

# TERAJU

Jurnal Syariah dan Hukum

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**Teraju:** Jurnal Syariah dan Hukum, hadir dengan edisi perdana pada Maret 2019. Dalam Kamus Besar Bahasa Indonesia (KBBI), kata "**Teraju**" memiliki beberapa makna yang satu diantaranya berarti "timbangan" atau "neraca". Kehadiran **Teraju** tak lain ingin membawa pesan sebagaimana nilai yang termuat dalam namanya, yakni timbangan yang menggunakan dua buah piringan yang digantungkan dengan rantai (tali) pada kedua ujung lengannya yang merupakan identitas syariah dan hukum di berbagai belahan dunia.

Keberadaan **Teraju:** Jurnal Syariah dan Hukum, sebagai jurnal ilmiah dan media komunikasi ilmiah dengan fokus kajian pada ilmu syariah dan ilmu hukum. Jurnal ini diterbitkan dua kali dalam setahun, yakni pada Maret dan September oleh **P3M dan Jurusan Syariah dan Ekonomi Bisnis Islam STAIN Sultan Abdurrahman Kepulauan Riau** dengan **ISSN Online 2715-386X** dan **ISSN Print 2715-3878**. Berdasarkan Surat Keputusan Direktur Jenderal Pendidikan Tinggi, Riset, dan Teknologi Nomor 204/E/KPT/2022, tanggal 03 Oktober 2022 tentang Tingkat Akreditasi Jurnal Ilmiah Periode II Tahun 2022, **Teraju:** Jurnal Syariah dan Hukum **terakreditasi SINTA 5**. **Teraju** mengundang para peminat, pengkaji, peneliti, dan akademisi untuk mempublikasikan hasil penelitian dan karyanya yang berhubungan dengan ilmu syariah dan hukum di jurnal ini.

## Focus and Scope

**TERAJU: Jurnal Syariah dan Hukum** merupakan Jurnal Ilmiah yang memiliki **focus** pada kajian **Syariah dan Hukum**. Sedangkan **scope** dalam Jurnal ini meliputi:

- **Syariah:** Usul Fikih, Fikih, Hukum Ekonomi Syariah, Hukum Keluarga Islam, Perbandingan Mazhab, dan Ilmu Falaq.
- **Hukum:** Filsafat Hukum, Hukum Bisnis, Hukum Pidana, Hukum Perdata, Hukum Tata Negara, Hukum Adat, Hukum Internasional dan Studi Perbandingan Hukum.

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## The History of Family Law Reform in Islamic Countries

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### **Abstract**

Hukum keluarga memiliki peran sentral dalam kajian hukum Islam karena dianggap sebagai pintu awal memahami hukum Islam. Pada pertengahan abad ke-20, terjadi reformasi dan pembaruan. Penelitian ini bertujuan untuk menguraikan sejarah hukum keluarga yang terjadi di negara Islam dengan menggunakan metode penelitian normatif. Data yang dihimpun melalui sumber-sumber dokumen relevan terkait sejarah hukum keluarga. Adapun hasil penelitian ini, 1) Negara Islam didefinisikan sebagai negara yang menerapkan hukum Islam secara murni, dan negara dengan penganut Islam terbesar, 2) Pembaharuan hukum keluarga dibagi menjadi dua kategori, *intra-doctrinal reform* dan *extra-doctrinal reform*, 3) Pembaharuan hukum keluarga bermula dari Turki sejak awal abad 20, lalu diikuti Mesir, Iran, Suriah, Pakistan dan Indonesia.

Kata Kunci : *Hukum Keluarga, Pembaharuan, Sejarah*

### **Abstract**

Family law has a central role in the study of Islamic law because it is considered the starting point for understanding Islamic law. In the mid-20th century, reform and renewal occurred. This research aims to describe the history of family law that occurred in Islamic countries using normative research methods. Data collected through relevant document sources related to the history of family law. The results of this study are as follows: 1) Islamic countries are defined as countries that apply Islamic law purely and countries with the largest adherents of Islam; 2) Family law reform is divided into two categories: *intra-doctrinal reform*

and extra-doctrinal reform; 3) Family law reform began in Turkey in the early 20th century, followed by Egypt, Iran, Syria, Pakistan and Indonesia.

Keywords: *Family Law, History, Renewal*



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## Introduction

Islamic countries are all countries that have proclaimed *Laa Ilaaha Illallah* (there is no God but Allah). This is because Sharia law originates from the Lord of the Universe, Allah Subhanahu wata'ala. Therefore, the Prophet of Islam is the Prophet and Messenger for all mankind and the entire universe, as Allah SWT says in Surah Al-Anbiya verse 107:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

Meaning: "We did not send you (Prophet Muhammad) except as a mercy to all the worlds."<sup>1</sup>

One of the basic principles of *rahmatan lil 'alamin* is *al-naẓaahah al-aliyah*, which means that Islamic teachings, including worship, muamalah and Islamic law, are relevant and applicable anytime and anywhere, without restriction or discrimination<sup>2</sup>. This means that Islam is universal, no Islamic teaching violates human nature, and no Islamic law does not contain human interests, because Islamic law is not a creation of God that is

futile, empty, and useless<sup>3</sup>. This means that changes in the times that cannot be denied by the ummah are recognised as something that will inevitably affect various aspects of Islam. Islam is a religion of renewal, and one aspect that has been renewed is family law.

Since pre-Islamic/jahiliyyah times in Arabia, family law has had three characteristics: 1) racial (tribalism/ultranationalism), 2) feudal (the superiority of the rich and nobility over the poor and weak), and 3) patriarchal (men superior and women inferior). These characteristics have been transformed into egalitarian law under Islam. However, to this day, the fiqh formula regarding family law in Islam still contains *patriarchal* legal practices, placing men as superior figures and women as inferior figures. In fact, the transformation of family law brought about by Islam opposes the laws of the Arab Jahiliyyah society, because egalitarianism is interpreted as placing men (husbands) on an equal footing with women (wives) in domestic life<sup>4</sup>, so that the reformulation of Islamic family law with reasons, background and objectives needs to be carried out.

<sup>1</sup> Ministry of Religious Affairs of the Republic of Indonesia, "Qur'an Kemenag," Ministry of Religious Affairs of the Republic of Indonesia, 2024.

<sup>2</sup> Abdulloh Safiq, M Miftakhul Huda, and Abdul Khamid, "The Universal Value of Islam as Rahmatan Lil 'Alamin," *Indonesian Journal of Islamic Religion and Culture* 1, no. 1 SE-Articles (10 June 2024), <https://journal.iaif-alfatimah.ac.id/index.php/ijirc/article/view/50>.

<sup>3</sup> Ais Mariya et al., "Implementation of the Concept of Islam Rahmatan Lil 'Alamin," *Al-Afkar, Journal For Islamic Studies* 4, no. 2 SE-Articles (25 January 2022): 459–74, <https://doi.org/10.31943/afkarjournal.v4i2.217>.

<sup>4</sup> Agus Hermanto, *Problematika Hukum Keluarga Islam Di Indonesia (Problems with Islamic Family Law in Indonesia)*, ed. An Nuha Zarkasy, I (Malang: CV. Literasi Nusantara Abadi, 2021), 7.

Ibn Qayyim al-Jawziyyah (1292–1350 CE / 691–751 AH), a Hanbali school jurist, once proposed a legal theory stating that fatwas can change with changes in time, location, conditions, social customs, and intentions. This theory is known as "*Tagayyur al-Fatwa bibasb Tagayyur al-Azminah wa al-Amkinah wa al-Aḥwal wa al-Niyyāt wa al-'Awāid*."<sup>5</sup> This expression implies that socio-cultural dynamics and geographical differences are important factors that contribute to changes in Islamic law<sup>6</sup>.

The changes that have occurred are believed to be the result of the internal dynamics of Islamic law and the dialogue between Islamic law and Western and customary legal systems. Islamic law, through its intellectual wealth and diversity of schools of thought, has given rise to various legal products through the methods of *takḥayyur* (selection of the most appropriate law) and *tafīq* (combination of several legal opinions). Meanwhile, the interaction between Islamic law and the other two legal systems has not only resulted in a fusion of laws, but has also encouraged legal innovation through the process of *ijtihād*<sup>7</sup>.

Family law has an important position in the discourse of Islamic legal studies. This is due to an understanding that family law is the main gateway to further Islamic legal provisions. In the mid-20th

century, family law underwent reforms and several updates.

The first country to do so was Turkey, followed by Egypt and then various other countries in the renewal of family law<sup>8</sup>. However, not all Islamic countries welcomed the efforts to renew family law. This was due to conservative groups who believed that Islamic family law was a set of rules and guidelines that had been implemented for centuries and were derived from the Qur'an, hadith, and *ijtihād* of the ulama.

Ultimately, efforts to reform the law are seen as a defiance of Islamic law by groups that claim to be religious authorities. Therefore, reforming family law is a dangerous act that could impact the essence of religion among the people. To answer this question, research is needed that clearly outlines the process of family law reform in Islamic countries to date. This is because changes do not happen overnight without careful consideration.

By understanding the history of family law reform, we can discover the various conditions of the state, society, and customs that have influenced the history of family law in Islamic countries. Based on this explanation, the researcher is interested in discussing the history of family law reform in Islamic countries.

## Method

This research uses a normative or doctrinal research method that focuses on the main discussion of the history of Islamic family law in the world<sup>9</sup>. The data

<sup>5</sup> Ibnul Qayyim Al-Jauziyya, *Tagayyur Al-Fatwa Bibasb Tagayyur Al-Azminah Wa Al-Amkinah Wa Al-Aḥwal Wa Al-Niyyāt Wa Al-'Awāid*, in *I'lām Al-Muwaqī'in'Al-' Alamīn* (Saudi Arabia: Dār Ibn al-Jauzi, 1423); Andi Muh. Taqiyuddin BN, Ahmad Arief, and Fadli Fadli, "Pembaharuan Hukum Keluarga Di Dunia Islam" (Family Law Reform in the Islamic World), *Familia: Journal of Family Law* 4, no. 1 SE-Articles (11 December 2024): 34–48, <https://doi.org/10.24239/familia.v4i1.83>.

<sup>6</sup> Abdul Aziz Dahlan, *Encyclopedia of Islamic Law*, VI (Jakarta: PT. Ictiār Baru Van Hoeve, 2003).

<sup>7</sup> Ahmad Bunyan Wahib, "Family Law Reform in the Muslim World," *Ijtihād: Journal of Islamic Law and Humanity* 14, no. 1 (2014): 1–19.

<sup>8</sup> Lilis Hidayati Yuli Astutik and Muhammad Ngizzul Muttaqin, "Positification of Family Law in the Muslim World Through Family Law Reform: Islamic Family Law," *Islamika: Journal of Islamic* 20, no. 01 SE-Articles (30 July 2020): 55–65, <https://doi.org/10.32939/islamika.v20i01.562>.

<sup>9</sup> Nur Solikin, *Introduction to Legal Research Methodology*, ed. Qiara Media Team, I (Pasuruan: CV. Penerbit Qiara Media, 2021), <http://digilib.uinkhas.ac.id/12273/1/Buku>

collection in this study comes from literature with a *library research* approach. The researcher collected relevant materials with high validity regarding the history of family law reform in the Islamic world.

### Discussion

Muslims inevitably face life transitions through various advances in aspects of life that are increasingly familiar with technology, in contrast to public activities hundreds of years ago. The needs of today's society are influenced by the scope of the state. The presence of the state has caused Muslim groups to live in places that are separated from one another, limited by a certain territory, and having their own respective governmental systems<sup>10</sup>.

These governments and territories have left a very significant mark and influence on the dynamics of change and the development of law enforcement, which was previously formed without limitation based on the power of tradition<sup>11</sup>.

The Islamic state itself is defined in some literature in two areas, namely a state that applies Islamic law and a state with the largest Muslim population in the world. Both definitions are described as Islamic states. According to Nasir et al.,<sup>12</sup>, Muslim countries are countries with the largest Muslim populations, so it is necessary to consider the social, cultural, humanistic, and complex national issues that are constantly changing. These

reforms are also solutions to various social factors that always arise.

Meanwhile, Nurjanah et al.<sup>13</sup> describe countries that apply Islamic family law purely based on a particular school of thought, while others carry out reforms by adjusting to the dominant school of thought or combining several schools of thought. There are also those that tend to be secular and have largely abandoned madhhab thinking, either singly or in combination. From this perspective, it is clear that the application of Islamic family law in various countries is greatly influenced by the needs of each country, including the majority madhhab and the introduction of new theories that encourage change.

The reform of family law in Turkey was a turning point in the history of family law reform in the Islamic world and had a major impact on the evolution of family law in various other countries. The presence of Turkish communities in European countries such as France, Britain, the Netherlands and Germany has also encouraged the emergence of studies on Islamic law (*Islamic Law Studies*). In addition, Turkey's interaction with Muslim countries in Asia and Africa has also strengthened this influence<sup>14</sup>.

This event is closely related to the spread of Western civilisation to the Islamic world, which triggered a movement of renewal in Islam with the aim of restoring Islamic law to its rightful place, but with adaptations from the Western legal system.<sup>15</sup> Renewal in the

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Introduction to Legal Research Methodology-Nur Solikin %281%29 %281%29.pdf.

<sup>10</sup> Juwaini Juwaini, Taslim H M Yasin, and M Anzaikhan, "The Role of Islamic Universities in the Harmony of the Madhhab (Resolution of the Aswaja and Wahabism Conflicts in Aceh)," *Millati: Journal of Islamic Studies and Humanities* 6, no. 2 (2021): 149–70, <https://doi.org/10.18326/mlt.v6i2.6148>.

<sup>11</sup> Muhammad Nasir, Aulia Rizki, and M Anzaikhan, "Contemporary Islamic Family *Taqnin*," *Journal of Sharia and Law* 4, no. 02 (2022): 94, <https://doi.org/10.30821/taqnin.v4i02.12137>.

<sup>12</sup> *Ibid*.

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<sup>13</sup> Siti Nurjanah and Agus Hermanto, *Renewal of Islamic Family Law in the Islamic World* (Bojongsari: Eureka Media Aksara, 2023).

<sup>14</sup> James Norman Dalrymple Anderson, *Islamic Law in the Modern World* (Surabaya: Amarpress, 1991).

<sup>15</sup> M Khidri Rahmad Dini and Dara Puspita Loka, "Contemporary Modern Islamic Thought: The Decline of Islam and Western Colonisation of the Islamic World," *Religion: Journal of Religion, Society, and Culture* 2, no. 2 (2023): 265–77, <https://doi.org/10.55606/religion.v1i2.83>.

field of family law is evident in several Muslim countries. Based on several sources, legislation dominates various forms of renewal<sup>16</sup>.

### Family Law System in Islam

Broadly speaking, family law reform can be classified into two categories. First, *intra-doctrinal reform*, which is an effort to reform by combining various theories from different schools of thought in Islam, including selecting views from outside the traditionally adopted school of thought. Second, *extra-doctrinal reform*, which is renewal pursued through an interpretative approach, in the form of reinterpretation and contextualisation of religious texts in the holy book to make them relevant to contemporary conditions<sup>17</sup>.

Broadly speaking, the family law systems that apply in the Islamic world or in countries with Muslim-majority populations can be divided into three parts, namely<sup>18</sup>:

1. A system that still enforces conventional fiqh as fundamental law and attempts to apply it in all aspects of human relations as a whole. Here, Islamic law is understood textually and literally as stated in religious texts. Examples of family laws that are enforced include the authority of divorce being held solely by men, the enforcement of polygamy, and so on. Among the countries that maintain this model are Saudi Arabia and northern Nigeria.

2. A system that abandons conventional fiqh and replaces it with completely secular law. The Muslim country that has at least officially become completely secular is Turkey. In 1926, Swiss law was established as a replacement for Islamic law, including family law. monogamy was implemented as a replacement for polygamy, and divorce based on a judge's decision for certain reasons, which is the same for husbands or wives involved in the case, was implemented as a replacement for divorce imposed unilaterally by the husband or imposed by mutual agreement between the husband and wife concerned.
3. This system attempts to take a moderate path between two extreme legal systems, namely the full application of Islamic law and a system that completely rejects Islamic law. Examples of countries that have attempted to compromise between the two systems include Egypt, Sudan, and Jordan, and Indonesia also falls into this category.

Variations in the application and reform of Islamic law in the Muslim world reflect that these differences are not only determined by the prevailing political system, but are also influenced by historical, sociological, and cultural factors specific to each country.

### Historical Journey of Family Law Reform in Islamic Countries

The renewal of Islamic law generally has several main characteristics, namely: (1) it takes the form of codification, which is the compilation of similar legal norms into a single entity in the form of national legislation; (2) it is non-sectarian in nature, whereby Muslims are not limited to a particular school of

<sup>16</sup> Nasir, Rizki, and Anzaikhan, "Contemporary Islamic Family Law Reform," p. 97.

<sup>17</sup> Afiq Budiawan, "Methodological Reasoning for the Renewal of Marriage Law in the Muslim World," *HUKUMAH: Journal of Islamic Law* 1, no. 1 (2018), <https://doi.org/10.55403/hukumah.v1i1.68>.

<sup>18</sup> Atho' Mudzhar, *Reading the Waves of Ijtihad; Between Tradition and Liberation*, 2nd ed. (Yogyakarta: Titian Ilahi Press, 2000).

thought, but can engage in *takhayyur* or the selection of opinions that are considered most appropriate to the social context of the community; (3) the application of Islamic law to contemporary cases or events (*tabiiq al-ahkam*); and (4) the existence of a process of legal reform, namely a shift from old provisions to new formulations through reinterpretation or *tajdid* of Islamic legal sources<sup>19</sup>.

Various forms of family law reform can be found in a number of countries with Muslim-majority populations. During the process of family law modernisation, at least three approaches have developed in various countries. *First*, countries that adhere to secularism and use a Western-based family law system, such as the Soviet Union, Turkey, and Albania. *Second*, countries that apply classical Islamic family law based on traditional fiqh books, such as Saudi Arabia, Kuwait, Afghanistan, and Yemen. *Third*, countries that have adopted classical family law but have been updated and codified in the form of laws, such as Indonesia, Malaysia, Jordan, Brunei Darussalam, and Morocco<sup>20</sup>.

The history of Islamic law reform that the researcher will describe in this study includes:

### 1. Turkey

The reform of family law began to develop in the early 20th century, marked by the emergence of *the Ottoman Law of Family Rights* (Qānūn Qarār al-Ḥuqūq al-‘Ā’ilāh al-‘Uthmāniyyah) in Turkey in 1917, which regulated aspects of marriage, divorce, and inheritance. This initiative

was later followed by a number of other countries, such as Egypt in 1920, Iran in 1931, Syria in 1953, Tunisia in 1956, Pakistan in 1961, and Indonesia in 1974. The first law enacted in Turkey in 1917 was then planned to be updated in 1923 through the formation of a special committee tasked with drafting a new law. However, for five years, the appointed legal experts were unable to draft a suitable law. Finally, the Turkish government decided to adopt *the Swiss Civil Code* of 1912, which was then used as the basis for *the Turkish Civil Code*, with some adjustments to bring it into line with the social and cultural conditions of Turkey at that time<sup>21</sup>.

The family law reforms carried out by the Ottoman Empire in 1915 and 1917, as well as the process of secularisation of law implemented by modern Turkey, had a significant influence on the development of family law in the Islamic world. Although the Ottoman Islamic Family Law was only in effect for approximately a decade, various studies show that its application continued in a number of countries that were once under Ottoman Turkish rule. Countries such as Syria, Jordan, and Palestine are known to have adopted many elements of Ottoman family law<sup>22</sup>.

*The Turkish Civil Code* was then implemented in 1926, with significant differences in the application of civil law that deviated from traditional Islamic law. The Turkish Civil Code of

<sup>19</sup>N. J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1994); Moh Zahid, "The Integration of Islamic Law and Customary Law (Efforts to Formulate Indonesian-style Islamic Law)," *Al-Ihkam: Journal of Law & Social Institutions* 1, no. 1 (2006): 57–68, <https://doi.org/10.19105/al-lhkam.v1i1.2552>.

<sup>20</sup> Astutik and Muttaqin, "Positification of Family Law in the Muslim World Through Family Law Reform: Islamic Family Law," p. 60

<sup>21</sup> Rahmawati Rahmawati, *Comparison of Family Law* (Parepare: IAIN Parepare Nusantara Press, 2020).

<sup>22</sup> James N D Anderson, "Recent Reforms In The Islamic Law Of Inheritance," *International & Comparative Law Quarterly* 14, no. 2 (1965): 349–65, <https://doi.org/10.1093/iclqaj/14.2.349>.

1926 includes various provisions related to family law, such as engagement (including the issue of *taklik talak*), the minimum age for marriage, marriage prohibitions, the prohibition of polygamy, the obligation to register marriages, the annulment of marriages, and divorce. Under this system, both husbands and wives who wish to divorce are allowed to undergo a period of separation first. If, within a certain period of time, there is no improvement in the marital relationship, then each party has the right to file for divorce in court<sup>23</sup>.

## 2. Egypt

Egypt, where the majority of the population follows the Shafi'i school of thought and a small minority follows the Hanafi school of thought, began to reform its family law after the influence of the Ottoman Empire. The reform began in 1920 with the enactment of two laws, namely Law No. 25 of 1920 and Law No. 20 of 1929. These two regulations were later updated in 1979 with the enactment of the Jihan Sadat Law (Law No. 44 of 1979). Further reforms were carried out through *the Personal Status (Amendment) Law No. 100 of 1985*<sup>24</sup>.

A few months after the Jehan Law was repealed, the Egyptian government passed Law No. 100 of 1985 as an amendment to the family laws that had been in force since 1920 and 1929. A number of provisions previously contained in the 1979 Law were reinserted, with the addition of several new rules. Subsequently, in 2005, Egypt issued Law No. 4 of

2005, which revised Decree No. 25 of 1920, particularly with regard to provisions on age in guardianship. In terms of legal content, the 2005 amendment reflects Egypt's return to a more conservative legal approach. One example is the removal of the automatic right for a wife to divorce her husband if he practices polygamy.

The previous provision allowing wives to file for divorce due to physical suffering or injury caused by polygamy has now been abolished. Instead, wives must declare that they feel emotionally tormented by their husband's polygamy, which refers to the classical legal view. This change is the result of an agreement between the Egyptian government, conservative religious leaders, and liberal Muslims<sup>25</sup>.

## 3. Iran

Iranian family law was first codified as part of the civil law enacted from 1928 to 1935. In 1927, the Iranian Minister of Justice formed a commission tasked with preparing a draft civil code. Provisions relating to matters other than family law and inheritance law were taken from the Napoleonic code as long as they did not conflict with Sharia law. Meanwhile, the ministers responsible for family law and inheritance law were more concerned with the unification and codification of Sharia law. The draft prepared by the commission was enacted as the Qonun Madani (Civil Code) in three stages between 1928 and 1929.

Discussing the reasons for the renewal of inheritance law in Iran cannot be separated from several aspects, ranging from normative to socio-political aspects, as well as social realities, including sectarian conflicts.

<sup>23</sup> Ahmad Zayyadi, "The Contribution of Turkey and Egypt to the History of Islamic Family Law," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 2, no. 1 SE-Articles (1 June 2020): 47–69, <https://doi.org/10.19105/al-manhaj.v2i1.3115>.

<sup>24</sup> Rahmawati, *Comparison of Family Law*, p. 14

<sup>25</sup> Nurjanah and Hermanto, *Reform of Islamic Family Law in the Islamic World*, p. 40.

Of course, this has a significant influence on the dynamics of legislation in any country, including Iran. One example is Law No. 188 of 1959 on Personal Status and *The Civil Code of the Islamic Republic of Iran*, 2000<sup>26</sup>.

#### 4. Syria

Like Lebanon and Jordan, Syria previously applied *the Ottoman Law of Family Rights* of 1917, albeit with some adjustments, before finally adopting its own law, namely *Qanun al-Ahwal al-Syakhsiyah al-Suriya* No. 59 of 1953. This law was enacted through a Presidential Decree, making Syria the second Muslim country after South Yemen to base its family legislation on an executive decree. The *Syrian Code of Personal Status* was passed on 17 September 1953 and came into effect on 1 November of the same year. Then, in 1975, this law was revised through Law No. 34 of 1975. One important aspect of this revision was the granting of authority to the courts to reject the practice of polygamy if it was carried out without valid reasons or was considered inappropriate<sup>27</sup>.

#### 5. Tunisia

The first Family Law implemented in Tunisia, a country with a majority of Maliki followers, was *the Code of Personal Status (Majallat al-Ahwal al-Shakhsiyah)* No. 66 of 1956, which came into effect on 1 January 1957. This law, as confirmed by the Minister

of Justice in his speech, applies to both the District Court and the Religious Court, and has undergone several amendments through Law No. 70 of 1958, No. 77 of 1959, No. 61 of 1961, No. 1 and No. 17 of 1964, No. 49 of 1966, and No. 7 of 1980. This law is based on a synthesis of the Hanafi and Maliki schools of thought, which have been adapted to the needs of modern society. Although the official announcement of the law was made by the Minister of Justice in a broadcast on 3 August 1956, and later reinforced by a speech from Prime Minister and President Habib Bourguiba, formal ratification took place on 13 August 1956, with the law coming into effect on 1 January 1957<sup>28</sup>.

#### 6. Pakistan-Bangladesh

The history of the development of family law in Bangladesh is essentially similar to that of Pakistan, given that Bangladesh still applies *the Muslim Family Laws Ordinance* of 1961, which was a product of the law from the time when the country was still part of Pakistan (as the Province of East Pakistan), before gaining independence in 1971.

With the majority of the population adhering to the Hanafi school of thought, like Pakistan, Bangladesh had previously adopted several regulations, including: *the Bengal Muhammadan Marriage and Divorce Registration Act* of 1876 (regulating the registration of marriages and divorces), *the Divorce Act* of 1869, *the Child Marriage Restraint Act* of 1929, *the Muslim Personal Law (Shariah) Application Act* of 1937, and *the Dissolution of Muslim Marriage Act* of 1939.

<sup>26</sup> Muhammad Fauzinudin, "Iran's Contribution to the History of Islamic Family Law Reform: A Portrait of the Islamic Inheritance System and Wajibah Wills in Iran," *Ulul Albab* 18, no. 2 (2017): 205, <https://doi.org/10.18860/ua.v18i2.4492>.

<sup>27</sup> Wilda Fitri, "Problems with the Codification of Family Law in the Modern Era," *Sakena: Journal of Family Law* 7, no. 2 (2022): 182–93, <https://journals.fasya.uinib.org/index.php/sakena/article/view/202>.

<sup>28</sup> Rayed Khedher, "Tracing the Development of the Tunisian 1956 Code of Personal Status," *Journal of International Women's Studies* 18, no. 4 (2017): 30–37.

After independence, Bangladesh introduced several amendments, such as *the Child Marriage Restraint (Amendment) Ordinance* and *the Dowry Prohibition Act* in 1980, as well as revisions to both in 1984. However, to date, *the Muslim Family Laws Ordinance* 1961 remains the main legal instrument in family matters, as is the case in Pakistan<sup>29</sup>.

Pakistani family law tends to be grouped with that of moderate countries such as Syria, Jordan, Egypt, and Indonesia. In terms of implementation, Pakistani family law, despite being more than 50 years old, is still constrained by social and cultural factors that are deeply rooted in society<sup>30</sup>.

## 7. Indonesia

Indonesia is classified as an Islamic country based on the majority of its adherents. The first law applicable in Indonesia concerning marriage and divorce was Law No. 22 of 1946, which was also the forerunner of efforts to reform family law in Indonesia. Initially, this law was limited to the Java region only, but after the enactment of Law No. 32 of 1954, it finally became applicable throughout Indonesia. Among them are laws on the registration and recording of marriages, divorces and reconciliations. The presence of Law No. 2 of 1946 is a continuation of Staatsblad No. 198 of 1895, and is a continuation of Huwelijk Ordonantie Staatsblad. No. 348 of 1929 Juncto Staatsblad. No. 467 of 1931, and

<sup>29</sup> Rohalina Rohalina and Nor Kholis, "Islamic Family Law in Pakistan," *Hakam: Journal of Islamic Law and Islamic Economic Law* 7, no. 1 (2023), <https://doi.org/10.33650/jhi.v7i1.5784>.

<sup>30</sup> Muhammad Atho Mudzhar, "Family Law in Pakistan (Between Islamisation and Customary Pressure)," *Al-'Adalah* 11, no. 1 (2017): 11–24, <https://doi.org/10.24042/adalah.v12i1.165>.

Vorstenlandse Huwelijks Ordonantie Staatsblad. No. 98 of 1933<sup>31</sup>.

Law No. 1 of 1974 concerning marriage is a continuation of Law No. 22 of 1946. The scope of this law includes elements of marriage and divorce that have been in effect since 1 October 1975. The existence of this regulation was followed by the emergence of Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974. This was followed by Law No. 7 of 1989 concerning Religious Courts. The law, which was passed on 14 December 1989, generally covers the court system in general, including court decisions, procedural law, including marriage issues, and the structure of the courts. Finally, at the end of 1991, the compilation of Islamic law (KHI) on Marriage, divorce, inheritance, waqf, and so on, was effectively compiled in accordance with Official Presidential Instruction No. 1 of 1991, which was followed by the issuance of Regulation of the Minister of Religious Affairs of the Republic of Indonesia No. 154 of 1991 concerning the Implementation of Presidential Instruction of the Republic of Indonesia No. 1 of 1991.<sup>32</sup>

## Conclusion

Family law has an important position in the discourse of Islamic legal studies. This is due to an understanding that family law is the main gateway to further Islamic legal provisions. In the mid-20th century, family law underwent reforms and several updates. Family law reform in Turkey became an important point in the history of family law reform in the Islamic world and had a major impact on the

<sup>31</sup> Rahmawati, *Comparison of Family Law*, p. 21.

<sup>32</sup> Nasir, Rizki, and Anzaikhan, "Reform of Contemporary Islamic Family Law," p. 99.

evolution of family law in various other countries. The presence of Turkish communities in European countries such as France, Britain, the Netherlands and Germany has also encouraged the emergence of *studies on Islamic law*. In addition, Turkey's interaction with Muslim countries in Asia and Africa has also strengthened this influence.

Family law reforms are classified into two categories: *intra-doctrinal reform* and *extra-doctrinal reform*. The Islamic family law system is divided into three types: traditional based on classical fiqh, modern codification by the state in legislation, and dualistic/secular, which separates religious and state law or gives citizens a choice of legal systems. The historical development of family law in Islamic countries has progressed through three approaches. First, secular countries such as Turkey and Albania use family law based on Western law. Second, countries such as Saudi Arabia and Yemen apply classical Islamic family law from the fiqh books. Third, countries such as Indonesia, Malaysia, and Morocco have adopted traditional Islamic law that has been updated and codified in the form of national legislation.

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