

# Comparing Law No. 1/1974 and Compilation of Islamic Law 1991 in Indonesian Marriage Regulation

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Article History	Abstract
<b>Original Research Article</b>	<i>This study examines the comparison between Law Number 1 of 1974 on Marriage and Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law (KHI) in the context of family law regulation in Indonesia, particularly for Muslims. Using a normative juridical and comparative approach, the research analyzes the similarities and differences between the two legal instruments from philosophical, juridical, and sociological perspectives. Law No. 1 of 1974 is national in scope and applies to all Indonesian citizens regardless of religion, whereas the KHI is a codification of Islamic law specifically applicable to Muslims, enacted through a Presidential Instruction. Fundamental differences lie in legal principles, provisions on polygamy, marriage guardians (wali), and divorce. The findings highlight the need for legal harmonization between the universal norms of national law and Islamic values embedded in the KHI to ensure legal certainty that is just and responsive to the diverse social fabric of Indonesian society.</i>
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## A. Introduction

Law Number 1 of 1974 on Marriage serves as a legal reference in matters of marriage and represents a national legal product aimed at fulfilling the legal needs of Indonesian society in the area of marital affairs. This law was developed based on the cultural values and societal tendencies of an independent Indonesian nation. The aspiration of the Indonesian people to have a unified national law governing marriage applicable to all social groups across the country had long been pursued as part of a broader legal unification effort. (Cik Hasan Bisri, 1997)

Officially, the Indonesian government began working toward the formation of a marriage law in 1950 by establishing the Committee for the Investigation of Marriage Laws and Regulations and drafting a Bill (RUU) in accordance with evolving societal conditions. Over the years, changes and developments emerged, and the committee succeeded in drafting a marriage bill specifically for Muslims. However, this effort failed to be enacted into law, as the People's Representative Council (DPR) was unable to proceed with legislation following the issuance of the Presidential Decree of July 5, 1959. (Sumiyati, 1986)

Subsequently, in 1966, through the Decree of the Provisional People's Consultative Assembly (Tap MPRS) No. 28, Articles 1 and 3 emphasized the necessity of enacting a marriage law. Following this mandate, in 1967 and 1968, the government submitted two draft laws: the Draft Law on Marriage for Muslims and the Draft Law on the Basic Provisions of Marriage. However, both drafts failed to gain approval and were subsequently withdrawn by the government. (Wael B Hallaq, 2009)

The government's efforts to promulgate a marriage law continued, and on July 13, 1973, a new marriage bill was resubmitted to the House of Representatives (DPR). This bill encountered obstacles because several provisions conflicted with the fundamental principles and teachings of Islamic marriage law. In response to objections from the Muslim community, the government issued a marriage law in 1974 that aligned with Islamic law and its core doctrines. This legislation is known as Law Number 1 of 1974 concerning Marriage.

Although Law Number 1 of 1974 largely accommodates and does not conflict with Islamic law, many Muslims remained dissatisfied with the legislation. This dissatisfaction gave rise to the Compilation of Islamic Law (KHI) is a collection of Islamic legal provisions

written and systematically organized in accordance with the tendencies of Indonesian Muslim society. Although the KHI is not classified as statutory law within the national legal framework, it functions as living law in the daily lives of the community. (A. Djazuli, 1994)

From a juridical perspective, the KHI only gained formal legal force within the national legal system after the issuance of Presidential Instruction Number 1 of 1991. Prior to this, there was considerable debate over whether the KHI should be enacted through a presidential decree, government regulation, or formal legislation. Following the 1991 Presidential Instruction, the KHI became a primary reference for judges in Religious Courts when adjudicating cases related to their jurisdiction, namely marriage, inheritance, and waqf (endowment). (Abdurrahman, 1995)

The Marriage Law of 1974, which came into effect on October 1, 1975, serves as the national marriage law as stated in its general explanation. The presence of this national law represents a *conditio sine qua non* for any nation-state, including Indonesia, considering its pluralistic society. Therefore, the 1974 Marriage Law is intended not only to establish principles but also to provide a legal foundation for marriage that has long been upheld and applies to all social groups and religions. (Jan Michiel Otto (ed.), 2010).

The law Number 1 of 1974 is a unique form of legal unification that fully respects variations based on religion and belief in the One Supreme God. Likewise, this unification aims to complement aspects not yet regulated by religious laws and beliefs. In this regard, the state has the right to regulate such matters independently, in accordance with societal developments and the demands of the times. Thus, the existence of this unification means that the state asserts its right not only to respect but also to regulate issues not governed by religious or belief systems. (Lynn Welchman, 2007).

## B. Methodology

This study employs a normative juridical method with a comparative legal approach. The method aims to analyze the legal norms contained in Law No. 1 of 1974 on Marriage and Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law. Primary data consist of primary legal materials, such as statutory regulations; secondary materials include scholarly literature and academic studies. The analysis is qualitative, focusing on the content, structure, and underlying legal principles of both instruments, while examining similarities and differences in the regulation of marriage, polygamy, marriage guardians (*wali nikah*), and the rights and obligations of husband and wife within Indonesia's plural legal system and its socio-religious context to inform

interpretation and policy. (Mike McConville & Chui, Wing Hong, 2007).

## C. Results and Discussion

### 1. Problems with Marriage Law

Presidential Instruction Number 1 of 1991 directed the Minister of Religious Affairs to disseminate the Compilation of Islamic Law for use by government agencies and communities in need. Subsequently, the Minister of Religious Affairs issued Decree Number 154 of 1991 mandating all relevant government institutions to maximize the dissemination of the Compilation of Islamic Law.

This Presidential Instruction is regarded by some Islamic law experts as a positive effort in the development of Islamic law within its capacity as one of the sources of national law. Due to the urgent need for justice and legal certainty particularly concerning Article 2 of Law Number 1 of 1974 for Muslims it was deemed necessary to compile the Compilation of Islamic Law. With the Compilation officially endorsed through Presidential Instruction Number 1 of 1991, all decisions by Religious Courts are required to be based on this Compilation. (Ann Elizabeth Mayer, 1999)

From Presidential Instruction Number 1 of 1991 followed by the Minister of Religious Affairs' decree, at least three key points can be understood:

1. The mandate to disseminate the Compilation of Islamic Law, which becomes an obligation for the Indonesian Muslim community to actualize Islamic teachings (i.e., law) in the life of the nation and state.
2. The legal provisions in the Compilation of Islamic Law are intended to fill substantive legal gaps for Muslims, particularly concerning the resolution of family disputes within the Religious Courts. Additionally, the Compilation of Islamic Law is explicitly referenced in Article 2 of the 1974 Marriage Law.
3. It clearly establishes the jurisdiction of Religious Courts in handling and resolving family law matters.

In its capacity as a legal instrument, the Compilation of Islamic Law accommodates a portion of the community's legal needs derived from values believed to be true. Besides providing legal protection, the Compilation is also believed to offer spiritual tranquility to society, as it presents religious symbols regarded by Muslims as sacred. Moreover, the Compilation embraces various Islamic jurisprudential views and schools of thought that sociologically hold strong persuasive and binding power

within the community. Therefore, it is not an exaggeration to say that the Compilation of Islamic Law is highly appropriate for implementation by society in the articulation of national and state life. (K. Wantjik Shaleh, 1982).

Although Presidential Instruction Number 1 of 1991 is acknowledged in its existence, it does not mean it is free from various problems. To date, it still faces several issues, including:

1. From a juridical perspective, Presidential Instruction Number 1 of 1991, which establishes the Compilation of Islamic Law, remains debated. This is because, within the hierarchy of legislation as outlined in the 1945 Constitution, Presidential Instructions (Inpres) are not explicitly recognized, but rather exist only as supplementary instruments in constitutional practice. Consequently, some members of society consider the Compilation of Islamic Law legally weak. Moreover, the Compilation consists of chapters, sections, articles, and clauses resembling the structure of formal legislation, even though it is not a law. This creates confusion regarding its form and format.
2. The Minister of Religious Affairs' decree, as an important instrument implementing the Compilation of Islamic Law or Presidential Instruction Number 1 of 1991, also exhibits weaknesses and ambiguities. It is known that a decree may contain various types of norms—general-abstract, general-concrete, individual-abstract, or individual-concrete. However, the decree's intended norm type is unclear. It is unlikely to be general-abstract because the President issued it as an instruction. Furthermore, it is considered ambiguous because the Minister of Religious Affairs issued it in the form of a decree, which could encompass different types of norms. Content-wise, the Minister's decree mirrors the Presidential Instruction in containing legal norms directed at individuals specifically, the Ministry of Religious Affairs' personnel. The mandate is to disseminate and implement the Compilation of Islamic Law. Therefore, the norm's nature is individual-concrete, categorizing it as an instruction decree rather than a ministerial decree. (SF, Amrullah Ahmad, 1996)

In addition to the two aforementioned problems, there are several other issues surrounding the Compilation of Islamic Law and Presidential Instruction Number 1 of 1991, including:

1. The socialization of the Compilation of Islamic Law to the general public, especially among the

Muslim community at large. In this regard, government officials involved in drafting the Compilation, as well as religious scholars and community leaders, have not conducted sufficient outreach. As a result, the Compilation primarily reaches urban populations, while rural communities remain largely unaware, with some completely unfamiliar with it.

2. The perception among community leaders, who strongly adhere to traditional *fuqaha* (Islamic jurists) teachings and wield considerable influence over their followers, has yet to fully accept the Compilation. This is particularly true for leaders who were not involved in its drafting.
3. The potential for conflict between the Compilation of Islamic Law and existing cultural structures and patterns within society, especially in inheritance matters. This arises because the Compilation was drafted and enacted in a context where much of the population lives in rural areas still closely tied to local traditions.
4. The persistence of groups within the community that firmly adhere to particular schools of thought or classical jurisprudence (*fiqh*). (Cik Hasan Bisri, 1999)

Although the number of such cases is relatively small, they attract significant attention from the Muslim community as they seem not to resolve issues but rather produce new problems. Therefore, efforts to refine the Compilation of Islamic Law or Presidential Instruction Number 1 of 1991 are necessary, particularly from Muslims who possess authority and expertise in legislation and Islamic law. (Ibrahim Hosen, 1993).

### 3. Comparative Review

The existence of Law Number 1 of 1974 aims to regulate and systematize the life of the Indonesian nation in the field of marriage and serves as national law. Similarly, the Compilation of Islamic Law aims to regulate the life of Indonesian Muslims, the largest population group, in matters of marriage, inheritance, and *waqf* (endowment). Additionally, the Compilation seeks to codify Islamic law in Indonesia in a formulated and systematic legal text. (Noel J Coulson, 1978).

Both legal products hold significant importance in the life of the Indonesian nation, as they share the same objectives. (Abdullahi Ahmed An-Na'im, 2008). Although differences exist between them, these differences are not fundamental and do not undermine the existing systems of either law. Therefore, to gain deeper insight into these two legal instruments, it is important to conduct a comparative analysis. The comparative analysis of these two legal products can be detailed as follows:

1. Although Law Number 1 of 1974 only addresses one aspect of family law, namely marriage and its related matters, its position in the hierarchy of legislation is more binding as it was enacted as a law. In contrast, the Compilation of Islamic Law, while more comprehensive in content compared to Law No. 1 of 1974, was established only through a Presidential Instruction followed by a decree from the Minister of Religious Affairs.
2. In terms of form and format, Law Number 1 of 1974 is more appropriately classified as a law, whereas the Compilation of Islamic Law exhibits ambiguity in its form since it was enacted solely by Presidential Instruction.
3. The Compilation of Islamic Law is broader and more detailed than Law Number 1 of 1974. Substantively, it covers issues not addressed by the 1974 Marriage Law, such as courtship (Articles 11–13), regulations on dowry (Articles 30–38), several prohibitions like marrying non-Muslims, marriage during pregnancy (Article 53), prohibitions during the ihram state (Article 54), prevention of marriage due to religious differences (Article 61), and legitimization of children born through technology-assisted reproduction (Article 99).
4. The essence of the Compilation of Islamic Law in marriage law is to imbue several provisions of Law Number 1 of 1974 with Islamic values. It also reaffirms and elaborates on these provisions, for example, the marital foundation in Law No. 1/1974 Article 1 is to form a happy and eternal family, whereas Article 3 of the Compilation expands this towards Islamic values such as *sakinah*, *mawaddah*, and *rahmah*. Likewise, the philosophical foundation of Law No. 1/1974 is Pancasila, linked to its first principle, while the Compilation's foundation is solely obedience to Allah, worship, and *mitsaqan ghalizan* (a strong covenant), among others.
5. The Compilation of Islamic Law is clearer and firmer than Law No. 1/1974, as seen in Articles 4, 5, 6, and 7, which emphasize and actualize order in Islamic marriage. These articles explicitly state that: a) marriage validity must be according to Islamic law; b) Muslim men are prohibited from marrying non-Muslim women; c) every marriage must be registered; d) marriage is only valid if conducted before the Religious Court Registrar (PPN); e) marriages outside the PPN are unlawful;

and f) marriage is only proven by a marriage certificate issued by the PPN. Such explicit provisions do not appear in Law No. 1/1974, which only states that: a) marriage must be conducted according to religious law, and b) recorded according to applicable legislation.

6. Law Number 1 of 1974 contains general provisions, while the Compilation of Islamic Law formulates specific rules as Islamic law applicable exclusively to Muslims.
7. The Compilation of Islamic Law has an Islamic perspective, whereas the 1974 Marriage Law has a national perspective that accommodates Islamic values.

Thus, although the Compilation of Islamic Law significantly modifies, affirms, and elaborates on Law Number 1 of 1974, it does not contradict or exceed what is regulated in the Marriage Law. Instead, the two have a close relationship, with consistent material content that complements each other. (John L Esposito, 2001)

## 1. Conclusion

A comparative study between Law Number 1 of 1974 on Marriage and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law reveals that both regulate the institution of marriage but differ in legal basis, normative approach, and scope. Law No. 1/1974 is general and binding on all citizens, whereas the Compilation of Islamic Law (KHI) is specifically applicable to Muslims. This difference reflects efforts to harmonize national law with Islamic law within Indonesia's legal system. The 1974 Marriage Law established the foundation for Indonesian marriage law and abolished the obligation for Muslims to be governed solely by their religious law. Presidential Instruction No. 1 of 1991 contains the Compilation of Islamic Law and mandates its dissemination and use as a reference for Religious Courts in adjudicating family law cases involving marriage, inheritance, and waqf. These two legal instruments do not present fundamental contradictions but rather complement each other.

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