

IMPLEMENTATION OF PRESIDENTIAL INSTRUCTION NO. 1 OF 1991 ON COMPILATION OF ISLAMIC LAWS AS MATERIAL LAW IN RELIGIOUS COURTS

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Abstract: *The purpose of this study is to understand the position of compilation of Islamic law in the form of Presidential Instruction in order of law in Indonesia, understand the application of compilation of Islamic law and obstacles in its application. The purposes of this research are: Understanding the position of Compilation of Islamic Law and application of Compilation of Islamic Law and know the obstacles in its application and the solution. By conducting Normative research using legal and conceptual approach, it can be concluded that in the form of Presidential Instruction in the order of law in Indonesia Understanding the application of Compilation of Islamic Law is a material law as the basis of decision in Mataram Religious Court Understanding the legal obstacles in the application of Compilation of Islamic Law and how the solution.*

Keywords: *presidential instruction, religious court, compilation of Islamic law*

I. INTRODUCTION

Islamic law is part of the positive law in Indonesia. Among many areas in Islamic law, for example marriage law, inheritance law, waqf law and others. In the Dutch colonial period there was an attempt to alienate the Muslims from their Islamic faith to alienate Muslims with Islamic law. In the Indonesian State Religious Courts are one of four judicial bodies in Indonesia, the 1945 Constitution of Article 24 states that judicial power is exercised by a Supreme Court, and other judicial bodies under the Act. Furthermore Article 25 states the composition and powers of the Justice Bodies regulated by law. The Religious Court is one of the judicial bodies that exercise judicial power to uphold the law and justice for Muslims. In a formal jurisdiction, the jurisdiction of the Religious Courts has a strong position considering that it has been regulated in several laws and regulations. According to Law No. 7 of 1989 the Religious Courts are only authorized to complete

marriages, inheritance, wills, grants, endowments, zakat, *infaq* and *shadaqah*. However, with the enactment of Law No. 3 of 2006 and Law Number 50 Year 2009 marks the birth of a new paradigm of Religious Courts.

The new paradigm, among others, concerns its jurisdiction, as it is affirmed that: Religious Courts are one of the judicial authorities for the Muslim justice seekers regarding “certain matters” as meant in this law. The words “certain cases” are the result of changes to the word “certain civil cases” as mentioned in Law No. 7 of 1989. The abolition of the word “civil” here means that not only civil cases shall be competence of the Religious Courts.

The issue faced by the Religious Courts is about the material law or its applicable law, namely the positive law that should be applied by the Religious Courts to resolve the cases submitted to it. The material law applied in the Religious Courts is Islamic law. What is meant by the principle of Islamic personality is that which is subordinate and can be subjugated to the religious justice environment only those who claim to be Islamic. The problem is that some people, including Religious Court judges equate Shariah with fiqh. Because there is a judge who holds such a view, then in settling the cases filed against him, they refer to the books of jurisprudence. Consequently, their references are certainly the books of jurisprudence of *madhhab* supporters. Thus, it is immediately possible to guess the birth of different Religious Judgment rulings for the same case (disparity).¹

Prior to the birth of the Compilation of Islamic Law, Judges in Religious Courts in examining, deciding and resolving the cases handled there are still referring to 13 (thirteen) books of fiqh as the source of applied law, the reference is based on Circular Letter of Religious Bureau No. B/I/735 1958. But in making a verdict for a case it appears that the judges of the Religious Courts have no uniform basis, but are scattered in various yellow books. This is due to the unavailability of the same Islamic legal material books.

By referring to these books are meant to obtain the certainty of Islamic law. However, in reality, the resulting verdict is still diverse, in the absence of a definite reference for the guidance.² Based on a book of fiqh or yellow book, the judges of the Religious Courts in taking the basis of its decision according to the wishes and thoughts of each is considered in accordance with his opinion. Still allow other judges also opinions and decisions about the same, according to different expressions judge different sentence (other judges are different verdicts).³ To overcome this problem, the idea came up to compile a book that brought together applicable law in the environment of the Religious Courts in carrying out its duties.⁴ Presidential Instruction No. 1 of 1991 on Dissemination Compilation of Islamic Law is related to pluralism in the national legal system. The Compilation of Islamic Law relates to the courts within the Religious Courts which undergo significant changes with respect to the coming into effect of Law Number 7 of 1989. The

¹ Rachmad Budiono, A. *Legal Renewal of Islamic Inheritance In Indonesia*, (Bandung, Citra Aditya Bakti, 1999), p. 2-6.

² Amrullah Ahmad, *The dimensions of Islamic law in the National Law System*, (Jakarta, Gema Insani Press, 1996) hlm.1.

³ Muhammad Daud Ali (et.al), *Islamic Law and Religious Courts (Posts Collection), Second Matter* (Jakarta, PT Raja Grafindo Persada, 2002), p. 210.

⁴ Jaenal Aripin, *Religious Court in the Framework of Law Reform in Indonesia*, Matter of First (Jakarta, Kencana, 2008), p. 274.

Compilation of Islamic Law also deals with the pluralism of family law, including marriage law which recognizes the differentiation of religion as reflected in the provisions of Article 2 paragraph (1) of Law Number 1 Year 1974.⁵

Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law has become a legal instrument in the Religious Courts against civil cases which it deals with both material laws and formal laws. The Compilation of Islamic Law in the form of Presidential Instruction No. 1 of 1991, dated June 10, 1991 is a Presidential Instruction to the Minister of Religious Affairs to disseminate the Compilation of Islamic Law. The Compilation of Islamic Law in one way makes it easy for Religious Court judges to resolve cases, but in terms of the other is the existence of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Laws which is expected to dispel people's doubts about the legal consequences of an uncertain act against its verdict from the judges of the Religious Courts, but due to different perceptions of the existence of the Compilation of Islamic Law in the form of Presidential Instruction in the Indonesian national legal system, so that the judges of the Religious Courts in applying the Compilation of Islamic Law materials in the judgments are varied as well.

In this study will be discussed issues related to how the application of Compilation of Islamic Law is a material law as the basis of the decision in the Religious Court of Mataram. This research is legal research normative (legal research), because in this research will be studied and analyzed Principles of Islamic Law, Fiqh and Legislation. The problem approach that will be used in this research is to cite the statutory approach, conceptual approach. Furthermore, it is analyzed by using juridical analysis that is to examine, explain deeply and comprehensively and interrelate with each other, and evaluates the material law, as the elaboration of the Compilation of Islamic Law in the future.

II. RESULT AND DISCUSSION

2.1 *Laws and Regulations in Religious Courts*

One of the problems faced in the environment of the Religious Courts is the material legal basis with respect to the scope of its authority. In the formulation of the decision, the court is obliged to refer to the written or unwritten legal basis as set forth in article 62 of Law no. 7 of 1989. The material law with respect to cases which are the authority of the court is spread out in various compound fiqh books. This multiplicity of law is an obstacle to be used as a reference in the process of formulating court termination. The use of one of the schools of law or *fuqaha* doctrine is likely to create gaps with justice seekers. In addition, the *fuqaha* doctrine is a product of thought that is in accordance with the conditions and legal guidance of its day, hence a new formulation in this regard. The compilation of Islamic law is one of the best choices. Compilation of Islamic law is a consensus (*ijma'*) malalui media workshop which then gets the legality of state power.⁶

But according to Yahya Harahap: "The compilation of the new Islamic Law is the first step. KHI is not yet final and imperfect; it is merely the legacy of the present generation to be abandoned

⁵ Cik Hasan Bisri, *Religious Courts in Indonesia, revised edition*, Fourth Print (Jakarta, PT Raja Grafindo, 2003), p. 130.

⁶ See M. Daud Ali, *Islamic Law and Religious Courts; Posts of Writings*, First Printing, (Jakarta: PT. Raja Grafindo Persada, 1997), p. 376

and perfected in its formal form and material substance by the next generation. The compilation of Islamic law is just the beginning of the publication of all sorts of chaos and endless long acts in all past justice “.⁷

According to Taufiq, by looking at religious and social life so far in terms of political and sociological, the development of material law of Religious Courts must be through research activities.⁸

The Religious Courts, since its establishment until 1991 have not yet had an applied law book that became the sole standard for religious judges in the Religious Courts in Indonesia. However, the Religious Courts do not mean not much role in the process of application of Islamic Law in Indonesia. It's just that the material law guided by the religious judges is very diverse. Their source of reference is the *fiqh* books of some sects which are generally derived from the *fiqh* of the Shafi'i school.

Religious judges often quarrel among themselves about the selection of references. Such circumstances often make a difference in judgment among judges in the same cases, even rarely differing decisions in similar cases between the Religious Courts of First Instance and the Religious Courts of Appeal because of the difference in the book they refer to .

Attendance of Islamic Law Compilation⁹ as *fiqh* typical of Indonesia which got consensus (*ijma'*) from Indonesian ulema, the goal is to make the material law for the judges of religion to confirm the certainty of Islamic law in certain fields originally influenced by *fuqaha* formulations while maintaining the image and authority of the Religious Courts in the eyes of society.

Overall the compilation of Islamic law consists of 229 articles with different distributions for each book. Book I of marriage consists of 19 chapters and 170 articles covering general provisions containing explanations of terms used, marriage grounds, marriage, harmonious and marital terms, dowries, marriage prohibitions, marriage agreements, cancellation of marriages, rights and duties of a wife, wealth, due to the breaking up of marriage, reconciliation and mourning. Book II on Inheritance consists of 6 chapter's 44 chapters covering general provisions, heirs, magnitude of sections, “aul and rad, testament and grant. Book III on representation consists of 5 chapters' 14 chapters covering general provisions, functions, elements and requirements of waqf, changes in settlement and monitoring of waqf objects and transitional provisions.¹⁰

⁷ Yahya Harahap, *Compilation of Islamic Law Material, in the book of Religious Court and Compilation in Islamic Law*, Muh. Mahfud (ed.), et al., (Yogyakarta: Universitas Islam Indonesia, 1993), p. 101

⁸ Condensed activities in the form of increasing the correctness of Law no. 7 of 1989 and KHI and the implementation and development of KHI materials through the decision of Religious Courts and Supreme Court. In this research is done by reviewing KHI from law drafting and its application in politics. See Taufiq Abdullah, *Five Years of the Religious Judicature Law; Some Thoughts and Legal Development of Material and Technical Personnel of Religious Courts*, in the Rule of Law no. 17 of 1994, p. 52

⁹ The compilation of Islamic law is a judicial material law of Religion born out of cooperation between the Supreme Court and the Minister of Religious Affairs whose operations is officially established through Presidential Decree no. 1 of 1991 and Decree of the Minister of Religious Affairs no. 154 Year 1991. See H. Andi Rasdiyana, *Problems and Constraints faced by Islamic Law in transportation upay into National Law*. National Seminar Paper for the reunion of IKA Syari'ah IAIN Alauddin, dated 1-2 March 1996, p.10

¹⁰ See Department of Religion RI, *Legal Compilation....., op.cit.*, p. 13-109

2.2 Material Laws Applicable in Religious Courts

Taking into account the systematic use of compilations of Islamic law above, Abdurrahman's judgment that does not describe a good system, the reason is that the compilation of Islamic law does not include general provisions applicable to all areas of law it regulates. Even if it exists as Article 229 which precisely in compilation of Islamic law is included as a cover provision.¹¹ Similarly, what is the urgency of repetition of article 229 which is essentially the same as the basic provisions of the judicial authority that are also valid and binding for all judges, including the judges of the Religious Courts. Is the repetition of the mention considering the need to get special attention. For perhaps it is still unclear what is meant by "living law values" which the judges must take in making decisions according to the sense of justice.¹²

In spite of the shortcomings of the compilations of Islamic law, the legal experts in Indonesia agree that it can be a material law of the Religious Courts and the making of the KHI as a material law is the result of the elucidation of article 49 of Law no. 7 of 1989 and the provisions not yet regulated by Law no. 1 Year 1974. Thus, the strength of the compilation of Islamic law, in addition to Presidential Decree no. 1 of 1991, also lies in the strength of Law no. 1 of 1974 and Law no. 7 of 1989.

The compilation of Islamic law means that the implementation of Islamic law is no longer directed at the will of the followers but is appointed by a ranks of the rulers and state agencies as the supervisory and implementing officers of the application as far as matters concerning the field of marriage, inheritance, representation and has become the rule of civil law official and public.

But the fact that happens in the community, the application of compilation of Islamic law as an applied law in the official and positive Religious Court is still found many cases of divorce (divorce) outside the court. There are still many cases of marriage without court permission.¹³ Including cross-breeding religion is between Muslim women with a man who is not Muslim.

The presence of this compilation of Islamic law has in fact created a legal standard (Law Standard), which is a norm, measure, legal rule, standard, both for Religious Courts and for Muslim society and seekers of justice and with the compilation of Islamic law can be realized:

- 1) Unified legal framework (unified legal framework) and unified legal opinion, so that it can be avoided and minimized decisions that have high uncertainty (high disparity/differences) and minimize the behavior of other "other judges of opinion of the verdict".
- 2) Fostering the uncertainty of law enforcement in order to realize the life of the rule of law "state of excellence of power, not the law of power/authority.
- 3) Giving equal treatment in similar cases so that the compilation of Islamic law is expected to be able to play the principle of "predictable" that can be predicted the verdict of the verdict that will be given by the judges of Religious Court because there is already a legal standard written

¹¹ See Abdurrahman, *op. Cit.*, p. 64

¹² *Ibid.*, p. 65

¹³ See M. Yahya Harahap, *Information on Islamic Legal Material, Positive Abstraction of Islamic Law*, in Ditbinbapera Team, *Various Views on Islamic Law Compilation*, First Matter; Jakarta: al-Hikmah, 1993/1994), p. 146

and compiled systematically in a legal book “Compilation of Islamic Law” which provides unity of law and uniform legal views in realizing the certainty of law enforcement.¹⁴

In summary with the presence of a compilation of Islamic law as the law and applied law of the Religious Courts, judges are not justified in passing judgmental decisions, other judges of opinion and decisions. Taking into account the compilation of Islamic law, Religious Court judges are required to be able and able to enforce uniform law and legal capacity without prejudice to the possibility of “variable” decisions. The equality of perception and uniformity of judgment through the application of Islamic law compilations still opens the door of judge’s freedom to impose decisions containing variables, provided that they remain proportionally casual, case-by-case. And on the part of the justice seeker, in every opportunity given to him to defend and defend his right and cessation in a judicial process in the Religious Courts should not deviate from the formulation of rules, the legal standards of compilation of Islamic law and they cannot and or can no longer “run” to the submission of different pretexts and arguments (*ikhtilaf/khilafiyah* /different).

Irrelevant and no longer juridical glorify and impose the will so that the judges of Religious Courts judge according to the opinion and doctrine of the desired school of fiqh book which formats and views (qaul). Just as the Legal Counsel/Lawyer is only allowed to propose interpretation with the starting point of the formulation of the articles contained in the legal compilation of Islamic law. Strictly speaking, all parties involved in a judicial process in the Religious Courts, both searching and researching and interpreting it from “the same estuary” is the legal compilation of Islamic law as a joint work of Indonesian scholars who are the result of *ijtihad jama’i ulama* Indonesia.

According to M. Yahya Harahap, the compilation of Islamic law as an applied law in Religious Law by Religious Court judges, but its application is casuistic case by case in accordance with the circumstances in concerto cases examined and tried. One way or another, starting from reality and awareness that:

- 1) There are no laws and regulations including the exact compilation of Islamic law.
- 2) Inclusive law and legislation compilation of Islamic law, basically the reality according to the factor of time, place and circumstances.
- 3) Lawmakers In casu compilers of Islamic law are only capable of making abstract and general provisions.
- 4) A provision of a law including compilation of Islamic law is immediately conservative at the time it is enacted, the portalist in this connection warns that by the time this law is established, a thousand unanticipated questions have arisen before the judge.¹⁵

Therefore, judges of Religious Courts who bear the responsibility of upholding truth and justice in “concreto” in the application of Islamic law compilations function and act:

- 1) Judges of Religious Courts who act as a determinant of compilation of Islamic law in concrete events which it manifested in the form of a decision.

¹⁴ See Matardi E., *Compilation of Islamic Law as an Applied Law in Religious Courts*, Mimbar Hukum No. 24 Tahun VII, 1996, p. 31

¹⁵ *Ibid*

- 2) In the judgment, the judge concocted the general nature and abstraction of the compilation of Islamic law.
- 3) Approach that must be done by judges of Religious Court so that concrete compilation of Islamic law through its decision to realize truth and justice is problematic approach, that is:
 - a) Seeking a settlement of cases in accordance with the dispute issues rose to him.
 - b) It does not prioritize and prioritize the system approach in the sense that it should not see the case of the system and the formulation of articles of compilation of Islamic law solely.
 - c) It should prioritize the problem-case approach without ignoring the system approach with other approaches; the provisions of the compilations of Islamic law remain the foundation of the law of the foundation but still open the door to the real value changes that appear in the dynamics of social consciousness of society.

The Religious Judicature Judge is required to make reasoning and interpretation in applying the articles in the compilation of Islamic law in concrete cases examined and judged. To portray such an activity, the buffer is described as follows:

- 1) Interpret the sounds of the compilation of Islamic law by giving and determining the meaning of the article that can be used to solve the incident in question. This means determining the meaning of rules or clauses which are clear and detailed, then the article applied is the value in accordance with the problem of events in the court.
- 2) In the face of the very general formula of the compilation of Islamic law, the judge must “give concrete content” in accordance with the disputed event.
- 3) In the event that KHI has not regulated the disputed event, the judge shall add something new in the compilation of Islamic law and in such instances the judge shall create a new law to resolve the concrete event.¹⁶

There are some obstacles that make it very difficult to apply the legal sanctions compilation of Islamic law materials are:

- 1) Some Islamic societies still hold the idea of a private affair. Where this understanding believes that the business of divorce and polygamy marriage is a private matter with God.¹⁷
- 2) There is still a dualism of legal choice which is negatively said that Muslims may not be subject to its own law in addition to the Religious Courts.¹⁸
- 3) There are still many members of our society who are not familiar with the compilation of Islamic law, some even not knowing its existence, this is due to the lack of smooth spread of compilation of Islamic law as referred to in Decree of Minister of Religious Affairs no. 154 Year 1991.

¹⁶ See *Ibid.*, p. 66-67

¹⁷ See M. Yahya Harahap, *Information..., op. Cit.*, p. 147

¹⁸ See H. Andi Rasdiyanah, *op. Cit.*, p. 13

The existence of the obstacles faced by compilation of Islamic law as above then there is no other way that most attention except dissemination in the middle of society. It is intended that the people know, understand, live, obey and behave as regulated in the compilation of Islamic law. In addition, the government is not ambivalent toward the reality of legal dualism established under article 49 of Law no. 7 of 1989.

Apart from the above obstacles, it can be said that in general the effectiveness of the compilation of Islamic law as an applied law of Religious judges in solving cases in Religious Courts has gone well. This can be seen by the lack of cases raised for appeals or cassations, but it must be further enhanced.

For the effective and enforcement of Islamic law it is necessary to immediately Compilation of Islamic Law which enactment based on Insturksi President upgraded become law as other civil law. This is in accordance with the spirit and spirit of Article 29 of the 1945 Constitution which guarantees the freedom of religious people to implement their religious shari'ah.

Thus, it can be said that KHI is not just a set of Islamic law. Furthermore, it is a legal set unearthed from the legal consciousness of Indonesian society with a fairly systematic and planned process. Muslims may be proud that some Islamic law has become a positive law in its own country.

2.3 Application of Compilation of Islamic Laws as Material Law in Religious Courts

The State of Indonesia is a constitutional state whose majority of the population is Muslim is a social reality, because it is very relevant if the Islamic law used as a source of reference in the formation of national laws. So the role of scholars and scientists who are concerned about Islam is needed¹⁹ Departing from the understanding that Islam is a religion that *kaffah* in all things compared with other religions, then here is needed a creativity for adherents to explore the existing teachings to continue to be developed so that the existence of religion is not lost or died.

In optimizing the role of Religious Courts as one of the judicial providers of course faced with various problems. The problem here can be interpreted as a distance between the expectations and the reality and potential possessed both with respect to the legal instruments being referred to as well as with respect to law enforcement and public awareness as well as relating to facilities that can be used:

First, the problems faced within the Religious Courts are the material legal basis with respect to the scope of its authority. In the formulation of the decree, the court is obliged to refer to the written or unwritten legal basis as stipulated in article 62 of Law Number 7 of 1989. The material law concerning the cases which is the jurisdiction of the courts is spread out in various fiqh books. This multiplicity of law is an obstacle to be used as a reference in the process of formulating court termination. The use of one of the schools of law or *fuqaha* doctrine is likely to create gaps with justice seekers. In addition, the *fuqaha* doctrine is a product of thought that is in accordance with the conditions and legal guidance of its day, hence a new formulation in this regard. The

¹⁹ (Sidik Tono. Muttaqien (Ed)., 1999:171)

Compilation of Islamic Law is one of the best choices. The compilation of Islamic law is a consensus (*ijma'*) through the workshop media which then gets the legality of state power.²⁰

However, according to Yahya Harahap, the Compilation of Islamic Law is just the first step. KHI is not yet final and imperfect; it is at best only a legacy of present generation to be abandoned and perfected in its formal form and material substance by the next generation. The Compilation of Islamic Law is just the earliest attempt of publishing all sorts of disorder and unending follow-up acts in all past courts.²¹

Compilation of Islamic law which is an applied law of Religious Courts, which participates in the dynamics of Indonesian society both in the social field. Politics, economics, culture and technology. Therefore, the KHI requires a more powerful and open legal power by lawyers in developing it in accordance with the times and the fulfillment of the legal needs of Muslims in Indonesia. From the point of view of the development of national law, the development of material law of the Religious Courts belongs to the category of renewal, namely the effort to complement and perfect the material law of the Religious Courts which has been compiled in the compilation of Islamic law.

According to Taufiq, by looking at religious and social life so far in terms of political and sociological, then the development of material law of Religious Courts must be through activities kondising and research activities.²²

Secondly, issues concerning the law enforcement apparatus, especially every court. If this benchmark reflects a healthy and efficient court, the shortage of the apparatus will not support simple and quick justice and low cost. The court judge is a graduate of sharia graduates of PTAIN plus a general law scholar in order to be able to make wise decisions, meaning that the losing party in the litigation must understand that the judge does not take the side that wins.²³ In the general explanation of Law No. 14 of 1970, the sixth point explains that “everything related to the implementation of law enforcement and justice agencies is either bad depending on the human.”

Therefore, it is necessary in the Law on the basic provisions of the judicial authority to include conditions that must always be met by an honest, independent, courageous and courageous judge and free from influence both inside and outside. The inclusion of the statement to the elucidation of the Act so that the judge's ears and ears are opens to the growing demands of society.

²⁰ See M. Daud Ali, *Islamic Law and Religious Courts; Collection of Posts* (First Mold; Jakarta: PT. Raja Grafindo Persada, 1997), p. 376.

²¹ Yahya Harahap, *Compilation of Islamic Law Material, in Religious Courts and Compilations in Islamic Law*, Muh. Mahfud (ed.), et al., (Yogyakarta: Universitas Islam Indonesia, 1993), p. 101.

²² Condensed activities in the form of increasing the correctness of Law no. 7 of 1989 and KHI, as well as the implementation and development of KHI materials through the decision of Religious Courts and the Supreme Court. In this research, conducted by reviewing KHI from law drafting and its application in politics. See, Taufiq Abdullah, “Five Years of the Religious Judicature Law, Some Thoughts and Legal Proceedings of the Material and Technical Personnel of Religious Courts”, in the Rule of Law, Number 17 of 1994, p. 52.

²³ M. Tahir Azhary, *Prospects of Religious Courts as Family Courts, in Prospects of Islamic Law in the Framework of Development of National Law in Indonesia*, Compilation Team Amrullah Ahmad, et al., (Matter of First: Jakarta: PP IKAHA, 1994), p. 293.

Thus, in carrying out his obligations he does not have to be based on the law, but so justice is spoken in the name of God Almighty. Therefore, in every ruling a judge begins with the word “For the sake of justice” which is the word oath. In addition to the outer is the responsibility of the inner judge, namely: “as a condition of the heart to the judges in running justice by the Law is placed a responsibility to the law, to you and to the people, but is responsible to God Almighty. The law is formulated with the provision that the judiciary is conducted “For the sake of Justice by the One Supreme God”. With the above explanation, there should be no doubt for Muslims and the Indonesian nation about the role of judges in upholding the law and justice.

Even if there are still many deviations during the 37 years of implementation of the law (mafia justice) this is simply because there are still many judges who spell out the law literally and ignore its true legal objectives. The real purpose of law does not have to be formulated with words, but can be understood and lived, because it comes from the human conscience. The statement, what if there are judges who have not or do not want to understand the meaning and responsibility in upholding justice. Once in an incident the Caliph Ali bin Abi Talib fired a judge because the judge spoke emotionally when examining a case. Will this policy also be applied in Indonesia in the effort to foster a clean and authorized law enforcement apparatus. It all depends on the authorities to foster the lives of judges.²⁴

Equally important is the orderly administration of the case because it is part of the court of law that absolutely must be implemented by all judicial officers of the Religious Religion in order to realize an independent judiciary in accordance with applicable regulations. What is meant by administration herein is the process of administering by an administrator on a regular basis and arranged in order to carry out planning, execution and supervision to achieve the basic objectives that have been set.

The main task of the Court is as stipulated in Law no. 14 year 1970 article 2 that is receiving, examining, hearing and settling the case submitted to him. Those who perform administrative duties in order to achieve the main task are the Registrar as mentioned in Article 26 of Law Number 7 Year 1989.²⁵

With regard to the different functional duties in the secretariat, secretarial and bailiffs, the courts within the Religious Courts are directed to carry out the judicial process in a simple, fast manner at a low cost. Simple refers to the simplification of procedures, both judicial and administrative. Quickly refers to the time units used efficiently in the process of receiving, examining, trial, termination and settlement of cases. Mild cost refers to the amount of rupiah incurred by litigants relating to the simplicity and speed of the judicial process. This has important significance, since the parties who litigate “users of the judicial services”, most of the lower and middle classes especially in Courts whose jurisdiction covers the territory of the Regency.²⁶

²⁴ Bismar Siregar, *God's Law and Justice; Collection of Islamic and Judicial Law Notes in Indonesia* (First Matter; Jakarta: Gema Insani Press, 1995), p. 35.

²⁵ The clerk of the Court administrative office has three main duties: 1) the administrators of the case, 2) the judge's adjunct in the trial, 3) the execution of the Court's decision / assignment and other jurisdictional tasks. See, Abdul Manan, et.all., op. cit., p. 3-4.

²⁶ Cik Hasan Bisri, *Islamic Courts* ... p. 138.

Third, issues related to public legal awareness. It deals with several things and stages:

- a) With regard to their knowledge of the basis and procedure of the administration of justice. He needed legal socialization which became known as legal counseling.
- b) With regard to the level of public appreciation of applicable legislation. This will be an interesting attraction in terms of the influence and authority of “charismatic figures” with “professionals” who formulate written law. The last group is required to understand the living in society to be excavated, processed and presented orientation into the future.
- c) With regard to the public’s compliance with the laws that were originally conceived and formulated from “above”. If legal awareness is a constraint, it is a fertile ground for extension workers, educators, framers and legal researchers.²⁷

Fourth, issues relating to facilities that support the law enforcement that concerns the convenience that can be obtained by the parties in both court and outside court. It also deals with the ease with which law enforcement is required, such as workspaces, administrative support, welfare and the rewards they earn.²⁸ Equally important is the availability of facilities and infrastructure that support the operationalization of religious courts. Many religious courts are not located in strategic places, even the inherent general impression of a religious tribunal is a “people’s court” in contrast to the local courts located in strategic places. This is a decrease in the “prestige” of religious courts. Similarly, the welfare of judges of religious courts should be qualified as state officials, as well as members of the House of Representatives and the Supreme Court. Such things should be considered as early as possible in order to prevent the occurrence of collusion between justice and justice seekers.

Attendance of Islamic Law Compilation²⁹ as fiqh typical of Indonesia which gets consensus (*ijma’*) from Indonesian ulema, the aim is to make a material law for religious judges to uphold the certainty of Islamic law in certain fields originally influenced by *fuqaha* formulations, while maintaining the image and authority of the Court Religion in the eyes of society. The compilation of Islamic law consists of three chapters, each book I on marriage, book II on inheritance and book III on waqf.

The presence of the Compilation of Islamic Law, in fact has created a legal standard (Law Standard), which is a norm, measure, legal rule, and standard, both for Religious Courts and for Muslim communities and seekers of justice, and with the compilation of Islamic law is expected to materialized:

- 1) Unified legal framework (unified legal frame work) and unified legal opinion (unified legal opinion), so it can be avoided and diminished decisions that have a high degree of “uncertainty” (disparity/differences) and minimize the behavior of “other judges opinion of the verdict “.

²⁷ Lihat, *Ibid.*, p. 140.

²⁸ *Ibid*

²⁹ The compilation of Islamic law is a material law of the Religious Courts born out of cooperation between the Supreme Court and the Minister of Religion, whose operations are officially established through Presidential Decree No. 1 of 1991 and Decree of the Minister of Religious Affairs no. 154 Year 1991. See, H. Andi Rasdiyanah, “The Problems and Constraints Faced by Islamic Law in Transpotation Efforts into National Law”. National Seminar Paper for the Reunion of IKA Syari’ah IAIN Alauddin, dated 1-2 March 1996, p. 10.

- 2) Fostering the certainty of law enforcement, in order to realize the life of the rule of law “rule of law” i.e. the superiority of power, not the law of power/authority.
- 3) Give equal treatment in similar cases, so that the compilation of Islamic law is expected to be able to play the principle of “predictable” which can be predicted the verdict of the verdict that will be given by judges of Religious Court. Because there is already a standard of law that is written and systematized in a book of law “Compilation of Islamic Law” which provides unity of law and uniformity of legal views in realizing the certainty of law enforcement.³⁰

Clearly, with the presence of a compilation of Islamic law as the law and applied law of the Religious Courts, judges are not justified in passing judgmental decisions, other judges of opinion and decisions. Taking into account the Compilation of Islamic Law, Religious Court judges are required to be able and able to enforce uniform laws and legal capacity, without prejudice to the possibility of “variable” decision decisions. The equality of perception and uniformity of judgment through the application of compilation of Islamic law still opens the door of judge’s freedom to impose decisions containing variable, as long as it remains proportionally casual, case by case.

On the part of the justice seeker, in every opportunity given to him to defend and defend his rights and interests in a judicial process in the Religious Courts, should not deviate from the formulation of the rules, the legal standards of the Compilation of Islamic Law, and they cannot and or can no longer “run “To the submission of excuses and arguments *ikhtilaf /khilafiyah*/different.

Irrelevant and no longer juridical glorify and impose the will so that the judges of the Religious Court judge according to the opinion and doctrine of the desired school of *fiqhiah* or to contradict and risk the teachings of the fiqh book which various kinds of formulas and views (*qaul*). Similarly, the Legal Counsel or Lawyer is only allowed to propose interpretation with the starting point of the formulation of the articles contained in the compilation of Islamic law. Strictly speaking, all parties involved in a judicial process in the Religious Courts, both searching and researching and interpreting it from “the same estuary” is the legal compilation of Islamic law as a joint work of Indonesian scholars who are the result of *ijtihad jama’i ulama* Indonesia.

According to M. Yahya Harahap, the compilation of Islamic law as an applied law in the Religious Courts is not just read and applied in the behavior of lifeless creatures by Religious Judge Judges, but its application is casuistic case by case according to the circumstances in concreto cases examined and tried. One way or another, starting from reality and awareness that:

- 1) There are no laws and regulations including the exact compilation of Islamic law.
- 2) Inclusive law and legislation compilation of Islamic law, basically the reality according to the factor of time, place and circumstances.
- 3) Lawmakers In casu compilers of Islamic law compilations are only able to make abstract provisions and are general.
- 4) A provision of the Law, including the compilation of Islamic law directly into conservative at the time of its expiration, Portalis in this connection warns that by the time this Act was created, a thousand unanticipated questions had arisen before the judge.³¹

³⁰ See, Matardi E., op. cit., p. 31.

³¹ See, M. Yahya Harahap, Some Legal Problems of Events in Religious Courts (Jakarta: al-Hikmah, 1993/1994), p. 15.

III. CONCLUSION

The position of Islamic Law Compilation in the form of Presidential Instruction is not found in the order of legislation in Indonesia, the Compilation of Islamic Law in its application is only used as legal considerations by the Judges of the Religious Court in making decisions, the obstacles in the application of Compilation of Islamic Law in its application Compilation of Islamic Law has not been able to accommodate some the issue of family law that developed so as to cause differences of opinion in its application. Instruction of the President of the Republic of Indonesia No. 1 of 1991 dated June 10, 1991 was amended in the form of legislation included in the order of legislation regulation, It is necessary to equate the perception of judges in interpreting the Compilation of Law Islam, it is necessary to perfect the Compilation of Islamic Law to accommodate the problem of family law that developed in society.

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