



The Development of Ideas for Reform and Transformation of Islamic Family Law Becoming Legislation in Islamic Countries

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Abstract

Family law reform in Muslim countries remains a subject of debate among the global Muslim community because they believe that Islamic family law and family law are not equal. This article aims to examine the renewal and transformation of family law in the Islamic world. This research is a literature review, with a descriptive-analytical research type. The approach used is interdisciplinary, namely comparative, legal, philosophical, and historical. The sources of this research include primary sources such as law books and secondary sources such as theses, dissertations, and journal articles. The factors influencing the renewal of Islamic family law in the world are politics, economics, and social law. The methods of Islamic legal reform are *siyasyah al-shar'iyah*, *takhayyur*, *takhsis al-qhadha*, the old theory of *ijtihad*, *ijma*, *qiyas*, *maslahah mursalah*, and *sadd' al-dhari'ah*. The renewal of Islamic law in the world includes polygamy, inheritance, marriage registration, and marriage contracts. The transformation of Islamic family law in Indonesia is reflected in Law Number 1 of 1974 on Marriage, State Gazette No. 1 of 1974, Supplement No. 3019/1974. Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, which serves as the standard reference for judges in adjudicating cases. The 2002 Law on Child Protection, Law No. 23 of 2004 on Domestic Violence, Law No. 12 of 2022 on Sexual Violence Crimes, and the legislation are in line with Islamic family law.

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INTRODUCTION

In the 20th century, one of the phenomena that emerged in the Islamic world was family law reform. Islamic family law is one of the most recognized fields in Muslim societies around the world today (Astutik & Muttaqin, 2020; Bahri, 2024; Sugitanata & Karimullah, 2023).

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Its existence is not only because it is still practiced in their traditional social and cultural life, but also manifested in the form of law through legislation that has been transformed into official legislation in that country. Almost all Islamic countries in the Asia-Africa region have family laws, including Indonesia with the Marriage Law No. 1 of 1974, the 1989 Law on Religious Courts, and the 1991 Presidential Instruction on the Compilation of Islamic Law in 1991 (Huda & Meidina, 2023; Nur Fadhilah Novianti, 2023; Sofiana & Meinungtias, 2023). Supreme Court Regulation No. 2 of 2008. This demonstrates that the field of Islamic family law is of great importance for implementation across all Islamic countries today. Islamic countries have always regarded Turkey as the first country to reform family law, beginning in 1917, followed by Egypt in 1920, Iran in 1961, and Indonesia in 1974.

There are Muslim countries that take a middle path in reforming Islamic family law by preserving the core principles of Islamic law while adapting them into national legislation. Countries such as Indonesia, Morocco, and Tunisia fall into this category. These nations attempt to reconcile the normative aspects of Islamic jurisprudence with the socio-cultural needs of modern society. For example, in Indonesia, the Marriage Law and the Compilation of Islamic Law represent the state's effort to transform classical fiqh into codified positive law, maintaining its religious legitimacy while ensuring legal certainty and social relevance.

Family law reform in Indonesia is considered to be slower than in other Muslim countries because it was only implemented in 1974 with the enactment of Law No. 1 of 1974 on Marriage, which regulates family law (Daud & Rosadi, 2021; Roslaili et al., 2021). However, the facts and realities of the family law reform process in all Islamic countries are not easy, as in some Islamic countries there is still a dichotomous debate between religion and the state, according to Heldon, where the relationship between religion and the state often results in unequal regulations in family law.

However, this reform process is not without challenges. In Indonesia, resistance often comes from conservative groups who view reforms as a threat to traditional Islamic teachings. On the other hand, progressive voices continue to push for more responsive legal reforms that address contemporary issues such as gender equality, child protection, and fairness in polygamy and divorce practices. These tensions highlight the complex negotiation space in which Islamic family law reforms occur balancing religious authenticity with evolving societal demands.

In addition, ongoing family law reforms, particularly in Indonesia, have faced significant resistance from social groups over the years. Muslim countries reforming Islamic family law can be categorized into three groups. First, countries that have not yet transformed Islamic family law into legislation, such as the Kingdom of Saudi Arabia, have made legal adjustments based on classical jurisprudence (Zayyadi & Faiz, 2020). Second, countries that have liberalized Islamic law largely based on European law, such as Turkey (Yuniarti et al., 2023; Yusa Djuyandi, Slamet Rizkiawan, 2021).

Therefore, the reform of Islamic family law cannot be viewed merely as a legal process but as part of a broader social transformation. The involvement of various actors state institutions, religious scholars, academics, and civil society plays a crucial role in shaping the direction and content of the reform. As observed across several Muslim countries, the success of family law reform depends significantly on how well a country can navigate the tensions between tradition and modernity, religious authority and state power, and individual rights and collective norms.

METHODS

This research is a qualitative literature study. It is a descriptive analytical study. The approach used is an interdisciplinary approach, namely a comparative approach,

by comparing Indonesian law with that of other Islamic countries (Engkizar et al., 2025). The legal approach is based on legislation, while the philosophical approach is based on the principles of Islamic family law, which are linked to the historical development of family law in the Islamic world. The data sources for this study were obtained from research conducted in libraries and family law books as primary sources, supplemented by secondary sources such as journal articles that support the findings (Kaputra et al., 2021). In conducting the analysis, the research also employed a contextual approach to understand how socio-political and cultural factors influence the formulation and implementation of Islamic family law in various countries. This approach allows the study to not only compare legal texts but also examine how laws operate within specific societal frameworks. By situating legal developments within their broader historical and social contexts, the research provides a deeper understanding of the motivations behind legal reforms, the challenges encountered, and the implications for the future of Islamic family law in Indonesia and other Muslim-majority countries.

RESULT AND DISCUSSION

The development of ideas for reforming and transforming Islamic family law into legislation in Islamic countries is the result of social dynamics and the needs of contemporary Muslim societies. Traditionally, Islamic family law is rooted in classical fiqh, which draws from the Quran, hadith, *ijma'*, and *qiyas* (Faizah et al., 2024; Tohari & Kholish, 2020). However, with the passage of time, there has been a growing demand to align these laws with principles of justice, gender equality, and human rights. This has been the primary driving force behind various reform initiatives aimed at reconciling sharia principles with modern social needs.

The codification of family law is an important part of this reform process. Islamic countries have begun to formulate laws governing marriage, divorce, child custody, alimony, and inheritance, in order to provide legal certainty and protection for individuals, especially women and children. For example, Tunisia and Morocco have successfully developed fairly progressive family laws, such as the prohibition of polygamy in Tunisia and the strengthening of women's rights in the *Mudawwanah* Code in Morocco (Ali Trigiyatno et al., 2022; Umam & Chaerunnisa, 2023). These reforms demonstrate that Islamic law is not static but can evolve according to the social and cultural context of each country.

However, this reform process has not always been smooth. Many countries have experienced tension between conservative groups who want to maintain the classical interpretation of Islamic law and reformist groups who demand renewal (Kadriyah et al., 2024; Wulandari, 2021). In some cases, family law reform has been strongly opposed because it is seen as an attempt at secularization or the blurring of Islamic values. Nevertheless, this debate highlights the dynamic nature of thought within the Islamic world, opening space for a contextual approach to religious texts and Sharia principles.

Indonesia is an important example of relatively moderate Islamic family law reform. Through the Compilation of Islamic Law and other legislation, Indonesia regulates aspects of family law based on fiqh principles, while still considering social justice and community development (Darna, 2021; Frahma, 2024; Mulyawan et al., 2021). Additionally, the active participation of religious leaders, academics, and civil society organizations has strengthened the discourse on family law reform at the national level, particularly in terms of women's empowerment and child protection.

Overall, the transformation of Islamic family law into legislation in various Islamic countries shows a dynamic and contextual direction of change (Engkizar et

al., 2025). Although each country has a different approach, all of them strive to balance Islamic values and the demands of modern life. This process underscores that Islamic family law is not monolithic but open to interpretation and adaptation, provided it remains within the framework of *maqashid al-syariah*, which aims to achieve the welfare of the community (Putra et al., 2022; Rohmah, 2024). Thus, the reform of Islamic family law is not merely a technical change, but also part of a larger effort to uphold justice and equality in today's Muslim society.

Family law in Islamic countries has different names. Some of them are *Abkam al-Usrah*, *Nidzam al-Usrah*, *Qanun al-Usrah* in Morocco called *Mudawanah* with reference to the work of Imam Malik bin Anas, and the most popular is *al-Ahwal al-Shakhsiyah*, which literally means personal behavior. In Dutch, it is called *personrecht*. Both terms in Western law cover issues of legal validity and acts of adultery. The first person to study *al-Ahwal al-Shakhsiyah* and codify it into a book was Muhammad Qadri Pasha, an Islamic law expert from Egypt (Balya Ziaulhaq Achmadin & M. Imamul Muttaqin, 2022; Muhajir, 2021).

Abdul Wahab Khallaf defines *al-Ahwal Shakhsiyah* as the law relating to the family from its inception, intended and aimed at regulating couples and their respective relatives. Wahbah Az-Zuhaily defines *ahwal al-shakhsiyah* as the laws governing family relationships from their inception until their final days or conclusion (of the family), encompassing marriage, divorce (*talaq*), lineage (*nasab*), maintenance, and inheritance (Engkizar et al., 2022). From the two legal terminologies of family law above, it is evident that while the wording differs, the substantive emphasis is the same, and they can at least be combined. First, family law governing the relationship between husband and wife occurs through the marriage process (*khithbah*) until the marriage takes place, even until the separation of husband and wife due to the death of one of them or because of divorce (Bairuha, 2023; Thoyib & Huda, 2022).

Second, the law of kinship, in the sense of guardianship and custody of minor children resulting from marriage. Third, family property law, which includes the division of property due to divorce, the division of inheritance due to the death of a family member, wills, gifts, and waqf. LJ Van Apeldoorn defines *familierrecht* as the legal principles arising from family relationships, which include rules regarding the first (Faizah et al., 2024; Nurdin et al., 2022). Marriage, including the property rights between husband and wife.

The relationship between parents and children, and the relationship between guardians and children under their supervision. The relationship between individuals placed under guardianship due to insanity, unhealthy mental states, or extravagance and guardianship. Islamic family law, in its core principles, encompasses four subsystems of law: marriage, child custody, child maintenance, inheritance and wills, and guardianship (Engkizar et al., 2021). In principle, humans have a natural desire for immortality in their lives. Life in this world as a human being is followed by immortality through descendants, children, grandchildren, and great-grandchildren; therefore, there is a need for regulations governing family matters.

All aspects of family life are based on Islamic teachings. The essence of family law is formed from the marital relationship built on love and affection between men and women (Fikri et al., 2021; Firmansyah et al., 2022; Kusmardani et al., 2022). Women are oriented toward the formation of a harmonious family based on love and compassion. Additionally, marriage involves a sacred and strong agreement between spouses within the family, serving a functional role in human interaction between individuals.

Islamic family law, as a holistic legal system, aims to regulate the familial and social relationships of individuals to ensure justice, protection, and balance within society. The emphasis on child custody, maintenance, and guardianship reflects the

core Islamic value of *maslahah* (public interest), ensuring the well-being and security of those who are most vulnerable, such as children and individuals under guardianship. These legal components not only provide a framework for parental and guardian responsibilities but also serve to uphold the dignity and rights of the dependents, guided by principles derived from the Quran, Hadith, and classical jurisprudence.

Furthermore, the concept of guardianship (*wilayah and hadbanah*) in Islamic family law extends beyond mere legal authority. It encompasses moral, emotional, and financial responsibilities aimed at fostering the physical and psychological development of children and those under care. Guardians are entrusted not only with protection and maintenance but also with the religious and ethical upbringing of their wards. In the case of individuals declared legally incompetent, guardianship ensures that their rights and properties are protected, preventing potential exploitation or harm due to their incapacities.

In the broader context, Islamic family law reflects a societal vision in which the family unit is seen as the foundation of a stable and moral community. The regulation of family matters from marriage to inheritance is not merely a legal necessity but a religious and social obligation. As such, legal reforms and interpretations of these aspects continue to evolve in response to contemporary challenges, including changing family structures, gender roles, and international human rights standards. These developments highlight the dynamic nature of Islamic law, as it seeks to remain relevant and just within modern legal systems while preserving its foundational values.

CONCLUSION

Based on the problems and objectives of the research that have been formulated previously, it can be concluded in this discussion as an answer to the problems raised that the methodology of law enforcement in Islamic countries takes various forms, namely *tahsis alqada*, *takbhayyur*, reinterpretation, *siyasah syar'iyah*, and court decisions. The nature and methods of reform used by Muslim countries in reforming Islamic family law can generally be categorized into intra-doctrinal reform and extra-doctrinal reform. The issues addressed in Islamic family law include the age of marriage, marriage registration and agreements, polygamy, and divorce. In addition to the aforementioned methods and issues, it is important to note that the process of reform in Islamic family law also involves a dynamic interaction between traditional jurisprudence (*fiqh*), modern legal frameworks, and societal needs. This interaction often reflects the unique historical, political, and cultural context of each Muslim-majority country. Legal reforms are not merely a product of internal scholarly discourse but also respond to international human rights standards and the growing demand for gender justice. As such, contemporary developments in Islamic family law demonstrate an evolving interpretation of Sharia that seeks to balance religious principles with the realities of modern society, highlighting the adaptability and relevance of Islamic law in addressing current family-related issues.

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