

## **Reconstruction of Islamic-Based Marriage Law Politics: A Comparison between Legal Traditions in the Middle East and Southeast Asia**

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### **ABSTRACT**

**Purpose** - This article aims to analyze the reconstruction of Islamic-based marriage law politics through a comparative approach between the legal traditions of the Middle East and Southeast Asia. The study examines how legal politics shapes the codification of family law and the extent to which reconstruction is needed to address the challenges of justice and modernity.

**Method** - This study employs a normative-comparative method, drawing on a legal politics approach and comparative Islamic law. The data are drawn from primary legal materials (marriage laws, Islamic legal compilations, and family regulations in Muslim-majority countries) and secondary legal materials, including academic literature. The analysis is conducted through content analysis and comparison of legal systems.

**Findings** - The findings indicate that legal politics plays a dominant role in shaping Islamic-based marriage regulations. The legal tradition in the Middle East tends to preserve classical *fiqh* with a high degree of conservatism. In contrast, Southeast Asia is more adaptive through codification and harmonization with national legal systems. A reconstruction of legal politics is necessary to integrate the principles of *maqāṣid al-shari'ah* with the demands of universal justice.

**Research Implications** - This study contributes to the development of Islamic legal politics theory and serves as a reference for policymakers in formulating marriage regulations that are responsive to social dynamics.

**Originality/Value** - This study offers a new perspective on the reconstruction of Islamic-based marriage law politics through a cross-regional comparative analysis, a subject rarely examined in depth in contemporary Islamic legal literature.

**Keywords:** *Marriage Law Politics, Legal Traditions, Comparative Law, Legal Reconstruction*

### **Introduction**

The formation of Islamic marriage regulations cannot be separated from the dynamics of legal politics, which reflect the configuration of social, political, and religious

forces within a country.<sup>1</sup> Legal politics plays a decisive role in shaping the direction of legislation—both in substance and procedure—so that marriage regulation becomes an arena of compromise between the values of sharia, the demands of modernity, and the interests of the state.<sup>2</sup> In Indonesia, for example, the enactment of Law No. 1 of 1974 on Marriage was the result of a tug-of-war between Islamic groups advocating for the pure application of *fiqh* and the government, which prioritized the principle of national legal unification.<sup>3</sup> This legislative process illustrates how legal politics accommodated the aspirations of the Muslim community by recognizing the marriage contract and the authority of the Religious Courts, while maintaining elements of secularization in certain areas, such as restrictions on polygamy and the determination of the minimum age for marriage.<sup>4</sup>

A similar dynamic can be observed in the Middle East, where countries such as Egypt and Saudi Arabia demonstrate contrasting orientations in their legal politics.<sup>5</sup> Egypt has undertaken family law reforms through a modernization approach characterized by more flexible codification, whereas Saudi Arabia has maintained a conservative stance by preserving Hanbali *fiqh*.<sup>6</sup> Conversely, in Southeast Asia, countries like Malaysia and Indonesia tend to adopt a compromise model between sharia and national law through instruments such as the Compilation of Islamic Law (KHI) and Islamic Family Law Acts.<sup>7</sup> These differences reflect the influence of political factors, colonial legacies, and legal pluralism in the legislative process.<sup>8</sup>

In general, the dynamics of legal politics in the formation of Islamic marriage regulations are influenced by three main aspects: (1) the politics of lawmaking, (2) the politics of legal substance, and (3) the politics of law enforcement.<sup>9</sup> Together, these aspects shape the extent to which regulations can realize substantive justice, protect women's rights, and

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<sup>1</sup> Mahfud M. D., *Politik Hukum di Indonesia* (Jakarta: Rajawali Press, 2009).

<sup>2</sup> Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008).

<sup>3</sup> Mark Cammack, "Islamic Law in Indonesia's New Order," *International & Comparative Law Quarterly* 46, no. 3 (1997): 649–661, <https://doi.org/10.1017/S0020589300064068>.

<sup>4</sup> John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003).

<sup>5</sup> Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007).

<sup>6</sup> Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden: Brill, 2000).

<sup>7</sup> John R. Bowen, *Islam, Law, and Equality in Indonesia...*

<sup>8</sup> Andrew Harding, *The Sharia in the Secular State: Evolving Meanings of Islamic Law in Malaysia* (Oxford: Oxford University Press, 2012).

<sup>9</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006).

adapt to social developments.<sup>10</sup> Therefore, the reconstruction of legal politics becomes essential so that Islamic-based marriage regulations are not solely oriented toward formal legality but are also responsive to the values of *maqāṣid al-shari‘ah* and human rights principles.<sup>11</sup>

The tradition of Islamic marriage law in the Middle East generally favors the literal application of classical *fiqh*, with the dominance of specific madhhabs serving as the foundation for legislation.<sup>12</sup> Countries such as Saudi Arabia maintain Hanbali *fiqh* in an almost pure form, resulting in more conservative marriage regulations, particularly regarding polygamy and divorce, which remain relatively permissive for men.<sup>13</sup> Conversely, Egypt, although rooted in Hanafi and Shafi‘i jurisprudence, has undertaken family law codification since the early 20th century, while still preserving the authority of religious scholars within the legislative process.<sup>14</sup>

In Southeast Asia, the approach to Islamic marriage law is more compromise-oriented and adaptive to national legal systems.<sup>15</sup> Indonesia and Malaysia integrate Islamic law into their respective legal frameworks through instruments such as the Marriage Law and the Compilation of Islamic Law (KHI).<sup>16</sup> Regulations in this region tend to accommodate modern values, such as minimum marriage age requirements, compulsory marriage registration, and stricter regulation of polygamy, as forms of harmonization between sharia, customary law, and positive law.<sup>17</sup> The fundamental difference lies in the degree of flexibility and the influence of legal politics: the Middle East remains more rigid and grounded in religious authority, whereas Southeast Asia emphasizes codification that is responsive to legal pluralism and the demands of modernity.<sup>18</sup>

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<sup>10</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2010).

<sup>11</sup> Jasser Auda, *Maqasid al-Shari‘ah as Philosophy of Islamic Law: A Systems Approach* (Herndon, VA: International Institute of Islamic Thought, 2008). Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women’s Rights in Islam* (Reading, MA: Addison-Wesley, 1991).

<sup>12</sup> Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009).

<sup>13</sup> John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law*, 2nd ed. (Syracuse, NY: Syracuse University Press, 2001).

<sup>14</sup> Amira El-Azhary Sonbol, *Women of Jordan: Islam, Labor, and the Law* (Syracuse, NY: Syracuse University Press, 2005).

<sup>15</sup> John R. Bowen, *Islam, Law, and Equality in Indonesia...*

<sup>16</sup> M. B. Hooker, *Indonesian Islam: Social Change through Contemporary Fatāwā* (Honolulu: University of Hawai‘i Press, 2008).

<sup>17</sup> Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007).

<sup>18</sup> Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009). John R. Bowen, *Islam, Law, and Equality in Indonesia...*

The social, cultural, and technological developments of the modern era demand that Islamic marriage law become more adaptive to contemporary realities.<sup>19</sup> Challenges such as gender equality, child protection, human rights, and globalization create an urgent need to reconstruct legal politics so that marriage regulations are not only normative but also contextual.<sup>20</sup> Classical *fiqh* concepts, which tend to be rigid, are often seen as insufficient in addressing modern issues such as early marriage, polygamy, and unilateral divorce. Therefore, a new approach grounded in *maqāṣid al-sharīʿah*, emphasizing public interest (*maṣlaḥah*) and substantive justice, is required.<sup>21</sup>

This study aims to examine the legal politics of Islamic-based marriage law, particularly how configurations of power, ideology, and state interests influence the legislative process of family law in Muslim-majority countries.<sup>22</sup> This analysis is essential for understanding the relationship between sharia norms and public policy in a modern context.<sup>23</sup> It also seeks to compare the legal traditions of two regions, the Middle East and Southeast Asia, which differ in their application of *fiqh*, legal codification, and responses to social demands.<sup>24</sup> This comparison will reveal the differing approaches between the legal conservatism of the Middle East and the legal flexibility of Southeast Asia.<sup>25</sup> It further aims to formulate a concept of legal-political reconstruction that is adaptive to contemporary challenges, such as gender equality, child protection, and harmonization with human rights principles, while remaining grounded in *maqāṣid al-sharīʿah* as its normative foundation.<sup>26</sup> Legal-political reconstruction entails shifting the legislative paradigm from mere positivization of textual norms toward regulations that are responsive to universal values without neglecting the principles of sharia.<sup>27</sup> Muslim-majority countries such as Egypt,

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<sup>19</sup> Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008).

<sup>20</sup> Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Reading, MA: Addison-Wesley, 1991). John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law*, 2nd ed. (Syracuse, NY: Syracuse University Press, 2001).

<sup>21</sup> Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon, VA: International Institute of Islamic Thought, 2008).

<sup>22</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006).

<sup>23</sup> Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008).

<sup>24</sup> John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003). Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009).

<sup>25</sup> Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007).

<sup>26</sup> Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon, VA: International Institute of Islamic Thought, 2008). Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Reading, MA: Addison-Wesley, 1991).

<sup>27</sup> Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008).

Morocco, and Indonesia have begun family law reforms by integrating human rights principles and gender justice into marriage regulations.<sup>28</sup> This development demonstrates that legal reform is not merely an option but a necessity to maintain the relevance of Islamic law amid global dynamics and societal pluralism.<sup>29</sup>

Thus, the reconstruction of Islamic-based marriage law politics becomes a strategic necessity to ensure that the law addresses modern challenges while preserving the authenticity of sharia values within a framework of justice and public welfare.<sup>30</sup> The novelty of this study lies in its approach to reconstructing Islamic-based marriage law politics through a cross-regional comparative analysis of the Middle East and Southeast Asia.<sup>31</sup> Most previous studies have focused only on a single country or region and have emphasized the normative aspects of family law without comprehensively linking them to the dynamics of legal politics.<sup>32</sup> This research offers a new perspective by integrating legal-political analysis, *maqāṣid al-shari'ah*, and comparative legal traditions to formulate a reconstruction model that is adaptive to contemporary challenges such as gender equality and harmonization with human rights principles.<sup>33</sup> Accordingly, this study is not merely descriptive but also provides both theoretical and practical contributions to the development of Islamic law that is responsive to social pluralism and the globalization of legal norms.<sup>34</sup> Based on the background above, the researcher focuses the discussion on several questions: How does legal politics influence Islamic-based marriage regulation? What are the differences in approach between the Middle East and Southeast Asia? How can the reconstruction of legal politics realize justice and maintain relevance?

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<sup>28</sup> John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law*, 2nd ed. (Syracuse, NY: Syracuse University Press, 2001).

<sup>29</sup> Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007).

<sup>30</sup> Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon, VA: International Institute of Islamic Thought, 2008).

<sup>31</sup> John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003). Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009).

<sup>32</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006).

<sup>33</sup> Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Reading, MA: Addison-Wesley, 1991). John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law*, 2nd ed. (Syracuse, NY: Syracuse University Press, 2001).

<sup>34</sup> Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008).

## Methods

This study employs a normative-comparative research design, focusing on the analysis of law as a normative system and comparing its application in two regions: the Middle East and Southeast Asia.<sup>35</sup> The approaches used include a legal-political approach to examine how configurations of power and state policies influence the legislation of Islamic-based marriage law, as well as a comparative legal approach to explore the similarities and differences in family law traditions between the two regions.<sup>36</sup> The data sources for this study include primary legal materials, such as the Marriage Law of Indonesia, the Compilation of Islamic Law (KHI), and family law statutes from Middle Eastern countries, including Egypt and Saudi Arabia.<sup>37</sup> In addition, secondary legal materials are used, including academic literature, scholarly journals, and books relevant to legal politics and Islamic family law.<sup>38</sup>

The analytical techniques applied are content analysis to examine the substance of the regulations and comparative analysis to identify the differences and similarities between the two regions. Through these methods, the study aims to formulate a model for reconstructing Islamic-based marriage law politics that is adaptive to contemporary challenges while maintaining *maqāṣid al-shari‘ah* as its normative foundation.<sup>39</sup>

## Results and Discussion

### Legal Politics Influences Islamic-Based Marriage Regulation

Legal politics has a significant influence on the formation of Islamic-based marriage regulations, as legislation is essentially not merely a technical activity but an arena where state interests, societal aspirations, and religious values within Muslim communities intersect and are negotiated. In Indonesia, this dynamic is clearly reflected in the enactment of Law No. 1 of 1974 on Marriage. This legal product emerged from a tug-of-war between Islamic groups

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<sup>35</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum [Introduction to Legal Research]* (Depok: Universitas Indonesia Press, 2010).

<sup>36</sup> Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975). Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd ed. (Oxford: Oxford University Press, 1998).

<sup>37</sup> Departemen Agama Republik Indonesia, *Kompilasi Hukum Islam di Indonesia [Compilation of Islamic Law in Indonesia]* (Jakarta: Departemen Agama RI, 1991). Egyptian Civil Code, Law No. 131 of 1948 (Cairo: Egyptian Government, 1948). Saudi Basic Law of Governance, Royal Decree No. A/90 (Riyadh: Kingdom of Saudi Arabia, 1992).

<sup>38</sup> Nadirsyah Hosen, *Sharia and Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2004). Mohammad Hashim Kamali, *Shari‘ah Law: An Introduction* (Oxford: Oneworld Publications, 2008).

<sup>39</sup> Abu Hamid Al-Ghazali, *Al-Mustasfa min ‘Ilm al-Usul [The Refined in the Science of Legal Principles]* (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1993). Muhammad Tahir Ibn Ashur, *Maqasid al-Shari‘ah al-Islamiyyah [The Objectives of Islamic Sharia]* (Amman: Dar al-Nafa’is, 2006).

advocating the pure application of *fiqh* and the government, which promoted the unification of national law for stability, legal certainty, and social integration. The interaction among executive actors, legislators, and religious figures resulted in a form of regulation that is compromise-oriented, balancing sharia principles with the demands of modernity and state administration.<sup>40</sup>

The influence of legal politics is also evident in the formulation of the Compilation of Islamic Law (KHI) in 1991, which was developed through a top-down approach yet still sought to accommodate the needs of the Indonesian Muslim community. The KHI became a more systematic juridical guideline for the religious courts, while providing a form of codification that harmonizes classical *fiqh* with the realities of national law.<sup>41</sup> This process affirms that Islamic family law in Indonesia evolves through the interaction of religious values, social dynamics, and the state's political interests, such that the resulting regulations are never detached from the context of power, ideology, and societal needs.

In the contemporary context, Islamic marriage regulations face increasingly complex challenges, particularly in balancing sharia norms with human rights (HR) principles and the demands of modernity. Issues such as gender equality, child protection, minimum marriage age, and restrictions on polygamy have generated intense debate because they involve a clash of values between religious tradition and international standards. On the one hand, Islamic law has historically emphasized moral principles, public welfare (*maṣlaḥah*), and substantive justice. On the other hand, international human rights standards call for the elimination of all forms of gender-based discrimination and require states to ensure equal protection for all citizens, including women and children.

In addressing these challenges, several Muslim countries, such as Indonesia and Egypt, have undertaken family law reforms using a *maqāṣid al-shari'ah* approach. This approach aims to reinterpret Islamic law in its historical context, ensuring it remains relevant, beneficial, and responsive to social change.<sup>42</sup> These reforms are reflected in the strengthening of the role of religious courts, the enhancement of women's rights in divorce, the tightening

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<sup>40</sup> J. M. Hutagalung and T. Gloriawati, "Konsep Politik Legislasi Hukum Keluarga di Indonesia," *Jurnal Hukum* (2023). A. Sparingga, "Konfigurasi Politik Legislasi Undang-Undang Perkawinan dalam Perspektif Fiqh Siyasah," *Istinbath Journal* (2023).

<sup>41</sup> A. S. Gibu and Saidah, "Analisis Arah Politik Hukum Pemerintah terhadap Pembangunan Hukum Keluarga Islam di Indonesia," *Hukamaa Journal* (2023).

<sup>42</sup> M. Hadi, H. Saputra, and M. Faozan, "Hak Asasi Manusia dalam Hukum Keluarga Islam," *Familia Journal* 5, no. 2 (2024). S. Husain and G. C. Kaunang, "Fleksibilitas Hukum Islam dalam Menjawab Tantangan Hukum Keluarga, HAM dan Ekonomi Modern," *Tasyri' Journal* (2025).

of polygamy requirements, and the affirmation of the importance of marriage registration as a guarantee of legal protection.

These developments indicate that legal politics not only determines the substance of regulations but also shapes the overall direction of Islamic family law reform. Legal politics guides how the state responds to the dynamics of globalization, demands for equality, and changes in social structures, ensuring that marriage law retains both social legitimacy and juridical relevance.<sup>43</sup>

### **Differences in Approach between Middle Eastern and Southeast Asian Family Law Traditions**

In the Middle East, approaches to Islamic family law generally remain oriented toward classical *fiqh* and are highly conservative, resulting in regulatory changes that tend to progress slowly. Egypt is one of the countries that undertook reforms earlier—particularly since the early twentieth century—through a codification process fundamentally based on the Hanafi school of law. Nevertheless, Egypt continues to accommodate Shafi'i and Maliki legal views to address broader social needs. Some significant reforms include restrictions on polygamy, strengthening women's rights in marriage and divorce, and enhancing the courts' role in resolving family disputes. However, all these changes remain within the framework of sharia deemed legitimate.<sup>44</sup>

Conversely, Saudi Arabia maintains a strong commitment to Hanbali *fiqh* as the foundation for regulations on marriage and family life. The dominance of this school makes the rules governing marriage more rigid and literal. Polygamy is permitted without strict limitations, and the practice of unilateral divorce by men (*ṭalāq*) remains valid without adequate judicial oversight. This conservatism reflects a highly textual legal character with minimal reformist intervention, making Saudi Arabia one of the countries with the most traditional family law systems in the region.<sup>45</sup>

Unlike the predominantly conservative model found in the Middle East, countries in Southeast Asia have adopted a more conciliatory approach to family law by integrating sharia principles with the needs of modern national legal systems. Indonesia, for example, regulates

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<sup>43</sup> M. Adieb, "Transformasi Hukum Keluarga Islam di Indonesia: Antara Norma Syariah dan Dinamika Sosial Kontemporer," *Jurnal Sosiologi Pendidikan dan Pendidikan IPS* 3, no. 3 (2025): 86–98.

<sup>44</sup> Dawoud El Alami and Doreen Hinchcliffe, *Islamic Marriage and Divorce Laws of the Arab World* (The Hague: Kluwer Law International, 1996).

<sup>45</sup> Hatoon Al-Fassi, *Women and the Legal System in Saudi Arabia* (Cambridge: Cambridge University Press, 2017).

marriage through Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), which combine *fiqh* norms with state administrative values and principles of citizen rights protection. These regulations include the requirement of marriage registration as a legal instrument, the establishment of a minimum marriage age to prevent child marriage, and stricter provisions on polygamy through court authorization and the requirement that justice conditions be fulfilled. This demonstrates that family law in Indonesia not only maintains its sharia-based foundations but is also responsive to social changes.<sup>46</sup>

Malaysia adopts a similar model through the Islamic Family Law enacted in each state and enforced by the Sharia Courts. This system allows for flexibility in implementation, enabling regulations to adapt to contemporary issues such as the protection of women's rights, family mediation, and the enhanced role of the courts in overseeing divorce and maintenance. With this more adaptive approach, Southeast Asian countries can present a model of Islamic family law that is moderate, inclusive, and relevant to the needs of modern society.<sup>47</sup>

The fundamental difference between the practice of Islamic family law in the Middle East and Southeast Asia lies in the degree of flexibility and the extent of legal-political influence in its formation. Middle Eastern countries tend to maintain a rigid approach that is strongly oriented toward religious authority. This results in a relatively narrow space for legal reform, as classical *fiqh* interpretations serve as the primary foundation and are difficult to modify through modern policy initiatives. Religious authorities play a dominant role in shaping legislative direction, frequently constraining reforms to conservative interests.

Conversely, Southeast Asian countries demonstrate greater flexibility through codification processes designed to respond to social dynamics, legal pluralism, and the demands of modernity. The legal systems in this region seek to harmonize sharia values with national principles and international standards, resulting in more moderate regulations that are adaptable to contemporary issues such as gender equality, civil registration, and child protection.<sup>48</sup>

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<sup>46</sup> M. B. Hooker, "Indonesian Syariah: Defining a National School of Islamic Law," *Pacific Affairs* 76, no. 4 (2003): 507–525.

<sup>47</sup> Ahmad Yusof, *Islamic Family Law in Malaysia: Principles and Practices* (Kuala Lumpur: IIUM Press, 2014).

<sup>48</sup> M. Hadi, H. Saputra, and M. Faozan, "Hak Asasi Manusia dalam Hukum Keluarga Islam," *Familia Journal* 5, no. 2 (2024).

## Comparative Analysis Between Middle Eastern and Southeast Asian Traditions of Family Law

The traditions of family law in both regions are fundamentally rooted in sharia and classical *fiqh* as their primary sources of legitimacy. Egypt and Saudi Arabia in the Middle East, as well as Indonesia and Malaysia in Southeast Asia, adopt the principles of Islamic law as the foundation for regulating marriage and family relations. Fiqh norms, such as the marriage contract as a valid legal agreement, the giving of mahr as a symbol of responsibility, and the regulation of spousal rights and obligations, continue to be maintained in various forms of modern legislation. These similarities demonstrate that, despite differences in political contexts, levels of conservatism, and social needs across countries, sharia remains the normative reference that provides moral and juridical authority for family law.<sup>49</sup>

The primary differences lie in the degree of codification and legal flexibility. Middle Eastern countries, such as Saudi Arabia, maintain the Hanbali *fiqh* in a literal manner, resulting in marriage regulations that are conservative and minimally codified. In contrast, Egypt has undertaken family law reforms through codification based on the Hanafi school, while still preserving the authority of religious scholars.<sup>50</sup>

In Southeast Asia, Indonesia and Malaysia adopt a more compromise-oriented approach through the Marriage Law, the Compilation of Islamic Law, and the Islamic Family Law Acts, all of which are more adaptive to contemporary issues such as restrictions on polygamy and mandatory marriage registration.<sup>51</sup> Political factors also play a significant role: Southeast Asian states tend to integrate Islamic law into their national legal frameworks, whereas Middle Eastern countries place greater emphasis on religious authority in legislation.<sup>52</sup>

This analysis shows that although both regions are grounded in sharia as their normative foundation, their responses to modernity and legal pluralism differ significantly. Southeast Asian countries such as Indonesia and Malaysia tend to be more progressive in

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<sup>49</sup> Dawoud El Alami and Doreen Hinchcliffe, *Islamic Marriage and Divorce Laws of the Arab World* (The Hague: Kluwer Law International, 1996). M. B. Hooker, "Indonesian Syariah: Defining a National School of Islamic Law," *Pacific Affairs* 76, no. 4 (2003): 507–525.

<sup>50</sup> Hatoun Al-Fassi, *Women and the Legal System in Saudi Arabia* (Cambridge: Cambridge University Press, 2017).

<sup>51</sup> Ahmad Yusof, *Islamic Family Law in Malaysia: Principles and Practices* (Kuala Lumpur: IIUM Press, 2014).

<sup>52</sup> M. Hadi, H. Saputra, and M. Faozan, "Hak Asasi Manusia dalam Hukum Keluarga Islam," *Familia Journal* 5, no. 2 (2024).

harmonizing Islamic law with national law and international standards. This approach produces family regulations that are more flexible and adaptive to social change. In contrast, the Middle Eastern region prefers to maintain classical *fiqh* traditions more strictly, relying on textual and conservative interpretations. These differences illustrate variations in the dynamics of legal politics and demonstrate how social context and power structures shape the direction of reform in Islamic family law.

### **Reconstruction of Marriage Legal Politics to Achieve Justice and Relevance**

The reconstruction of Islamic-based marriage law politics must be grounded in *maqāṣid al-shari‘ah*, the fundamental objectives of sharia that emphasize the protection of religion, life, intellect, lineage, and property. This foundation allows for the formulation of marriage regulations that are not only textual but also contextual and responsive to social developments. By prioritizing the principles of public interest (*maṣlaḥah*) and substantive justice, the *maqāṣid* approach creates space for family law reforms that are more inclusive and adaptive. Through this approach, marriage law can address contemporary issues such as gender equality, child protection, the prevention of domestic violence, and the elimination of discriminatory practices, without neglecting the core values of sharia that serve as its ethical and normative foundation.<sup>53</sup>

The proposed reconstruction model should be adaptive and capable of bridging the fundamental principles of sharia with international legal standards and the evolving social dynamics of local communities. Several Muslim-majority countries have demonstrated this reform direction. Morocco, through revisions to its Mudawwanah, and Egypt, through updates to its family law, have integrated the *maqāṣid al-shari‘ah* approach with human rights principles to strengthen the position of women and children. Meanwhile, Indonesia and Malaysia have pursued family law codification that harmonizes with their national legal systems, thereby creating a more comprehensive and contextually grounded model of marriage regulation.<sup>54</sup>

Such adaptation is essential to maintain the relevance of Islamic law in the era of globalization, where societies face challenges of legal pluralism, social mobility, and

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<sup>53</sup> M. Hadi, H. Saputra, and M. Faozan, “Hak Asasi Manusia dalam Hukum Keluarga Islam,” *Familia Journal* 5, no. 2 (2024). Jasser Auda, *Maqasid al-Shari‘ah as Philosophy of Islamic Law: A Systems Approach* (Herndon, VA: International Institute of Islamic Thought, 2008).

<sup>54</sup> Hatoon Al-Fassi, *Women and the Legal System in Saudi Arabia* (Cambridge: Cambridge University Press, 2017). M. B. Hooker, “Indonesian Syariah: Defining a National School of Islamic Law,” *Pacific Affairs* 76, no. 4 (2003): 507–525.

increasingly complex demands for justice. Therefore, the reconstruction of legal politics cannot be understood merely as a normative revision of specific articles, but as a transformation of the legislative paradigm. It aims to ensure that Islamic family law can genuinely guarantee justice, gender equality, protection for vulnerable groups, and public welfare in a modern context.<sup>55</sup>

## Conclusion

The analysis shows that legal politics plays a strategic role in determining the substance and direction of marriage regulations in Muslim-majority countries. Family law legislation is not merely a normative process but is also heavily influenced by political, ideological, and social interests. In Indonesia, for example, the Marriage Law and the Compilation of Islamic Law emerged from a compromise between the aspirations of the Muslim community and state policies that prioritized legal unification. A similar pattern occurs in Egypt and Saudi Arabia, where political configurations influence the extent to which classical *fiqh* is preserved or reformed.

The comparison between the Middle East and Southeast Asia reveals fundamental differences in legislative approaches. Middle Eastern countries, such as Saudi Arabia, tend to maintain legal conservatism based on Hanbali *fiqh*, whereas Egypt has adopted codification-based reforms. In contrast, Southeast Asia is more flexible and adaptive, integrating Islamic law into the national legal framework through regulations that are responsive to social pluralism and the demands of modernity. Contemporary challenges such as gender equality, child protection, and harmonization with human rights principles demand the reconstruction of Islamic-based marriage law politics. This reconstruction must be grounded in *maqāṣid al-sharīʿah* so that the regulations are not only legally formal but also ensure public welfare and substantive justice. An adaptive reconstruction model that considers both global and local contexts is key to maintaining the relevance of Islamic family law in the modern era.

## Declarations

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