

Legal Politics in the Codification of Islamic Marriage Between Normative and Socio-Philosophical Approaches

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ABSTRACT: The codification of Islamic marriage law is part of a political-legal process that reflects the interaction between religious texts, state authority, and the social dynamics of Muslim society. In general, codification is carried out to provide legal certainty and uniformity in the application of Islamic family law. However, approaches to the codification process vary widely, ranging from normative-textual approaches to socio-philosophical approaches oriented towards the *maqasid al-shari'ah* (objectives of Islamic law) and substantive justice. This study aims to analyse how legal politics operates in the codification process of Islamic marriage law, compare normative and socio-philosophical approaches in codification practice, and examine the extent to which the *maqasid* approach can strengthen the justice dimension of Islamic family law. This study uses qualitative methods with normative-juridical, conceptual, and comparative legal approaches. The primary data sources come from marriage law codification documents from several Muslim countries, such as the Compilation of Islamic Law (Indonesia), *Mudawwanah al-Usrah* (Morocco), and the Code du Statut Personnel (Tunisia). Secondary data was obtained from scholarly literature related to Islamic legal philosophy, legal politics, and the *maqasid al-shari'ah* (objectives of Islamic law). The research findings indicate that the normative approach to codification tends to maintain the continuity of classical *fiqh* but often ignores social realities and gender justice. Conversely, the socio-philosophical approach opens up space for a more responsive, contextual, and inclusive legal interpretation of the *maqasid*. Ideally, the codification of family law should integrate these two approaches to create a law that is just, dynamic, and relevant to the needs of contemporary Muslim society.

KEYWORDS: Legal Politics; Codification of Marriage Law; Normative and Socio-Philosophical Approaches

A. INTRODUCTION

Classical *fiqh* law, particularly in the realm of marriage, is based on the methodology of *ushul fiqh*, which combines normative texts such as the Qur'an, hadith, *ijma'*, and *qiyas* (the principle of Islamic jurisprudence), and is influenced by the diversity of schools of thought that developed in different social and geographical contexts. This tradition reflects the flexibility and pluralism of Islamic law in responding to societal needs. However, with the emergence of the modern nation-state, many Muslim countries felt the need to integrate *fiqh* norms into a structured and uniform national legal system through a process of codification (*taqnin*). This codification is not merely a formal legal process but also a legal-political instrument used by the state to direct the development of national law by ideology, power interests, and the demands of modernity. In this case, discursive and pluralistic *fiqh* norms are often simplified and formalised, transforming them into positive law that is binding and uniform throughout the country's jurisdiction. (Salim, 2003); (Moosa, 2004)

Taqnin, or putting Islamic marital law into writing, is a complicated political-legal process that has three primary steps: selection, adaptation, and systematisation. First, the state needs to choose sources of *fiqh* (Islamic law) or schools of thought that are believed to be useful and valid to use as the basis for positive law. Second, this *fiqh*'s substance is adapted to fit the country's social and political situation and its legal system, enabling its successful application. Third, the rules that come from this selection and adaptation are put together in a methodical way into legal documents like laws, government regulations, or presidential directives. The 1991 Compilation of Islamic Law (KHI) in Indonesia is a *taqnin* product that is based on the *Shafi'i* school of jurisprudence but has been changed to fit the country's laws, which recognise monogamy and formal marriage rituals. Morocco, on the other hand, made more progressive changes through the *Mudawwanah al-Usrah* (2004), which changed family law to focus on gender equality and justice. This included limiting polygamy and giving women more rights in the home and court. (Welly, 2010)

The codification of Islamic law, especially when it comes to marriage, is not just a legal procedure; it also shows how complicated the legal and political systems are. Choosing *fiqh* sources, the effect of state ideology, and talks between religious leaders and political leaders are all part of this process. The state often uses codification to stabilise social order and legitimise power by making laws uniform. (Özdemir & Sabri, 2022), (Asep, 2022) But codification also brings up important philosophical

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questions: is its primary objective to show power and keep order, or is it to make sure that substantive justice is done according to the *maqasid al-shari'ah*, including protecting life, honour, and family welfare? This study takes a different approach by looking at the differences between the normative-textual approach, which is concerned with legal certainty and preserving classical *fiqh*, and the socio-philosophical approach, which tries to understand Islamic law in terms of social justice and universal human values. This study is critical because it shows that codification should not just be about the formal aspects of Islamic law, but also about the moral and substantive aspects. (Moosa, 2004), (Auda, 2011), (Maulidi, 2022)

Since Islamic family law was written down, many Muslim countries have used a normative-textual approach that focuses on turning traditional *fiqh* texts into formal legal norms without taking social circumstances into account. This means that the rules are the same for everyone, but they don't change to meet new problems like gender equality and domestic violence. (Moosa, 2004) This method is great for making sure the law is clear, but it often leaves out important social and substantive justice values. Over time, more and more people realised that a strictly textual approach was not enough. Legal scholars and practitioners have begun to support a sociological perspective that places laws within the context of culture, religion, and societal social structure, thereby making them more relevant to contemporary issues. (Salim, 2003) For instance, the new *mudawwanah* in Morocco takes into account women's rights and responds to criticism from local feminist groups. Also, a philosophical approach based on *maqasid al-shari'ah* came about as a way to make codification more solid. This legal philosophy examines sharia law in a manner that considers ideals such as justice, welfare, and human dignity, rather than merely the words themselves. So, the socio-philosophical method looks at not just what is written down, but also why and how these rules work in actual life. (Kamali, 2006)

This change in thinking means that law is no longer just a set of rules; it is now also a way of thinking about society. This study will examine the two methods of normative-textual and socio-philosophical approaches to understand how legal politics influence and distinguish codification models, and what that means for substantive justice in Islamic marriage law in Muslim nations. When codifying Islamic marriage law, there is often a conflict between legal clarity and substantive justice. Legal certainty provides society and the courts with stability, a defined set of rules, and clear procedures. This is very important in today's legal systems, which are built on the ideas of legality and the equal application of the law. (Salim, 2003) However, this paradigm of certainty is usually rigid and doesn't work well in many social, cultural, and personal situations. Substantive justice, on the other hand, deals with deeper moral, ethical, and social justice values, especially when it comes to things like poverty, gender inequity, or family welfare. (Moosa, 2004) In real marriage law, this means that women can get their rights in divorce, child support, and guardianship, and they can also get protection in dangerous situations like domestic abuse. However, when codification puts too much emphasis on certainty, crucial parts of justice are typically left out. For instance, specific family law rules still prioritise the husband's authority and limit women's ability to make legal decisions, despite societal calls for more equitable justice. This shows that having formal positive law doesn't always lead to fair results. (Kamali, 2006)

This study aims to explore how legal politics in the codification process might strike a balance between certainty and substantive justice. The study aims to determine how effectively the *taqin* of Islamic marital law can be improved to achieve both goals by comparing two approaches: normative-textual and socio-philosophical. In modern Muslim nations, this knowledge is expected to lead to legal change that is more responsive and fairer. The main goal of this study is to look at the legal politics involved in the codification of Islamic marriage law, specifically how the state uses legal tools to set rules for Islamic marriage. The goal of this study is to examine the extent to which the state influences the selection of *fiqh* books, collaborates with influential groups such as ulama and the legislature, and revises or maintains specific aspects of classical marriage law to ensure its political legitimacy and legal certainty. (Özdemir & Sabri, 2022), (Asep, 2022), (Salim, 2003)

This study also looks at two main ways to codify: the normative-positivistic approach, which focuses on legal certainty, procedural order, and the equal application of the law, as shown in the Compilation of Islamic Law in Indonesia; and the socio-philosophical-substantial approach, which focuses on the social context, values of justice, and the implementation of *maqashid al-shari'ah*. This method aims to address modern concerns, including the protection of vulnerable groups and ensuring equal treatment for men and women. (Kamali, 2006); (Welty, 2010) The third goal of this study is to look at how *maqashid* (the principles of justice) and the values of justice help with *taqin* (the principle of justice). This philosophical-dynamic method uses the main goals of sharia—protecting life, children, intellect, property, and honour—as a standard for how well the law is written. Finding out how much positive law represents the values of substantive justice, both in the rules themselves and in how they are applied to society, is the most important part of this inquiry. (Auda, 2008) This study brings together legal political analysis, comparative approaches, and a focus on *maqashid* to help us better understand how to make the codification of Islamic marriage law not only legally valid, but also fair, open, and responsive to the needs of modern Muslim society.

There is a significant distinction between legal certainty and substantive justice in Islamic marriage law, which makes this research particularly important. For example, Indonesia, Morocco, and Egypt use the normative-textual method, which gives legal protections and makes it easier to apply family law consistently (Salim, 2003). However, this method often doesn't take into account modern social issues, including gender equality, women's safety, and new laws like those against domestic abuse (Kamali, 2006; Moosa, 2004). Also, as the codification process goes on, more and more people are realising how important *maqasid al-shari'ah* is.

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This includes measures to safeguard life, honour, and children ([Auda, 2008](#)). There is a lack of research that examines how both normative and socio-philosophical perspectives influence the quality of family law that emerges from them.

The necessity for this research is also practical: Muslim countries need a legal-political approach that can connect the textual principles of *fiqh* with the moral and social demands of today. This study assumes that the socio-philosophical approach will lead to rules that are more inclusive, flexible, and respectful of civil rights and the *maqasid al-shari'ah* (objectives of Islamic law). So, this study is very important because it gives lawmakers and Islamic lawyers a theoretical model and practical advice on how to make changes to family law that are not only legal and formal, but also moral and social, and that reflect the substantive justice that Islamic teachings hold up as an ideal.

This study offers significant innovation in the study of the codification of Islamic marriage law by combining two dimensions rarely examined simultaneously: the normative-textual approach and the socio-philosophical approach. Most previous studies have focused on the juridical aspect or comparisons between codification products (Moosa, 2004); (Salim, 2003), without touching on the philosophical dimension or the *maqashid* values behind them. Thus, this study takes an interdisciplinary stance that encompasses legal politics, legal philosophy, and legal sociology to provide a holistic perspective on the dynamics of the formation of Muslim family law. In addition, this study introduces a novel analytical framework in the form of a layered assessment: (1) the legal political structure within the codification system; (2) the normative and procedural dimensions; and (3) the values of substantive justice based on *maqashid al-shari'ah*. This approach demonstrates how a codification can merely fulfil legal force, but fail to guarantee substantive justice and the public good, or conversely, be adaptive to the social context but lose formal legitimacy. ([Kamali, 2006](#)); ([Auda, 2008](#))

Through cross-country comparisons—Indonesia, Morocco, and Tunisia—this study demonstrates the variation in adaptation to social change and local needs, ranging from conservative to progressive to secular, using the parameters of *maqashid* and formal norms in conjunction. This distinguishes this research from classical studies that focus solely on textual or historical analysis. Therefore, the novelty of this research lies in the methodological and thematic integration that unites political analysis, philosophy, and the sociology of law, and its application to the concrete case of marriage law codification in Muslim countries. This approach, which has not been widely used, offers both theoretical and practical contributions to the reform of Islamic law.

Based on the above background, the researcher focuses the discussion on several questions as problem formulations, namely: What is the role of legal politics in the codification of Islamic marriage law? How do the normative and socio-philosophical approaches differ in the codification process, and does the socio-philosophical approach reflect the *maqashid al-shari'ah*? How do codification models in Muslim countries compare?

B. METHODS

This study employs a qualitative-normative approach, focusing on the study of legal documents and an in-depth understanding of legal values. This method is suitable for examining the theoretical, philosophical, and social dimensions of the codification mechanism of Islamic marriage law ([Salim, 2003](#)). A conceptual approach is used to examine key terms and concepts such as legal politics, codification, *fiqh*, *maqashid al-shari'ah*, and the division between normative and socio-philosophical approaches. A philosophical approach is used to examine universal values such as justice, welfare, and human dignity, as reflected in Islamic legal philosophy ([Kamali, 2006](#)). A comparative legal approach allows for cross-analysis of codification models across Muslim countries to understand their diverse characteristics and legal implications. ([Moosa, 2004](#))

Primary data comes from official documents codifying Islamic marriage law, such as the Indonesian Compilation of Islamic Law (KHI), Morocco's *Mudawwanah al-Usrah*, and Tunisia's Code du Statut Personnel (CSP). These documents were analyzed to understand the structure, normative formulation, and philosophical basis of the legislation. Secondary data were collected from academic books, scientific journal articles, and writings on Islamic law and contemporary legal philosophy to strengthen the analytical context and argumentation. ([Auda, 2008](#))

The analytical technique used is descriptive-analytical, which is used to describe the contents of the codification document and its legal structure. Comparative analysis is carried out by comparing the characteristics, contexts, and philosophies of codification models in various countries. Critical analysis is used to evaluate the values of *maqashid* in the context of substantive justice and social relevance, as well as the emerging legal and political tensions. ([Kamali, 2006](#)), ([Moosa, 2004](#)) With this framework, the research is expected to produce a comprehensive understanding of the mechanisms and implications of the codification of Islamic marriage law from the perspective of legal politics and legal philosophy.

C. RESULTS AND DISCUSSION

1. Legal Politics of Marriage Codification: The Role of the State and the Ulama

The codification of marriage law in Muslim nations is not merely a formal-juridical procedure; it embodies the intricate power dynamics between the state and religious authorities. The state does not remain neutral; it actively influences the interpretation of Islamic law, thereafter codified as positive law. In this framework, the interaction between ulama (Islamic scholars) and the state is a significant factor in shaping the direction and content of legal policy. For instance, in Indonesia, the government worked with

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bureaucratic ulama to create a conservative compilation of Islamic law based on *Shafi'i fiqh*. In Morocco, on the other hand, the King worked with reformist ulama and women's rights activists to change *Mudawwanah al-Usrah* (Islamic Law), utilising the *maqasid al-sharia* (Islamic principles) and gender justice methods. In Tunisia, on the other hand, the state took complete legal power from the ulama by passing the Code du Statut Personnel. This was the beginning of the secularisation of family law. These contrasts demonstrate that codification is inherently political, revealing how power operates within each society. ([Özdemir & Sabri, 2022](#)); ([Asep, 2022](#))

The Compilation of Islamic Law (KHI) was born in Indonesia in 1991. This was a clear example of how the government got involved in making Islamic law using administrative, not legislative, means. The KHI was put together by the Ministry of Religious Affairs and approved by Presidential Instruction No. 1 of 1991. It doesn't have the same legal power as a law, but it is often utilised as the primary source of information for religious courts when they need to make decisions. This codification shows how the state, through the religious bureaucracy, took on the role of an authority in interpreting and standardising Islamic law. Although a lot of the KHI's content is still based on the Shafi'i school of jurisprudence, the state's role in choosing, organising, and changing the law means that the KHI is a result of legal politics, not just sharia law. This supremacy of the state presents epistemological and sociological challenges: it establishes legal certainty while also prompting inquiries regarding its normative legitimacy from the standpoint of religious authority and the Muslim community. The Compilation of Islamic Law (KHI) was born in Indonesia in 1991. This was a clear example of how the government got involved in making Islamic law using administrative, not legislative, means. The KHI was put together by the Ministry of Religious Affairs and approved by Presidential Instruction No. 1 of 1991. It doesn't have the same legal power as a law, but it is often utilized as the primary source of information for religious courts when they need to make decisions. This codification shows how the state, through the religious bureaucracy, took on the role of an authority in interpreting and standardizing Islamic law. Although a lot of the KHI's content is still based on the Shafi'i school of jurisprudence, the state's role in choosing, organizing, and changing the law means that the KHI is a result of legal politics, not just sharia law. This supremacy of the state presents epistemological and sociological challenges: it establishes legal certainty while also prompting inquiries regarding its normative legitimacy from the standpoint of religious authority and the Muslim community. ([Salim, 2003](#))

Morocco's family law reform is one of the most advanced in the Muslim world. The *Mudawwanah al-Usrah* reform of 2004 is a clear illustration of how traditional Islamic ideals and the needs of modern life can work together. The King, as Amir al-Mu'minin, who has the most religious power, the Supreme Council of Scholars, the legislature, and civil society groups, including women's groups and academics, all worked together to make this change. The new family law made women's rights stronger in marriage, divorce, and child custody. It also made polygamy very hard to do, with tight rules and the first wife's permission. This rule stressed the idea that a husband and wife should be equal partners in the household. Morocco effectively upheld the legitimacy of Islamic law while contextualising the concepts of *maqasid al-Shari'ah*, such as the protection of human dignity and gender equity, so illustrating that Islamic law can be modified without forfeiting its Sharia foundation. ([Welty, 2010](#)); ([Kamali, 2006](#))

Tunisia is the most notable example of a secular method for codifying family law in the Muslim world. Tunisia made a big change when it passed the Code du Statut Personnel (CSP) in 1956. It entirely banned polygamy and used the idea of gender equality as the basis for developing family law. The CSP legislative process has been nearly completely under state control, unlike in other Muslim nations, where religious academics and institutions have played a big role. President Habib Bourguiba, who was responsible for the reform, stressed the importance of interpreting Islamic law in a logical way that is in line with republican ideals and modernity. The state is not just a regulator; it also decides what codified Islamic law should say and where it should go. This method is considered politically autocratic, but Tunisia is considered successful in adopting progressive principles when it comes to preserving women's rights and fairness in the home. ([An-Na'im, 2002](#)); ([Kartini, et.al., 2021](#)); ([Nasution, 2021](#)); ([Syawqi, 2022](#))

The conflict between political power and religious authority is a significant factor in the process of codifying Islamic marriage law in Indonesia, Morocco, and Tunisia, among other Muslim countries. The state, which can make laws and run the government, uses codification as a way to gain political legitimacy and influence over society. By codifying Islamic law, the state creates an official version that is recognised as valid and legally binding. Islamic scholars, on the other hand, typically try to keep their power over classical *fiqh* works that have been used as sources of Islamic law for hundreds of years. In this setting, legal politics is not just a formal legal process; it is also a place where religious traditions, state power, and the demands of modern society for justice, equality, and the preservation of civil rights clash. Codification thus transforms into a dynamic arena for negotiation between established principles and the contextual requirements of modern society. ([Lombardi, 2013](#))

2. Codification and Normative Approach

The normative method for codifying Islamic law, especially regarding marriage law, presupposes that its legitimacy is founded on its strict conformity to traditional *fiqh*. This method prioritises *fiqh* books as the primary sources of law, without considering how society functions or how modern notions of justice have evolved. In Indonesia, this concept was concretely used in the development of the Compilation of Islamic Law (KHI) in 1991, which was ratified by Presidential Instruction No. 1 of 1991. Even though the KHI was not created by the House of Representatives (DPR) and is only an administrative document, it is still used by religious courts as a guide for settling matters of marriage, inheritance, and guardianship. The majority of Indonesian Muslim

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schools of thought follow the Shafi'i school of fiqh, which is what this text is mostly about. This method makes the law more certain, but it also rejects the idea of legal reform based on *maqashid* (the principle of Islamic jurisprudence), which is more relevant to real-life situations. (Salim, 2003)

The predominance of the normative approach in the drafting of Islamic family law has engendered substantial methodological challenges. This method emphasizes the verbatim replication of ancient *fiqh*, disregarding the intricacies of modern social dynamics. In Indonesia's Compilation of Islamic Law (KHI), numerous rules are written in a way that doesn't allow the law to be interpreted in many ways based on the situation. For instance, rules about polygamy still make it legal without enough ways to limit it; the husband still has the right to divorce without thinking about equality; and the way child custody is split up doesn't fully protect the child's best interests or the rights of women. These laws demonstrate the patriarchal tradition of classical *fiqh*, which persists unaltered in response to evolving societal realities. Because of this, the codification works more as a tool of formal legality than as a tool of substantive justice that can deal with gender disparity and discrimination. (Moosa, 2004)

The lack of social interpretation in the codification of Islamic marriage law creates a severe challenge to the accomplishment of the basic objectives of sharia (*maqasid al-syari'ah*), particularly in the protection of life (*hifz al-nafs*), honour (*hifz al-'ird*), and women's rights. A normative approach that depends excessively on traditional fiqh texts frequently neglects the dynamic nature of the social situation. As a result, religious judges usually make decisions based on literal interpretations in court because no system in place lets them use contextual social *ijtihad*. This has made it harder to push for legal changes that deal with concerns of gender justice and structural inequality. Kamali (2006) posits that Islamic law must be dynamic and responsive to change, rather than just focused on the preservation of normative traditions. Consequently, legal codification must be augmented by a socio-philosophical framework that takes into account the principles of substantive justice and the contemporary social circumstances. (Kartini, et.al., 2021); (Nasution, 2021); (Syawqi, 2022)

So, the Compilation of Islamic Law (KHI), which is a codification of marriage law based on Shafi'i fiqh, can be considered as an example of a normative approach that gives legal certainty and a clear legal framework for religious courts to use when making decisions. The KHI has administrative power and has been the main source of Islamic legal practice in Indonesia since it was made law by Presidential Instruction Number 1 of 1991. However, this legalistic power has not been entirely balanced by its ability to bring about change in modern Muslim society to promote gender equality and social justice. The rules still mostly follow the patriarchal structure that was passed down from classical *fiqh*, and they don't leave enough room for contextual *ijtihad*. This shows that the KHI is normatively valid, but it doesn't entirely meet the values of *maqasid al-shari'ah*, which stress protection, justice, and welfare. (Salim, 2003); (Makka & Ratundelang, 2022); (Marzuki, 2019); (Mukri, 2018); (Barkah, et al. 2023)

3. Socio-Philosophical Approach and *Maqashid al-Syari'ah*

When it comes to codifying Islamic marital law, normative approaches based on ancient fiqh texts sometimes have trouble dealing with modern social problems, including gender justice, domestic abuse, and protecting vulnerable populations. This method tends to focus more on formal legality and less on the real meaning of justice. Consequently, a socio-philosophical approach has arisen as a more adaptive alternative, especially within the context of *maqasid al-shari'ah*. This method evaluates legal validity based on textual compliance while simultaneously highlighting the ethical and social goals of Islamic law. *Maqasid al-shari'ah* adds a normative aspect that checks to see if a law can defend five fundamental principles: religion (*din*), life (*nafs*), reason (*aql*), descendants (*nasl*), and property (*mal*). Consequently, the legislation can be assessed by its societal advantages and substantive fairness, rather than solely its procedural aspects. (Kamali, 2006)

A socio-philosophical perspective on Islamic law underscores the inseparability of legal texts from social realities and foundational ethical principles. In this perspective, Islamic law is regarded as a value system designed to foster well-being, rather than merely a compilation of legal standards to be interpreted literally. In the realm of family law, this methodology is essential, as specific stipulations in ancient Islamic jurisprudence, if inflexibly enforced, may sustain gender inequity. For instance, polygamy, the husband's exclusive right to divorce, and limitations on women's custody of their children frequently do not align with the fundamental principles of justice inherent in Islamic teachings. Utilising the *maqasid al-shari'ah* framework, these rules can be reassessed to ensure their conformity with the principles of safeguarding women's dignity, promoting family justice, and recognising the contextual significance of equality in contemporary society. (Auda, 2008)

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Consequently, a socio-philosophical framework grounded on the principles of Islamic law (*maqasid al-shari'ah*) offers a vital alternative paradigm in the evolution of Islamic law, especially with the codification of marriage law. This method emphasizes

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not only normative validity derived from classical literature but also examines the ethical, humanitarian, and substantive principles of justice prevalent in society. *Maqasid al-shari'ah* is a set of values that helps bring together texts (*nash*), social situations, and the goals of Islamic law, such as protecting human dignity, ensuring family fairness, and empowering women. In today's world, as social realities become increasingly complex, this approach enables legal reconstruction that is not only legally sound but also beneficial and has a positive moral and social impact. This method connects the past with the present, the law with justice, and the rules with what society really needs. ([Auda, 2008](#)); ([Mohadi, 2023](#)); ([Nawir, et al. 2024](#)); ([Heriandita, et al. 2025](#)); ([Huda, et. al., 2023](#)); ([Ahmad, 2023](#))

4. Comparison of Codification Models in Muslim Countries

The codification of marriage law in the Muslim world illustrates not only legal variation but also significant disparities in political structures, the dynamics between the state and the ulama, and the ideological orientation embraced by each government. There are at least three main models that can be seen. First, the conservative style, such as in Indonesia, where the 1991 Compilation of Islamic Law (KHI) used a classical *fiqh* approach, especially the Shafi'i school, without changing much to fit modern social changes. Second, the progressive approach, as seen in Morocco's *Mudawwanah al-Usrah* reform of 2004, clearly supported the ideas of gender equality and women's role in the household. Third, the secular paradigm is exemplified by Tunisia, where the Code du Statut Personnel eliminated polygamy and highlighted republican principles in family law, with minimal influence from ulama. These differences show that legal politics have a big impact on the course of codification. ([An-Na'im, 2002](#); [Welty, 2010](#))

Indonesia took a conservative approach to marital law by issuing the Compilation of Islamic Law (KHI) in 1991. Presidential Instruction did this and put together by the Ministry of Religious Affairs without going through a formal legislative procedure in parliament. The KHI embodies a normative-textual methodology predominantly grounded on the Shafi'i school of jurisprudence. This project shows that the state is in charge, with the function of the state bureaucracy being more important than the engagement of civil society or critical scholarly discourse. The KHI oversees rules about marriage, inheritance, and guardianship, and it tends to keep patriarchal structures in place. For example, only the husband has the right to divorce, polygamy is allowed with a few conditions, and women have limited access to custody of children. In this situation, the state and traditional ulama are the main players, and the most important values are legal stability and the protection of classical *fiqh*. ([Salim, 2003](#))

Morocco, on the other hand, showed a more modern way of codifying through the *Mudawwanah al-Usrah* revisions of 2004. These changes marked a significant shift from the traditional *fiqh* approach to a more contextual one based on the *maqasid al-shari'ah* (the basis of Islamic law). The codification effort was fueled by the collaboration of King Muhammad VI, Amir al-Mu'minin (the Amir of the Believers), reformist scholars, and civil society organisations, especially women's groups, vigorously promoting equality in family law. The main ideas behind these changes were gender equality, the health of the family, and the safety of weak groups. The outcome was a more equal legal system, encompassing the requirement to secure the wife's consent in instances of polygamy, the fair allocation of child custody rights, and the acknowledgement of women's right to divorce. The *Mudawwanah* reforms illustrated the constitutional relevance of socio-philosophical methodologies within a contemporary Islamic legal framework. ([Welty, 2010](#))

Tunisia, on the other hand, has taken a very secular approach to codifying family law since the Code du Statut Personnel (CSP) was passed in 1956, not long after the country became independent. The CSP is one of the most significant changes to family law in the Muslim world. It made polygamy illegal, required both people in a marriage to agree to it, and gave women the same rights to divorce as men. The state clearly took away the ulama's power and replaced it with a modern civil law system, which did not directly adhere to classical *fiqh* (Islamic law). Modernity, gender equality, and protecting civil rights within a republican framework are the main values that guide the CSP. The post-independence government led by President Habib Bourguiba was the main player in this legislative process. He pushed for a vision of secularism and modern nationalism. This method shows how Islamic law has changed, mostly because of the state's political vision. ([Azhar, 2024](#)); ([Ahmad, 2017](#)); ([Auda, 2020](#)); ([An-Na'im, 2002](#))

When you look at the conservative model in Indonesia, the progressive model in Morocco, and the secular model in Tunisia, you can see that the way marriage laws are written in Muslim countries is closely linked to the relationship between the state, religious authorities, and civil society. In conservative models like Indonesia, family law is based on classical *fiqh* and is mainly controlled by the state, with little input from the people. Morocco, on the other hand, is a progressive paradigm that focuses on *maqasid al-shari'ah* and gender justice through the work of reformist scholars and women's movements. Tunisia offers a secular framework that distinctly renounces ties to *fiqh* and embraces contemporary civil law ideas. These three models demonstrate that the political and ideological structure of the state is crucial in the process of codification. This analysis underscores the necessity of an inclusive methodology that incorporates cross-sectoral stakeholders and is rooted in philosophical principles such as justice, equality, and social context to develop a more responsive and equitable Islamic family law. ([Welty, 2010](#)); ([Kamali, 2006](#))

D. CONCLUSION

This study illustrates that legal politics has a strategic function in the drafting of Islamic marital law. The state, as the principal entity in the legislative and regulatory domain, operates not just as a legal facilitator but also as an interpreter, organizer,

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and even director of *fiqh* texts for the development of positive law. In this setting, legal politics serves as an ideological tool that embodies the state's perspective, be it conservative, progressive, or secular, contingent upon the power dynamics and the associated socio-religious legitimacy.

There is a significant contrast between the normative and socio-philosophical approaches to writing laws. The normative approach, exemplified by the Indonesian Compilation of Islamic Law (KHI), emphasises legal formalism and the literal interpretation of *fiqh* texts, resulting in stagnant legal systems that are inadequately sensitive to social dynamics. The socio-philosophical view, on the other hand, sees law as a historical product that must be in line with the *maqasid al-shari'ah* (the purposes of Islamic law), which include justice, protecting women's rights, and the well-being of the family. This method enables the contextual development of Islamic law with substantive justice.

A comparison of codification models in Muslim countries reveals a range of approaches. For example, Indonesia has a conservative model based on *Shafi'i fiqh*, Morocco has a progressive model that focuses on *maqasid* (the goals of Islamic law) and gender justice, and Tunisia has a secular model that keeps family law separate from *fiqh*. These three models illustrate that legal codification is inherently biased, emerging from the interplay of legal politics, religious authority, and societal influences. The optimal codification of Islamic marriage law integrates the normative principles of Islamic teachings with modern social realities, employing a philosophical, contextual approach that aligns with *maqasid al-shari'ah*.

RECOMENDATION

This study's findings and analysis provide numerous recommendations to promote a more responsive and equitable revision of the codification of Islamic marriage law. First, it is essential to amalgamate normative and socio-philosophical methodologies within the family law legislative process. A normative approach is essential for maintaining legal certainty and the normative legitimacy of Islamic legal sources; however, it must be augmented by a socio-philosophical perspective that considers the social context, substantive justice, and gender dynamics within contemporary Muslim society. So, the law will not only be legally valid, but it will also be socially and morally important.

Second, the process of developing Islamic family law should be open to everyone, including religious experts from different schools of thought, academics, women's groups, and institutions that safeguard families. Laws founded on the *maqasid al-shari'ah* (the principles of Islamic law) strengthen the values of justice, welfare, and protection for vulnerable groups. They do not become stuck in textual conservatism or legal secularism. Any changes to marriage laws must be based on *maqasid* principles, like protecting life, children, and human dignity.

Third, it is important to create a space for conversation between different Islamic schools of thought and for people from different domains of law, sociology, and Islamic legal philosophy to work together. This interdisciplinary approach is essential for enhancing understanding of legal realities and preventing the oversimplification of *fiqh* texts. The experiences of Muslim nations like Morocco and Tunisia illustrate that contextual and progressive legal reform is feasible solely via the consolidation of diverse schools of thought and scientific methodologies in an open and collaborative fashion. These measures can help the codification of law policy move toward creating family justice that is fair and long-lasting.

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