

# Problems and Comparisons Regarding The Implementation of Marriage Laws Towards The Dissemination of Islamic Law Compilations

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## Abstract

*This research aims to identify problems in the implementation of Law Number 1 of 1974 concerning Marriage related to Presidential Instruction Number 1 of 1991 which regulates the dissemination of the Compilation of Islamic Law as a juridical basis. Although the Marriage Act of 1974 regulates various aspects of marriage in general, it does not explicitly regulate, legalize, or prohibit interfaith marriage. This raises the need for further elaboration in order to cover all religions regulated by the state. The birth of Presidential Instruction No. 1 of 1991, which aims to disseminate the Compilation of Islamic Law, faces challenges in implementation due to its lower position in the legal hierarchy compared to the Marriage Law. Therefore, even though this Presidential Instruction provides additional guidance, marriage issues must still refer to higher and more general rules. This research will explore how the integration of these two regulations can be done to create a consistent and fair legal system.*

**Keywords :** Comparison, Marriage, Islamic law compilations, Problems,

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## 1. Introduction

Law number 1 of 1974 is a national legal product which aims to fulfill the legal needs of the Indonesian people in the field of marriage. This law was built (read: formulated) based on the culture and tendencies of independent Indonesian society. The Indonesian nation's dream of having a law regulating marriage nationally that applies to all groups of society in Indonesia has long been fought for, namely legal unification. (Cik Hasan Basri, (1999). Officially, the Indonesian government began to take the initiative towards the formation of a law on marriage since 1950 by forming a Committee to Investigate Marriage Regulations and Laws and preparing a draft law in accordance with developments in the situation. Several years later there have been changes and new developments, the committee has succeeded in completing a bill on marriage for Muslims, but it failed to be passed into law because the DPR at that time was unable to act after the Presidential Decree of July 5 1959.

In 1966 through Tap. MPRS No. 28 emphasizes in articles 1 and 3 the need for a marriage law. As a follow-up to the confirmation of the MPRS, in 1967 and 1968, the government submitted two draft laws, namely, a draft law on Muslim marriage and a draft law on basic provisions for marriage. However, the two bills did not receive approval, therefore the government withdrew both bills. The government's efforts to issue a law on marriage continued, so that on July 13 1973, the government again submitted a new bill on marriage to the DPR. However, the bill encountered obstacles because there were several articles in the bill that conflicted with the principles of Islamic teachings and law regarding marriage. In response to the principles of



Islamic teachings and law regarding marriage. In response to Muslim objections to the bill, in 1974 a law on marriage was issued which was in accordance with Islamic law and its basic teachings. Furthermore, this law is called Law Number 1 of 1974 concerning marriage. (M. Yahya Harahap, 1999)

Even though Law Number 1 of 1974 provides many accommodations that do not conflict with Islamic law, Muslims do not seem to be satisfied with this Law. This expression of dissatisfaction gave birth to complications of Islamic law, which is a collection of Islamic legal provisions written and compiled in an orderly and systematic manner in accordance with the tendencies of Indonesian Muslims. Even though the complications of Islamic law in statutory regulations are not included in the category of written law, it is a law that lives in people's daily lives. (Zainuddin Ali, 2006). Juridically, the complications of Islamic law only had legal force in the national legal system after the birth of presidential instruction number 1 of 1999, although previously there was a tug-of-war on ideas, there were those who wanted the complications of Islamic law to be stipulated through a presidential decree or by government regulations, while there were also those who wanted them to be determined through law. After presidential instruction Number 1 of 1991, the Complications of Islamic Law became a reference for Religious Court judges in deciding cases related to competence, namely, marriage, inheritance and endowments. (Shaleh, K. Wantjik, 1982)."

## 2. Method

This research is a type of qualitative descriptive research with a formative juridical approach that focuses on aspects of Islamic law related to economic disputes. As qualitative descriptive research, its main goal is to provide an in-depth picture of legal phenomena without using statistical analysis or hypotheses (Creswell, 2014). A formative juridical approach is used to assess and develop a new understanding of legal issues, especially in the context of Islamic law and economic disputes, with the aim of recommending relevant solutions (Mertens, 2010). The data used in this study include primary data, such as Law No. 1 of 1974 concerning Marriage and Presidential Instruction No. 1 of 1991, which is the main source of law for the study (Republic of Indonesia, 1974; Republic of Indonesia, 1991). In addition, secondary data in the form of books on Islamic law and legal comparisons are used to provide additional context and insights (Hallaq, 2009; Azam, 2017). The analysis is carried out in a qualitative juridical manner, namely by assessing data based on legal principles to identify legal issues and provide in-depth interpretations (Bona, 2005). The library research approach is used to collect information and references from the legal literature, allowing researchers to gain a holistic understanding of the problem being studied and draw comprehensive conclusions (Babbie, 2010).

## 3. Results and Discussion

### 1. Problems with Marriage Law Number 1 of 1974

The Marriage Law of 1974, which came into effect on October 1 1975, is the national marriage law as stated in its general explanation. Therefore, the 1974 Marriage Law is intended as a principle and provides a legal basis for marriage which has been the guide and applies to all groups of society and religions. (Marriage Law Number 1 of 1974). In this context, Law number 1 of 1974 is a unique unification that fully respects variations based on religion and belief in belief in One Almighty. Likewise, this unification aims to complete everything that has not been regulated by law in religion and belief. In this case, the State has the right to regulate itself in accordance with societal developments and the demands of the times. Thus, the presence of unification means that the State declares itself to regulate something that is not regulated by law in that religion or belief.

Law number 1 of 1974 of 14 chapters covering 67 articles, even though it is not perfect and has not satisfied all groups, its presence must be recognized as progress in the field of Indonesian civil law. In this case. This law will be perfected as concrete problems arise in implementing the marriage law. This means that improvements to this Law are still expected if the provisions contained in it are deemed no longer up to date in line with developments and tendencies of the Indonesian nation. (Sumiyati, 1986). The contents of the 1974 Marriage Law, at least, can be said to have laid down the most basic principles of national marriage law,

including:

1. Marriage aims to form a happy and eternal family based on belief in the Almighty God.
  2. Marriage is a physical and spiritual bond, it must be based on the consent of both parties who will carry out the marriage, there must be no coercion from any party.
  3. For a marriage to be valid, it is carried out according to the laws of one's religion and beliefs.
  4. Every marriage event must be recorded based on existing regulations.
  5. The position of husband and wife is balanced in domestic life and social life together in society, each party has the right to carry out legal actions by dividing tasks, the husband is the head of the household and the mother is the housewife.
  6. A man can only have one wife and a woman only a husband.
  7. A man may have more than one wife if it is based on reasons and conditions with the permission of the court.
  8. The age limit for entering into marriage is 19 years for men and 16 years for women, and as long as they have not reached the age of 21, parental permission is still required.
  9. In certain relationships and circumstances a person is prohibited from entering into marriage.
  10. In certain cases a marriage can be prevented and annulled.
  11. Divorce can only be carried out after it is clear that there are certain reasons with a court decision.
  12. Even though a divorce has occurred, parents' responsibilities and obligations towards their children must remain.
  13. Both parties in a marriage event can enter into an agreement.
  14. Property acquired during marriage becomes joint property between husband and wife, its use must have approval from one of the parties. Meanwhile, property owned by husband and wife is handled individually unless there are other provisions in the agreement.
  15. As an Indonesian citizen, you can marry a foreign citizen.
  16. Marriage can be solemnized outside Indonesia.
  17. A legitimate child is a child born as a result of a valid marriage, while a child born outside a valid marriage only has a civil relationship with the mother/mother's family.
  18. In relation to the judiciary, what the judiciary carries out is justice in the context of religious justice for those who are Muslim and justice for others. (A. Djazuli, 1994) Juridically, Law number 1 of 1974 has a strong position in the Indonesian legal system, this does not mean that this Law is free from problems or issues. However, in its implementation, this Law is faced with several problems, including:
    - a. Even though in this Law there are provisions that provide opportunities for every religion to carry out marriages in accordance with religious law and their beliefs, there is still a perception from community groups that the law under this Law has not fulfilled the demands of their religion, because this Law does not address Islamic symbols clearly.
    - b. There is still an opinion that Law number 1 of 1974 is discriminatory and tends to violate human rights. It is said that because from a legal point of view everyone has the same position before the law, but why are there still provisions that prohibit marriages between people of different religions, even though that is not a human right that must be respected and upheld?
    - c. There are still provisions that are considered unclear and imperfect, for example article 2 paragraph 2 states that every marriage is registered according to applicable legislation. This provision does not explain the purpose of the recording. In the general explanation it is only said that each marriage is the same as recording important events in a person's life such as birth and so on.
    - d. Article 63 states that what is meant by courts in this Law are: a) religious courts for those who are Muslim, b) general courts for other religions. Then in paragraph 2 it is stated that the decision of the religious court is confirmed by the general court. This provision seems insulting and discriminatory towards religious courts. Apart from that, it seems that the juridical power of religious court decisions is not strong enough.
2. Problems with Presidential Instruction Number 1 of 1991 concerning Complications of Islamic Law

Presidential Instruction number 1 of 1991 to the Minister of Religion contains the dissemination of the complications of Islamic law which are used by government agencies and communities who need it. Then the Minister of Religion with his decision number 154 of 1991 stipulated that all other relevant government agencies should disseminate the complications of Islamic law wherever possible and apply it in resolving problems in the legal field in the following order;

1. Book I concerning marriage law consists of 19 chapters covering 170 articles (articles 1 to article 170).
2. Book II concerning inheritance law which consists of 6 chapters covering 43 articles (articles 171 to article 214).
3. Book III concerning waqf law which consists of 5 chapters covering 12 articles (articles 215 to article 228). (Presidential Instruction Number 1 of 1991)

This presidential instruction is considered by some Islamic law experts as a positive effort in developing Islamic law in its capacity as a source of national law. Therefore, due to the pressing need for justice and legal certainty, especially in relation to Law number 1 of 1974 article 2 for Muslims, it is deemed necessary to prepare a complication of Islamic law. With the complications of Islamic law confirmed by Presidential Instruction Number 1 of 1991, all religious court decisions must be based on the complications of Islamic law. (Ibrahim Hosen, 1993). From Presidential Instruction Number 1 of 1991 which was followed by the decision of the Minister of Religion, there are at least three things that can be understood, namely:

1. Order to disseminate the Complications of Islamic Law. This is the obligation of the Indonesian Islamic community in order to actualize the teachings (read: laws) of Islam in the life of the nation and state.
2. The legal formulation in the complications of Islamic law is intended to fulfill the void of substantive law for Muslims, especially with regard to resolving family disputes in the religious court environment. In addition, the Islamic Law Complications are designated by article 2 of the 1974 Marriage Law.
3. Demonstrate firmly the competence of religious courts in handling and resolving family law problems.

In its capacity as a legal instrument, the Compilation of Islamic Law has accommodated part of society's legal needs which are extracted from values that are believed to be true. The Compilation of Islamic Law, in addition to providing legal protection, is also believed to be able to provide inner peace to the community, because it displays religious symbols that viewed by Islamic society as something sacred. Complications of Islamic Law also accommodate various views and schools of thought in jurisprudence which sociologically have a strong message and binding force in society. (Abdurrahman, 1992). Even though Presidential Instruction Number 1 of 1991 is acknowledged that its existence does not mean it is free from various problems, to date it is still faced with various problems, including:

1. Juridically, Presidential Instruction Number 1 of 1991 which created the Compilation of Islamic Law is still debated, because the legislation mentioned in the 1945 Constitution does not include a Presidential Instruction, but is only known in constitutional practice, and even then only as a complement. Therefore, the Compilation of Islamic Law is considered by some people to be juridically weak. Apart from that, the Compilation of Islamic Law consists of chapters, sections, articles and verses that resemble the body of statutory regulations, even though they are not laws. 15 means that judging from the form and format there is confusion.
2. The Decree of the Minister of Religion as one of the important instruments of the Compilation of Islamic Law or Presidential Instruction Number 1 of 1991 also still contains weaknesses and confusion. As is known, a decision contains general - abstract, general - concrete, individual - abstract, individual - concrete norms. In this case, the Minister of Religion's decision is not clear which norm is meant. What is certain is that it is impossible to mean an abstract general because the president issued it in the form of instructions. Apart from that, it is also said to be ambiguous because the Minister of Religion continued

it in the form of a decision containing various possible characteristics and norms. Judging from the contents of the Minister of Religion's decision, it turns out that it is the same as Presidential Instruction Number 1 of 1991, namely that it contains legal norms that have individual address, namely only to the ranks of the Ministry of Religion. (Ahmad SF, Amrullah, 1996)

Apart from these two problems, there are still several problems surrounding the Compilation of Islamic Law or Presidential Instruction Number 1 of 1991, including;

1. The problem of socializing the Compilation of Islamic Law to members of the public, especially among Muslims in general. In this case, the government officials involved in compiling the Compilation of Islamic Law, the ulama and zu'ama have not carried out maximum outreach. This fact clearly shows that the Compilation of Islamic Law only touches urban levels of society, while rural society does not know much about it, some even do not know about the Compilation of Islamic Law at all.
2. Perception among community leaders regarding the Compilation of Islamic Law, which still adheres strongly to the teachings of the fuqaha and has a strong influence among its followers, has not yet been fully accepted. Especially community leaders who were not involved in preparing the Compilation of Islamic Law.
3. The possibility of clashes between the Compilation of Islamic Law and the structure and cultural patterns of society, especially in the field of inheritance. This is because the Compilation of Islamic Law was compiled and decided by the majority of people living in rural areas who are still related to local traditions.
4. There are still groups of people who insist on adhering to certain schools of thought or classical jurisprudence. Of the problems found, even though the number is relatively small, it is enough to pay attention to Muslims because it seems as if they are not solving problems, but instead producing problems. Therefore, efforts are needed to improve the Compilation of Islamic Law or Presidential Instruction Number 1 of 1991 from Muslims, especially those who have authority and capability in the field of legislation and Islamic Law. (Cik Hasan Bisri, 1997).

Comparative Analysis of Law Number 1 of 1974 with Presidential Instruction No. 1 of 1991. Law number 1 of 1974 aims to regulate and systemize the life of the Indonesian nation in the field of marriage and applies as national law. Likewise, the Compilation of Islamic Law also aims to regulate the lives of Indonesian Muslims as the largest population in the fields of marriage, inheritance and endowments. In addition, the Compilation of Islamic Law aims to positively formulate Islamic law in Indonesia in a legal book. These two legal products have an important meaning in the life of the Indonesian people, because they both have the same goal. Even though there are differences, these differences do not damage the existing systems in both. Therefore, to look further into these two legal products, it is important to analyze them comparatively. A comparative analysis of the two legal products can be detailed as follows;

1. Law No. 1 of 1974, although it only contains one aspect of family law, namely marriage and all its aspects, its position in the legislative order is more binding because it is stipulated through law. Meanwhile, the Compilation of Islamic Law, although in terms of content, is more comprehensive compared to Law no. 1 of 1974. This is said because the Compilation of Islamic Law was established only through instructions from the President and was followed up by the decision of the Minister of Religion of the Republic of Indonesia.
2. In terms of the form and format of Law number 1 of 1974, it is more appropriate to say that it is a Law. Meanwhile, the form and format of the Compilation of Islamic Law is ambiguous, because its regulation is only through the President's instructions.
3. The Compilation of Islamic Law is broader and more perfect than Law number 1 of 1974. In this case, the Compilation of Islamic Law is a confirmation. In terms of legal material, the Compilation of Islamic Law is more comprehensive compared to Law number 1 of 1974, it is said that , because there is some material from the Compilation of Islamic Law that is not regulated in the 1974 Marriage Law, including; marriage proposal (articles 11 – 13), regulation of dowry (articles 30 – 38), several marriage prohibitions such as marrying a non-

Muslim woman, pregnant marriage (article 53), prohibition on marriage for people who are in ihram (article 54), prevention of marriage because of differences religion (article 61), the validation of children born by technological processes (article 99). 19

4. The essence of the Compilation of Islamic Law in marriage law, in principle, tries to provide Islamic values to several provisions regulated in Law number 1 of 1974. Apart from that, it also provides reaffirmation and elaboration, for example the basis of the marriage Eid in the Law -The Marriage Law of 1974 (article 1) is about forming a happy and eternal family. Meanwhile, article 3 of the Compilation of Islamic Law emphasizes and expands it towards more Islamic values, namely sakinah, mawaddah and rahmah. Likewise, the philosophical basis of the 1974 Marriage Law is Pancasila, linking it to the first principle, whereas in the Compilation of Islamic Law it is simply about obeying Allah, carrying out worship and being mitsaqamgalidzan, and so on. (Roihan A Rasyid, 1999)
5. The material of the Compilation of Islamic Law is clearer and firmer than the 1974 Marriage Law. This fact can be seen in articles 4, 5, 6 and 7 of the Compilation of Islamic Law. There is an emphasis on and actualization of marriage order in Islam. In this article it is clearly stated that, a) a valid marriage must be carried out according to Islamic law, b) it is prohibited for Muslim men to marry non-Muslim women, c) every marriage must be recorded, d) a marriage is only valid if it takes place before the PPN, e) marriage outside PPN is an illegal marriage, f) marriage can only be proven by a marriage certificate made by PPN. An affirmation like this is not found in the 1974 Marriage Law which only states that; a) the marriage is carried out according to religious law and b) it is recorded according to the applicable laws and regulations.
6. Law number 1 of 1974 contains basic provisions of a general nature, while the Compilation of Islamic Law formulates special provisions as Islamic legal rules that apply specifically to those who are Muslim.
7. The Islamic Law Compilation Material has an Islamic perspective, while the 1974 Marriage Law has a national perspective by accommodating the values of Islamic teachings. (Abd. Gani Abdullah, 1992)

Thus, even though the Compilation of Islamic Law has made many changes to confirm and explain the 1974 Marriage Law, it does not mean that it contradicts or goes beyond what has been regulated in the 1974 Marriage Law. But between the two there is a close relationship which both remain the material is consistent and complementary.

#### 4. Conclusions

The Marriage Law 1974 and Presidential Instruction (Inpres) Number 1 of 1991 play complementary roles in the marriage legal system in Indonesia. The 1974 Marriage Law establishes a general legal framework that applies to all citizens, regulating fundamental aspects such as the minimum age of marriage, marriage registration, and the rights and obligations of husband and wife. Meanwhile, Presidential Instruction No. 1 of 1991, which was issued to strengthen the application of Islamic law, provides special guidelines for religious courts in resolving family cases involving Muslims, including marriage, inheritance, and waqf issues. Although both regulate aspects related to the family, the Marriage Law 1974 provides a universal legal basis, while Presidential Instruction 1/1991 emphasizes the application of Islamic law in a more specific context. The integration of these two regulations ensures that the family law system in Indonesia not only adheres to the principles of national law that are general but also considers and respects the religious rules that apply to Muslims. With this harmonious legal framework, it is hoped that a balance can be created between compliance with state laws and respect for religious teachings, thereby creating an inclusive and fair family justice system.

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