

Eclecticism in the Compilation of Islamic Law in Book 1

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Abstract: Eclecticism in the Compilation of Islamic Law (KHI) is evident through the incorporation of various opinions from different schools of Islamic jurisprudence, including the Shafi'i school as the dominant *madhhab* in Indonesia, as well as the Hanafi, Maliki, and Hanbali schools, alongside several modern approaches. This method reflects an effort to reconstruct Islamic law so that it aligns with social needs and the national legal system. This study employs a library research method. The primary sources consist of the official text of the KHI, classical fiqh works from the four major schools (Hanafi, Maliki, Shafi'i, and Hanbali), and contemporary literature on Islamic family law in Indonesia. The analytical techniques used include document study, article content analysis, and tracing the compatibility of madhhab opinions with the norms adopted in the KHI, supplemented by a sociological approach to assess the implications of its implementation in practice. The findings indicate that the application of eclecticism in Book I of the KHI is grounded in (a) social plurality; (b) the sustainability of the national legal system; (c) the values of justice; and (d) legal adaptability. The procedural steps of madhhab-based eclecticism in the KHI involve: (a) identifying issues of Islamic law to be compiled, (b) examining textual evidences and madhhab opinions, (c) selecting the most beneficial view (*maslahah*), (d) harmonizing it with the national legal system, and (e) conducting academic validation and social feasibility testing.

Keywords: Eclecticism; Islamic Jurisprudence Schools; Islamic Law Compilation; Legal Adaptability; National Legal System.

1. Introduction

Indonesia, as a nation that upholds the principles of democracy and justice, places law as the fundamental pillar in regulating national and state life. Law is not merely a collection of regulations but serves as a vital instrument for maintaining social order, ensuring justice, and constraining power to prevent its misuse. In this regard, the existence of a strong and respected legal system constitutes an essential prerequisite for establishing a civilized governance framework oriented toward the interests of the people. Therefore, it is crucial to ensure that law is genuinely present in every aspect of state affairs, not merely as a symbol but as the primary guiding principle in every policy and decision.

Indonesia has declared itself a state governed by law (*rechtsstaat*) (Thaib, 2000), thereby affirming that law, rather than political interests or economic policies must serve as the guiding principle in national and state life. Consequently, the legal system must be constructed fairly and function effectively. Furthermore, political, economic, and social institutions must be organized in a systematic manner. Equally important is the cultivation of a legal awareness culture that is logical and impartial, aimed at fostering communal life within society, the nation, and the state (Ali & Heryani, 2012).

The rule of law in Indonesia possesses distinctive characteristics that cannot be separated from the societal context, in which the majority of the population adheres to Islam. As devout followers of their faith, Muslims naturally expect that their lives, including legal matters, align with the religious teachings they uphold. To respond to these expectations, the Indonesian government has provided space by incorporating Islamic law into the national legal system through the Compilation of Islamic Law / *Kumpulan Hukum Islam* (KHI), enacted under Presidential Instruction No. 1 of 1991. The KHI regulates aspects of family law for Muslims, such as marriage, inheritance, and endowments (*waqf*) (Muhaki, 2020).

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The implementation of the KHI as a legitimate legal product is closely connected to Indonesia's primary sources of law, namely Pancasila and the 1945 Constitution. This indicates that the KHI exists within a constitutional legal framework, consistent with Indonesia's legal tradition, which follows the Continental European legal system. Historically, Islamic law has long existed and developed within Indonesian society. Consequently, many legal scholars regard Islamic law as part of customary law (*bukum adat*). On this basis, the enactment of Islamic law through the KHI can be understood as a legitimate and integral component of the national legal system.

Although the KHI has been institutionalized as part of the national legal system, it must be understood that Islamic law (*shari'a-fiqh*) is fundamentally derived from the Qur'an and the *Sunnah*, a principle agreed upon by all Muslims. In practice, however, these laws emerge through processes of interpretation involving diverse methods and approaches. Such differences have given rise to various schools of fiqh within the Islamic tradition. Accordingly, the KHI cannot be separated from references to the perspectives of these different schools of jurisprudence. This has, in turn, generated diverse responses within society, both supportive and critical, particularly regarding efforts to realize legal certainty and justice for Muslims in Indonesia (Almujahidin, 2011).

The KHI, as Islamic family law in Indonesia, came into effect following the issuance of Presidential Instruction No. 1 of 1991 and has since attracted significant scholarly attention. However, most existing studies on the KHI have primarily focused on normative and descriptive analyses of its articles, without delving deeper into the methods underlying its formulation. Theoretically, the KHI is not the product of a single school of fiqh but rather an eclectic selection of various fiqh perspectives, adapted to the needs of the national legal framework and Indonesia's socio-political context. Such an approach should be a focal point in the study of Islamic law, so that understanding the KHI is not confined merely to the textual provisions of its articles, but also extends to the legal reasoning and methodologies that underpin its development (Qodri Azizy, 2004).

Research by Nurul Huda (2010), for instance, has addressed the theme of eclecticism in the KHI, but it remains general in scope and does not provide a detailed identification of the specific articles of the KHI to trace their fiqh origins, nor does it offer an in-depth analysis of the justification for selecting particular schools from the perspective of *maqāṣid al-shari'ah* or public interest (*maslahah*). Another study by Eri Nur Shofi'i (2023) discusses the aspect of *talfiq* (the combination of opinions from different schools) within the KHI, but its focus is limited to certain articles and does not examine the overall structure of eclectic reasoning in Book I. Meanwhile, Musdah Mulia's study through the Counter Legal Draft of the KHI (CLD-KHI) emphasizes gender bias in KHI norms, particularly regarding issues of polygamy, wife's obedience, and the husband's position as head of the household. However, the approach taken is largely ideological in nature and has not academically analyzed the roots of such bias in the jurisprudential sources employed in the legal construction of the KHI (Musdah Mulia, 2007).

Studies from the perspective of positive law also demonstrate certain limitations. For example, Muhammad Adib (2016) underscores the importance of standardizing the decisions of religious courts and recognizes the KHI as a significant instrument. However, his study does not evaluate the coherence between the legal norms within the KHI and the methods of *madhhab* selection applied, which affect inconsistencies in legal implementation. In addition, research by Fadhlán and Ramdani Putra (2023) has highlighted aspects of *ijtihad* and the comparison of *madhhab* opinions on the issues of *hibah* (gifts) and *mahr* (dowry), yet their analysis does not extend methodologically to encompass all articles of Book I.

From these facts, it becomes evident that no research has yet comprehensively analyzed the eclectic approach across all articles of Book I of the KHI by mapping the *madhhab* origins of each provision, examining the reasoning behind their selection, and evaluating their compatibility with the social context and the principles of substantive justice in contemporary Islamic law. As the national family law for Indonesian Muslims, the KHI holds a crucial position in providing legal certainty, unifying the diversity of *fiqh* practices, and realizing the values of substantive justice in the life of Muslim families.

The KHI was formulated through an eclectic approach, namely by selectively adopting legal opinions from various schools of *fiqh*. Theoretically, this approach provides flexibility and the capacity to accommodate the diversity of Indonesia's plural society. Although the methodology for selecting *madhhab* opinions, along with the normative foundations and

maqāṣid objectives underlying each provision, is not elaborated in detail, this approach nonetheless reflects an adaptive effort to respond to the legal needs of Islamic family law in Indonesia. Based on this premise, the present study will examine the topic under the title “Eclecticism in the Compilation of Islamic Law in Book I.”

2. Research Method

This study is a library research, which focuses on exploring, reviewing, and examining books and other scholarly literature in a comprehensive and in-depth manner. This type of research confines its activities to the exploration of library collections without requiring field surveys (Zed, 2008). Library research is classified as qualitative research, employing inductive data analysis (Moleong, 1995), meaning that data presentation proceeds from the particular to the general. According to Amir Hamzah (2020), library research operates at an analytical level and adopts an emic perspective, in which data are obtained not from the researcher’s personal viewpoint but from conceptual and theoretical facts.

The research method employed in this dissertation is the descriptive-analytical method, which involves defining and describing the characteristics of the research object, followed by analysis and the formulation of conclusions aligned with relevant theories and general principles related to the object of study (Soekanto, 1986).

The data collection method in this dissertation employs documentation techniques and methods, namely textual analysis (*nash*) and literature review, as the primary means of gathering data. This method is applied to collect information from various documents and sources of literature. The textual analysis or literature review method is specifically used to examine data explicitly contained in various references such as classical *turath* works, books, journals, magazines, and others (Qomar, 2015). In this dissertation, the researcher obtained data by reviewing a wide range of sources, including classical texts, books, journals, qanun, fatwas, legal forums, legislation, regulations, and other relevant literature, particularly legal sources connected to the Indonesian context and Islamic law that are directly related to the subject matter under discussion.

Data analysis is a crucial process for obtaining answers to the research questions as outlined in the problem formulation, as well as for interpreting findings prior to drawing conclusions in a study. In this process, the available data are systematically organized according to specific categories. The data analysis applied in this research is content analysis, a method aimed at describing and drawing conclusions from the substance of communication processes as reflected in texts (Hamzah, 2020).

The initial stage undertaken in this study, after documenting both primary and secondary sources, was to inventory the issues that serve as the object of this dissertation. Once these issues were organized according to the chapters contained in the KHI, the next step involved tracing and examining the texts of Book I of the KHI on marriage. This was carried out using content analysis, in relation to both the primary references of the KHI and secondary sources. The data were then analyzed and presented in a descriptive manner through a dialectical analytical exposition.

3. Research Result and Discussion

3.1. The Basic Concept of Eclecticism in the Compilation of Islamic Law (KHI)

In the Arabic linguistic perspective, eclecticism tends to share a close meaning with the concept of *talfiq*. While eclecticism is understood as the act of selecting a legal opinion considered preferable, *talfiq* refers to the application of more than one legal opinion within a single legal case, typically by adopting the opinion that is easier to implement. As defined in the usual *al-fiqh* lexicon, *talfiq* means practicing two opinions simultaneously in one case, or applying one opinion while still being influenced by the other (Arifin, 2012). It can also be understood as performing an act of worship by combining the results of *ijtihad* from multiple jurists (*mujtahid*) on a single issue, even though one of the credible jurists does not recognize such a combined practice (Syarifuddin, 2011).

The discourse on the legality of *talfiq* among *mujtahid* scholars reflects differing opinions. Some scholars prohibit the practice of *talfiq* when it is pursued merely to seek convenience, while others permit it. Among those who allow *talfiq* is Ibn al-Subki (d. 771 H), who adopted the view of Abu Ishaq al-Mawarzi (d. 340 H). In contrast, al-Mahalli (d. 864 H)

held that those who engage in *talfiq* are to be considered sinful (*fasiq*), whereas Abu Hurairah (d. 345 H) argued that practitioners of *talfiq* should not be deemed *fasiq*.

Then, Syarifuddin explains that the aforementioned opinion, when connected with the thought of al-Razi (d. 606 H) in *al-Mahshul wa-Syarhihi*, indicates the presence of legal arguments concerning *talfiq*. This is in line with the views of al-Ruyani (d. 502 H) and Ibn Abd al-Salam (d. 660 H), who asserted that the permissibility of *talfiq* depends on the underlying motivations for its practice. Such motivations must be evaluated in light of the broader principle of public interest (*maslahah*). In other words, if the motivation is negative, such as manipulating religious teachings, then *talfiq* is prohibited. However, if its implementation aims at achieving *maslahah* or alleviating harm (*madarat*) and hardship (*masyaqqah*), then it is deemed permissible.

Eclecticism is also essential in the context of reforming Islamic law (contemporary *ijtihad*). Modern Muslim scholars and jurists such as Yusuf al-Qaradawi and Jasser Auda have developed an eclectic *maqashid al-shariah* (objectives of sharia) approach, which emphasizes the substance and core values of the sharia such as justice, public welfare (*maslahah*), and humanity, rather than rigid formal provisions. They stress that in a constantly changing world, Islamic law must evolve through an open, interdisciplinary, and eclectic form of *ijtihad*, while remaining firmly rooted in the fundamental values of the Qur'an and the Sunnah (Yusuf al-Qaradawi, 1992).

Eclecticism in state governance is crucial for maintaining harmony within multicultural societies. Indonesia, for instance, as a nation composed of diverse ethnicities, cultures, and religions, heavily relies on eclectic legal and policy approaches to preserve stability and justice. Pancasila itself can be regarded as a form of ideological eclecticism, combining religious, humanistic, and national elements. This demonstrates that eclecticism holds significant potential as a philosophical foundation for building an inclusive and just state order (Magnis-Suseno, 1994).

Eclecticism has become highly relevant in the contemporary era, whether in the realms of science, education, culture, or religion. Openness to diverse ideas and the capacity to integrate multiple perspectives serve as essential foundations for developing comprehensive and resilient thought capable of confronting complex realities.

According to A. Hamid S. Tamimi (1996), a compilation is a written product derived from the works of others that is systematically arranged. Accordingly, the Compilation of Islamic Law (KHI) can be understood as a collection of Islamic legal provisions that are written and organized in an orderly manner. Compilation represents a method of assembling information from various sources with the aim of facilitating comprehension and practical application. It is a process of gathering and arranging information systematically from multiple sources, thereby making it easier to understand and utilize across different fields, such as law and scholarship. Compilation serves to simplify and clarify information, thus enabling broader accessibility and usability for the general public.

When the term "law" is combined with the term "Islam," the phrase Islamic Law refers to a body of rules grounded in the Qur'an and Hadith, which regulate human actions, are acknowledged and believed in, and must be practiced by Muslims (Djamil, 1997). Islamic Law can also be understood as a set of regulations governing human behavior, recognized by a given community, formulated by competent authorities within that community, and enforced as binding upon all its members (Tamam, 2018; Manan, 2016; Hatta, 2017). Furthermore, when the term "law," as defined above, is combined with the term "Islam" or *shar'*, Islamic Law denotes a system of rules derived from the Qur'an and Sunnah, relating to the conduct of legally accountable individuals (*mukallaif*), and these rules are recognized and believed to be binding upon all adherents of Islam (Lis Sulistiani, 2018).

In Western literature, Islamic Law is commonly referred to as the Islamic Law or, in a broader sense, as the Islamic Jurisprudence. These two terms, however, reflect different tendencies: the former is more closely associated with *shari'ah*, while the latter leans toward *fiqh*. Nevertheless, the two cannot be applied consistently (Rafiq, 2001). The use of the term Islamic Law also reveals ambiguity in practice between *fiqh* and *shari'ah* (Syaltut, 1966), since, in practical usage, the term Islamic Law is often employed as a substitute for either of these concepts.

The Compilation of Islamic Law (KHI) is a highly significant legal product in the context of Islamic family law in Indonesia. Drafted to bridge the gap between *shari'ah* norms and the national legal system, KHI serves as the primary reference in resolving cases within the jurisdiction of the Religious Courts. Although KHI is not a formal legislative product equivalent to statutory law, its existence nonetheless carries recognized legal authority and functions as a juridical basis in various cases concerning marriage, inheritance, and guardianship. Nevertheless, challenges remain, particularly regarding reform and adaptation in response to the ever-evolving dynamics of society.

3.2. The Process of Eclecticism in the Compilation of Islamic Law (KHI) in Book I

Eclecticism in the Compilation of Islamic Law (KHI) not only reflects an inclusive intellectual approach to the various schools of thought in Islam but also constitutes the outcome of a systematic and structured operational process. The formulation of the KHI is grounded in the principle that Islamic law in Indonesia must be capable of addressing the dynamics of modern society without losing its normative essence. Accordingly, its drafting process did not merely involve selectively adopting opinions from classical *fiqh* texts but also proceeded through institutional, intellectual, and contextual stages, carried out within the framework of *ijtihad jamā'ī* (collective *ijtihad*).

This operational process began with the establishment of a drafting committee by the Indonesian Ministry of Religious Affairs in 1981, consisting of scholars (*ulama*), legal academics, and judges of the Religious Courts from various madhhab and organizational backgrounds. The committee examined a wide range of Islamic legal sources from the four major schools, Shāfi'ī, Ḥanafī, Mālikī, and Ḥanbalī without being bound exclusively to any single one. The selection of opinions was based on considerations of social relevance, compatibility with the national legal system, and the principles of justice and public welfare (Qodri Azizy, 2002). In practice, whenever differences of opinion arose among the schools, the view chosen was the one deemed most contextual and capable of providing broad benefits for Indonesian society.

This process also involved sociological and juridical considerations. For instance, draft articles were examined through national deliberations, academic seminars, and limited public hearings before being finalized into Presidential Instruction No. 1 of 1991. At each stage, a dialogue was conducted between the normative framework of *fiqh* and the positive norms of national law. This approach demonstrates that eclecticism in the Compilation of Islamic Law (KHI) was not a form of arbitrary compromise, but rather a reconstruction of Islamic law within the framework of *maqāṣid al-shari'ah* (the higher objectives of Islamic law), namely the preservation of religion, life, intellect, lineage, and property (Atho Mudzhar, 1993).

Thus, this process not only produced a legal framework compatible with national law but also created a model of Islamic law that is contextual, rational, and responsive to Indonesian values. The Compilation of Islamic Law (KHI) serves as evidence that Islamic law is not monolithic but rather dynamic and open to reform through an eclectic approach that is both academically and socially accountable (Abidin, 2010).

The drafting of the Compilation of Islamic Law (KHI) represents a concrete manifestation of the eclectic approach, namely a method of selecting the best elements from various Islamic legal schools of thought and combining them with local, national, and modern values. This process proceeded through the following systematic stages: first, identifying the issues of Islamic law to be compiled, particularly in the field of family law; second, tracing evidences and juristic opinions from various schools to obtain a wide range of perspectives; third, selecting the most beneficial opinions based on rational and contextual considerations; fourth, harmonizing with the national legal system to ensure consistency with the principles of Indonesian law; and finally, conducting academic validation and social feasibility testing through academic forums and community involvement to refine the KHI draft before its enactment. Thus, KHI serves as an effective and relevant legal reference in accordance with the needs of Indonesian society (Atho Mudzhar, 2000).

Each stage of the operational process in drafting the Compilation of Islamic Law (KHI) reflects a careful eclectic approach, taking into account the diversity of legal schools, the social context of society, and the requirements of the national legal system. This demonstrates that Islamic law in Indonesia has developed through a scientific, democratic, and contextual process, rather than merely as a textual adaptation of classical *fiqh* literature. Accordingly, KHI

may be regarded as a model of Islamic legal reconstruction that is both relevant and responsive within the framework of a modern state governed by law.

The process of eclecticism in the formulation of the Compilation of Islamic Law (KHI) demonstrates a progressive approach to the development of Islamic law in Indonesia. By incorporating various sources of classical *fiqh*, taking into account social realities, and aligning with the national legal system, KHI serves as a model of Islamic legal application that is moderate, open, and contextual. This approach not only preserves the continuity of tradition but also addresses contemporary challenges in a rational and inclusive manner.

3.3. Considerations in the Determination of Madhhab Adoption in the Compilation of Islamic Law (KHI) in Book I

The Compilation of Islamic Law (KHI), as a codification of substantive Islamic law in Indonesia, represents a form of legal engineering characterized by eclecticism, meaning that it is not strictly bound to a single madhhab but instead accommodates diverse perspectives from various Sunni schools of jurisprudence. Historically, the KHI was enacted under Presidential Instruction No. 1 of 1991, consisting of three books, with Book I providing a detailed regulation of marriage law. In its formulation, the drafters did not rely solely on the Shafi'i *madhhab* which has traditionally been the dominant school in Indonesia, but also incorporated perspectives from the Hanafi, Maliki, and Hanbali madhhabs when deemed more contextually relevant to Indonesian society.

3.3.1. Socio-Historical Background and the Need for Codification

The Compilation of Islamic Law (KHI), particularly Book I on Marriage Law, represents a codified product of Islamic law by the state that is uniquely Indonesian. Its formulation was not solely grounded in the normative sources of religion but also took into account the sociological, juridical, and political contexts of post-New Order Indonesia, which demanded the unification of Islamic family law and the strengthening of religious courts. Hence, the drafting of the KHI was not merely a duplication of classical *fiqh* texts but rather the result of contextual *ijtihad* by scholars, judges, and academics (Atho Mudzhar, 1993).

The drafting of the Compilation of Islamic Law (KHI) was carried out through an eclectic approach, which integrates opinions from various Sunni *fiqh* schools, namely Hanafi, Maliki, Shafi'i, and Hanbali. Although culturally the majority of Indonesian Muslims affiliate with the Shafi'i school, a single-school approach was deemed insufficient to address the dynamics of society and the demands of family law modernization. Consequently, this method is referred to as a form of *takhayyur* (selective adoption) and *talfiq* (combination) of schools within a unified legal system (Qodri Azizy, 2004).

The Compilation of Islamic Law (KHI) adopts an eclectic approach by incorporating perspectives from various schools of *fiqh*, such as Shafi'i, Hanafi, Maliki, and Hanbali. This approach enables KHI to select opinions that are most relevant to the conditions of Indonesian society, rather than adhering exclusively to a single school. For instance, regarding the issue of a marriage guardian (*wali nikah*), KHI adopts the more flexible Hanafi perspective, whereby a marriage without a consanguine guardian may be deemed valid if conducted before the Religious Court (Rofiq, 2019).

Talfiq occurs when, within a single legal provision, two opinions from different schools of *fiqh* are combined to form a new legal norm. This method is employed to produce legal formulations that are not only valid according to Islamic jurisprudence but also responsive to social change and aligned with the national legal structure. An example can be seen in the regulation concerning the distribution of joint marital property (*gono-gini*), which is not explicitly recognized in classical *fiqh* but was incorporated into KHI by referring to principles of justice and local practices embedded in Indonesian society (Azra, 2021). This approach was developed in the spirit of *ijtihad jama'i* (collective *ijtihad*), involving scholars, academics, and judges in its formulation process. In this way, KHI emerges as a product of Islamic law that carries not only a *fiqhiyah* (classical Islamic jurisprudential) dimension but also juridical-formal and socio-constitutional significance (Arifin Mansur, 2021).

It is important to understand that the *Kompilasi Hukum Islam* (KHI) is not a classical *fiqh* manual or a compilation of juristic fatwas, but rather a binding legal document within the jurisdiction of religious courts. This positions KHI as a product of contextual *ijtihad* that takes into account social diversity, family dynamics, and the status of women in modern Islamic family law. In several respects, KHI is even regarded as more progressive than classical *fiqh*, for instance in its provisions restricting polygamy, requiring the consent of the first wife, and

protecting the rights of wives and children (Marcoes, 2022). Contemporary scholars view KHI as a manifestation of the indigenization of Islamic law in Indonesia, whereby *fiqh* norms are adapted to the needs of Indonesian Muslim society at both local and national levels (Nur Ichwan, 2023). This approach is also consistent with the principles of *maqāṣid al-shari'ah* (the higher objectives of Islamic law), which prioritize public interest, justice, and family welfare.

The *Kompilasi Hukum Islam* (KHI), particularly Book I on Marriage Law, represents a uniquely Indonesian legal product. It is not merely a replication of classical *fiqh*, but rather the result of collective *ijtihad* that takes into account juristic schools, sociological realities, and legal frameworks. The use of *takhayyur* (selective adoption) and *talfiq* (eclectic combination) demonstrates that KHI is a form of Islamic legal reconstruction responsive to the Indonesian context, while also affirming that Islamic law is dynamic and open to the demands of changing times.

Certain provisions in the *Kompilasi Hukum Islam* (KHI) are selected based on the extent to which the teachings of a particular *madhhab* are socially acceptable within Indonesian society. For instance, the Shafi'i school remains the primary reference regarding the obligation of a marriage guardian (*wali nikah*), as this view is deeply rooted among Indonesian Muslims (Abidin, 2020). Azra (2021) emphasizes that this choice is not solely based on the strength of religious arguments but also because the view has become firmly embedded in the socio-religious practices of Indonesian Muslim communities, particularly in Java and Sumatra. Within the Shafi'i school, the guardian is an essential element of marriage that cannot be omitted, which aligns with the prevailing customs and the enduring patriarchal social structure in Indonesian Muslim society.

The KHI also exhibits a hybrid character in its configuration neither purely classical Islamic law, nor merely positive state law, but rather the outcome of a dialogue between these two legal realms. This is evident in numerous provisions that have no direct equivalents in classical *fiqh* texts, such as regulations on divorce mediation (Article 65), joint property (Article 97), and the allocation of child custody rights (Article 105). All of these reflect legal *ijtihad* that takes into account Indonesia's plural socio-political context and is oriented toward substantive justice (Qibtiyah, 2019).

The flexibility of the KHI in selecting *madhhab* views appropriate to the Indonesian context demonstrates that Islamic law is not static but responsive to social change. This also indicates that religious authority within the state context is no longer individualistic, as in classical scholarly traditions, but has become collective and institutionalized. In other words, KHI serves as a concrete example of the institutionalization of *ijtihad* within the framework of a modern state (Rohmah, 2020).

The contextualization of Islamic law in the KHI is also aligned with the spirit of democracy, which emphasizes public participation and universal values of justice. Therefore, the determination of *madhhab* positions in KHI is not solely based on the strength of theological or historical arguments but is also assessed through the lens of social needs, gender equality, child protection, and other public interests. Consequently, many provisions in KHI can be categorized as *ijtihad maqāshidi*, that is, the formulation of law based on the overarching objectives of sharia such as justice, public welfare, and the prevention of harm.

The process of *madhhab* selection in the KHI reflects a new model in the development of Islamic law: Islamic law as an open system capable of engaging in dialogue with local culture, national needs, and international legal frameworks. This also signifies that *ijtihad* is never extinct and remains highly relevant in the modern world. KHI serves as a symbol that Islamic law in Indonesia is not merely a legacy of classical texts but the result of a prolonged engagement between texts, context, and ever-changing realities (Syamsuddin, 2021).

Thus, the KHI represents the outcome of a national law Islamization process that is neither rigid nor static, but inclusive and transformative. This approach is essential for maintaining the relevance of Islamic law within Indonesia's pluralistic society, while also demonstrating that Islamic values can be articulated within a functional and just positive legal framework.

3.3.2. Customary Practices (Synchronization) with Indonesia's National Law

The synchronization between the KHI and Indonesia's national law represents a strategic step in establishing a legal system that is harmonious, integrative, and in accordance with the principles of a constitutional state. As part of the national legal framework, KHI cannot exist solely as a normative *fiqh* document; it must be compatible with the fundamental

values enshrined in the 1945 Constitution, including the principles of the rule of law (*rechtsstaat*), respect for human rights, and a modern state administrative system. Therefore, considerations of Indonesian positive law constitute a key factor in the selection of *madhbab* within KHI.

As a component of the national legal system, the KHI must be compatible with constitutional norms, including human rights principles and national legislation. This is evident in Article 2 of KHI, which mandates the registration of marriages at the Office of Religious Affairs. While the Hanafi *madhbab* permits marriage without a guardian and registration, in the context of the state, this opinion is adjusted to ensure legal protection and proper civil administration (Ni'am Sholeh, 2017).

One concrete example of this synchronization is the provision in Article 2, paragraph (2) of KHI, which mandates that every marriage must be registered at the Office of Religious Affairs (KUA). This registration is not merely administrative but carries broad legal implications for the validity of the marriage, legal protection for women and children, and recognition of legal status within the state system. In the context of classical *fiqh*, particularly according to the Hanafi *madhbab*, a marriage contract is valid without official registration and may even occur without a guardian for a mature and sane woman. However, within the national legal system, this view cannot be directly adopted as it conflicts with administrative requirements and legal certainty.

By mandating marriage registration, the state seeks to prevent the widespread practice of unregistered marriages (*nikah siri*), which gives rise to various social and legal issues, such as children without birth certificates, mothers lacking spousal support, and difficulties in inheritance distribution. This demonstrates that KHI does not solely rely on textual religious evidence but also considers aspects of *maslahah 'ammah* (public welfare) and *maqāṣid al-shari'ah* (objectives of Islamic law), namely the protection of religion, life, intellect, lineage, and property (Mubarok, 2017).

Marriage registration also represents the realization of the principles of justice and legal certainty as affirmed in Article 28D of the 1945 Constitution. Law Number 1 of 1974 on Marriage and Government Regulation Number 9 of 1975 have even emphasized the importance of such registration. Thus, although marriage registration is not a requirement for validity according to classical *fiqh*, it is mandated by the state to ensure clarity of legal status and citizen administration. This exemplifies contextual *ijtihad* that reconciles Islamic law with national law.

Moreover, this synchronization approach also reflects the principle of *al-'urf al-shāhīb* (legitimate custom) in Islamic law, which allows the state to enact new regulations to address contemporary needs, as long as they do not fundamentally contradict the *nash* of the Sharia. In the context of Indonesia as a modern constitutional state, marriage registration becomes part of *al-'urf al-shāhīb*, protected by the state for the public welfare of the Muslim community (Wahbah al-Zuhaili, 1986).

Contemporary fatwas, such as those issued by the Majelis Tarjih of Muhammadiyah and the Fatwa Commission of the Indonesian Ulema Council (MUI), regard marriage registration as a legitimate and sanctioned form of social regulation. This demonstrates the flexibility of Islamic law in responding to social changes for the sake of public welfare and the protection of fundamental rights. Synchronization with national law is also crucial to establish the KHI as a legal instrument with binding authority in religious courts, in accordance with the rule of law principle that places all citizens under the same legal framework. Therefore, the KHI relies not only on *fiqh* but also on national and internationally ratified legal norms.

The above discussion illustrates that the synchronization between the KHI and Indonesian national law serves as concrete evidence that Islamic law in Indonesia is contextual, dynamic, and open to contemporary developments and societal needs. Provisions within the KHI, such as the obligation for marriage registration, demonstrate adjustments to the positive legal system and the principles of a rule-of-law state, ensuring justice, legal certainty, and the protection of citizens' rights. Although derived from various classical *madhhabs*, the KHI does not apply them textually; rather, it employs an approach based on *maslahah*, *maqāṣid al-shari'ah*, and *al-'urf al-shāhīb*, accommodating Indonesia's social and legal realities. Thus, the KHI functions not only as a codification of *fiqh* but also as a juridical instrument bridging religious law and state law within an inclusive and relevant national legal system.

3.3.3. The Principles of *Maqāṣid al-Sharī'ah*

The principles of *maqāṣid al-sharī'ah* constitute a crucial foundation in the consideration of school of thought selection in the formulation of the KHI in Indonesia. *Maqāṣid al-sharī'ah* is generally understood as the objectives of Islamic law, encompassing the protection of five fundamental aspects: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), progeny (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) (Al-Ghazali, 1993). In this context, Islamic law is not merely understood as a collection of formal rules but as an instrument to realize human welfare in societal and state life. Therefore, the selection of schools of thought in the KHI considers not only textual authority but also the alignment with the values of *maqāṣid*, which represent the universal objectives of Islamic law.

The selection of schools of thought in the KHI is not exclusive to any single *madhhab*. Although the majority of Indonesian Muslims adhere to the Shafī'ī school, the drafters of the KHI did not limit themselves solely to this perspective. Instead, a process of selective consideration of legal opinions from various *madhhabs* including Hanafi, Maliki, Hanbali, and even non-madhhab scholars such as Ibn Hazm was undertaken, prioritizing views deemed most aligned with justice and public welfare. The principles of *maqāṣid* served as a guiding framework in choosing these opinions, ensuring that the formulated norms reflect the contemporary needs of Indonesian Muslim society while remaining grounded in authentic sources of the Sharia (Qodri Azizy, 2004).

A concrete example of the application of *maqāṣid* as a basis for selecting schools of thought in the KHI can be seen in the provisions regarding the marriage guardian (*wali*). In the Shafī'ī school, the *wali* is an absolute requirement and cannot be substituted; however, the KHI allows for the role of the judge (*wali hakim*) when the biological guardian is absent or unknown (Article 20). This reflects the adoption of the principles of *ḥifẓ al-nasl* and *ḥifẓ al-nafs*, emphasizing the protection of women's rights and preventing harm arising from uncertainty in marital status. In this case, the KHI opts for the opinion that is more contextual and provides better legal protection, even if it originates from a *madhhab* that is not dominant in Indonesia.

The KHI also adopts a progressive perspective regarding divorce and repudiation (*ṭalāq*). In the Shafī'ī school, *ṭalāq* can be pronounced verbally without requiring court approval; however, the KHI mandates a clear justification and a formal process before a religious judge (Article 116). This serves as protection for vulnerable parties, namely women and children, in line with the *maqāṣid* of *ḥifẓ al-nafs* and *ḥifẓ al-nasl*. This approach aligns with the theory of responsive law, which emphasizes substantive justice and social protection within the legal system (Auda, 2007).

The use of *maqāṣid* as the basis for selecting madhhabs in the KHI also reflects the principle of *murūbah* (flexibility) in Islamic law. Islamic law is not a rigid, frozen normative system but is open to adaptation in response to changing times and social needs. In this context, *maqāṣid* plays a central role as a principle that balances normative religious values with the practical requirements of society. By grounding the selection of *madhhabs* in *maqāṣid*, the KHI is able to formulate legal norms that are applicable, relevant, and imbued with strong social-ethical values (Khalid Masud, 2012).

The use of *maqāṣid* in the formulation of the KHI reflects a progressive legal consciousness. As Satjipto Rahardjo asserts, law is not merely a normative institution but an instrument for liberation and social transformation. In this context, *maqāṣid* serves as an epistemological basis for developing Islamic law as transformative law, a law that promotes social advancement, protects vulnerable groups, and adapts to societal dynamics (Rahardjo, 2009). Thus, the principle of *maqāṣid al-syarī'ah* in the selection of madhhabs in the KHI is not only a methodological aspect but also an ethical and philosophical foundation that ensures codified Islamic law remains vital and functional within the context of a modern nation-state. The KHI demonstrates that Islamic law need not be confined to textual conservatism but can be managed creatively and substantively to realize the higher objectives of Sharia in contemporary life.

3.3.4. Maslahah Mursalah (Public Interest or General Welfare)

One of the main principles applied in selecting opinions across different madhhabs is the principle of *maslahah*, which entails choosing the ruling that best ensures welfare, justice,

and convenience for society. The opinions adopted in the KHI are not necessarily those of the majority (*jumbūh*), but rather those that maximize public benefit and are practically applicable in the Indonesian context (Huda, 2010). For instance, Article 43 of the KHI stipulates that a child born out of wedlock only has a legal lineage (*nasab*) connection with the mother. This provision reflects a modern *fiqh* approach and the principle of child protection, even though it does not strictly follow a single classical *madhhab* and appears more aligned with contemporary *fiqh al-jinayah* and the Child Protection Law.

The selection of views in the KHI is not merely a compromise but reflects the *maslahah mursalah* approach, which considers the needs of the era, the protection of children's rights, and the principle of *hijz al-nasl* (preservation of lineage) within the framework of *maqāṣid al-syar'ah*. This means that a child's right to legal recognition, protection, and justice is prioritized, even if born from an extramarital relationship (Wahbah az-Zuhaili, 1986). This approach is further reinforced by developments in national law, such as Constitutional Court Decision No. 46/PUU-VIII/2010, which affirms that a child born out of wedlock has civil legal relations with the biological father, provided this can be scientifically verified, for example through DNA testing. Although this decision is a product of positive law, its values align with the Islamic principle of *maslahah*, which seeks to protect children's rights without legitimizing illicit sexual relations.

However, the implementation of this approach is not without criticism. Some scholars argue that recognizing a child born out of wedlock in relation to the biological father could potentially weaken the protection of the institution of marriage. Yet, within the framework of the KHI, this approach is not intended to legitimize *zina* (adultery) but rather to protect the child from unclear legal status and social discrimination (Djazuli, 2006). The application of the *maslahah* principle in the KHI demonstrates that Islamic law in Indonesia is dynamic, contextual, and progressive. Islamic law is not confined to classical texts but is interpreted and developed with consideration for the needs of a pluralistic modern Indonesian society living within a constitutional state system. The KHI thus serves as a bridge between the classical *fiqh* heritage and contemporary social needs, without neglecting the fundamental principles of the Shari'ah (Mubarak, 2015).

Thus, the application of the *maslahah* principle in the KHI demonstrates that Islamic law in Indonesia is dynamic and responsive to contemporary developments. Islamic law does not merely adhere to classical texts but also takes into account the needs and conditions of modern society. This reflects the contextual *ijtihad* approach employed by the drafters of the KHI in addressing contemporary legal issues. By prioritizing values of justice, utility, and public welfare, the KHI is able to bridge the gap between classical *fiqh* norms and the social realities of Indonesian society.

4. Conclusion

Based on the research findings and discussion above, it can be concluded that the use of eclecticism in Book I of the KHI is based on four main reasons: (1) social pluralism, which requires inclusive laws acceptable to various groups; (2) the continuity of the national legal system, which necessitates harmonization between *fiqh* and Indonesian positive law; (3) values of justice, serving as the basis for selecting *madhhab* opinions for the sake of public welfare; and (4) the adaptability of Islamic law to remain relevant to the development of modern society. The process of *madhhab*-based eclecticism in the KHI in Indonesia, particularly in Book I, demonstrates that this eclectic approach involves identifying the Islamic legal issues to be compiled, tracing textual evidence and *madhhab* opinions, selecting the most beneficial views, harmonizing with the national legal system, and conducting academic validation and social feasibility testing.

The implications of this study can be utilized for the development of an inclusive and adaptive Islamic law that responds to the dynamics of modern society, harmonization between Islamic law and Indonesian positive law, the application of justice values as a basis for *madhhab* selection, and the advancement of eclectic methodology in Islamic legal studies. The findings of this research can serve as a reference for the government, legal institutions, and academics in developing legal policies, Islamic law education curricula, and further studies on eclecticism and the evolution of Islamic law. This study may contribute to the formation of a more just, prosperous, and harmonious society.

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