



COMPARATIVE STUDY OF ISLAMIC FAMILY LAW IN INDONESIA AND SAUDI ARABIA: *MAQĀṢID AL-SHARĪ'AH* PERSPECTIVE

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ABSTRACT

This study explores the comparative implementation (substance, form, and interpretation) of Islamic family regulation in Indonesia and Saudi Arabia through the lens of *Maqāṣid al-Sharī'ah*. This research paper aims to reveal how the two countries differ in presenting the normativity (in terms of substance, form, and interpretation) of the regulation. This study uses primary sources from legal documents and academic literature, as well as qualitative data. In-depth analysis shows that the flexibility and rigidity of regulation in both countries are based on the principles of justice and social protection, although the methods of manifestation are different. The main findings indicate that although Saudi Arabia is known for its strict regulation, there is a courtroom that considers individual conditions, while Indonesia shows legal initiatives to address social challenges. The novelty of this study lies in the emphasis that Islamic regulation can adapt to contemporary contexts without losing the essence of Sharī'ah despite geographical differences. Limitations of the study include the lack of detailed field case studies, prompting further research directions to link law to social manifestations directly. Suggestions for further research include deeper qualitative analysis of the application of law in more diverse social contexts. This research adds a new dimension to the study of Islamic law as a dynamic and responsive, yet responsible, instrument.

Keyword: Comparison of the Manifestation, Islamic Family Regulation, *Maqāṣid al-Sharī'ah*, Justice, Comperative Law



A. Introduction

In the context of rapid globalization and social disruption, Islamic family law in Indonesia and Saudi Arabia emerges as an interesting area to study. In Indonesia, which has a diverse culture and pluralistic legal system, family law not only functions as a normative regulation (Hamida, 2022; Wardhani et al., 2022) but also plays a role in maintaining “*bhinneka tunggal ika*” and creating social harmony (Chia, 2022; Tjandra et al., 2023). Meanwhile, Saudi Arabia, as the home of two holy cities of Islam, can be seen as following a more traditional and strict approach to family law (Riegg, 2020; Syahputra & Zuhdi, 2024). Both countries demonstrate how family law interacts with cultural norms and social values in their respective national contexts (Depuydt, 2024; Karriel, 2024; Noor, 2024). These differences in manifestation or embodiment raise profound questions about the effectiveness and substance of law in protecting individual rights (Renz & Cooper, 2022; Tasioulas, 2019) which are a formative-substantive part of the Sustainable Development Goals (Cardesa-Salzmman & Cocciolo, 2019; Vatter & De Leeuw, 2023). Understanding these dynamics can provide broader insights into how law can emerge normatively and substantively in response to societal needs.

Based on previous studies, most studies have focused on the theoretical and practical aspects of Islamic family law in Indonesia and Saudi Arabia. Although many have discussed cultural and religious influences (Barkah, 2017, 2018; Barkah et al., 2022, 2023; Hayat, 2022; Herman & Hayat, 2021), there is still limited research linking it to *Maqāṣid al-Sharī'ah*. These studies tend to ignore the comparative approach that can provide a more comprehensive picture of the differences and similarities in the manifestation of the essence of Islamic family law (Campbell et al., 2019; Halim et al., 2024; Javaid, 2021; Ramadhan, 2024) and the application of law in both countries (Nawir et al., 2024; Pektaş, 2021; Sarabdeen & Mohamed Ishak, 2024; Wibowo et al., 2023). Thus, there is a gap in knowledge that needs to be filled regarding how the appearance and implementation of Islamic family law can better understand the attainment of SDGs. This shows the need for more in-depth and integrated research for researchers and practitioners.

This paper aims to compare the substance, form, and interpretation of Islamic family regulation in Indonesia and Saudi Arabia using *Maqāṣid al-Sharī'ah* as Islamic legal theory. Within this framework, the main focus is on revealing the substance, form, and interpretation of effectiveness and justice in family law, both in the context of local culture and universal values. In addition, this paper seeks to answer the question of how each legal system (including substance, form, and interpretation) contributes to the protection of individual rights. This study seeks to understand the injustices that may arise in the substance, form, and interpretation of the legal system and create a new foundation for more inclusive

family law reform. Thus, issues of social justice and legal pluralism are at the heart of this discussion.

The argument of this paper argues that although both legal systems have principles that are in conformity with the *Maqāṣid al-Sharī'ah*, the substance, form, and interpretation in Indonesia are more receptive to the needs of diverse communities compared to Saudi Arabia, which tends to be rigid. The conservative approach to the application of law in Saudi Arabia may hinder the reforms needed to achieve social justice. On the other hand, Indonesia shows the potential to accommodate local values as well as broader global demands through a more flexible legal system. However, challenges remain in ensuring that all individuals receive equal and normatively fair protection. Thus, this research paper will examine how family law as a social instrument can function better in the context of sustainable development.

The material object of this study is Islamic Family Law, which is integrated with the challenges and opportunities in the context of sustainable development goals. This study chooses Islamic Family Law as the unit of analysis because of its high relevance in shaping the social structure and community values in Indonesia and Saudi Arabia. The selection of this object is based on the urgency to understand the differences and developments in the family law system to support community welfare while maintaining harmony in the family. Researchers seek to explore the substance, form, and interpretation of family law towards sustainable development in both countries. The selection process for this object involves a thorough and careful study of applicable laws, as well as insights gained from emerging social issues. Thus, this material object has the possible to make a important influence to policies based on derivative-continued laws that are oriented towards sustainability.

The research paper design used in this paper is qualitative-normative-descriptive. This design was chosen to deliver a profounder understanding of the comparison of the manifestations of family law in Indonesia and Saudi Arabia, related to the context of regulations and practices in the field. The qualitative approach allows researchers to explore the substance, form, and interpretation related to family law, as well as analyze the values contained in both legal systems. The work process in this study includes data collection through document studies, to ensure the conformity between the qualitative data obtained and the theory used. With this design, research can identify challenges and opportunities in the manifestation of family law, as well as provide references based on the results obtained. This design not only emphasizes theory, but also places social and cultural contexts in its analytical frame.

The primary sources used in this paper include three important documents: The Personal Status System with Index (*Niẓām al-Aḥwāl al-Shakhṣiyyah ma'a al-Fahāris*, نظام الأحوال الشخصية مع الفهارس) by Walīd ibn Ibrāhīm ibn 'Abdillāh al-Khalīfah,

Regulation of the Republic of Indonesia Number 1 of 1974 concerning Marriage, and Regulation of the Republic of Indonesia Number 16 of 2019 Regarding Amendments to Law Number 1 of 1974 about Marriage. The selection of these primary sources is based on the fundamental and essential role of the three documents in reflecting family law regulations in each country. The Personal Status System (*Nizām al-Aḥwāl al-Shakhṣiyyah ma'a al-Fahāris*, نظام الأحوال الشخصية مع الفهارس) provides the necessary insight into the legal norms prevailing in Saudi Arabia, while Indonesian laws provide a clear context for the changes and dynamics in family regulation. The selection process for these sources involved in-depth reading and critical analysis of the existing literature and the relevance of these legal documents within the research framework. By examining these sources, the researcher hopes to enhance the understanding of the manifestations of family law and its impact on society.

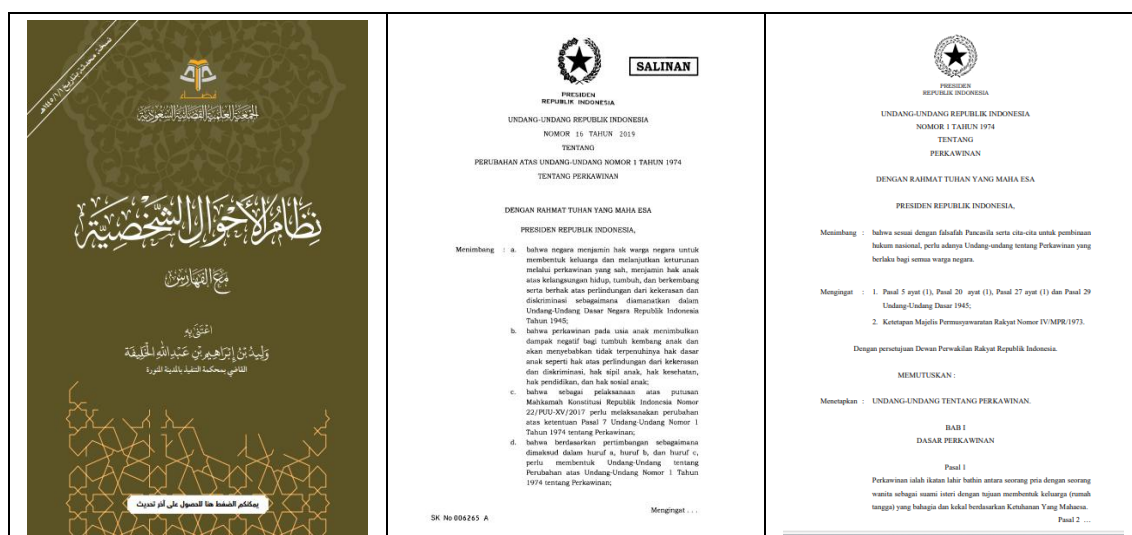


Figure 1. Family Law Regulations in each Country

The data collection technique used in this paper involves documentation. Documentation is chosen to obtain data from written sources that can provide historical, normative, and contextual information on family regulation in Indonesia and Saudi Arabia. The process of selecting this technique considers the diversity and validity of the data needed for a comprehensive analysis of the manifestation of family law. This method emphasizes that the originality and legality of the basis for the quality of the data produced provide a comprehensive picture. Therefore, this technique is expected to produce valid and representative data for research.

The data analysis technique in this study is carried out in three separate phases, all of which focus on theories relevant to the object of study. First, the analysis uses *Maqāṣid al-Sharī'ah* by Al-Shāṭibiyy, which aims to analyze the purpose of Islamic law in protecting the interests of society (Ab Aziz & Mustafar, 2021; Hamid & Hasan, 2021). With a relevant analytical approach in this research

paper, it is possible to provide a new understanding that is contextual and applicable regarding the realization of Islamic family law. All data are carefully examined within a textual and contextual framework, resulting in a high-quality analysis.

B. Comparison of the Manifestations of Islamic Family Regulation through *Maqāṣid al-Sharī'ah*

1. Minimum Age for Marriage

The comparison of the manifestations of Islamic family law in Indonesia and Saudi Arabia reveals significant differences and important similarities in the context of Al-Shāṭibiyy's *Maqāṣid al-Sharī'ah* theory. This analysis will discuss in detail several key aspects, including the minimum age requirement for marriage, the dispensation mechanisms, the practical impact of each regulation, and the relevance of *Maqāṣid al-Sharī'ah* theory and the social-cultural context (*al-'Urf*) in shaping a just legal environment.

In Saudi Arabia, there are strict provisions regarding the minimum age for marriage. According to Saudi Marriage Regulations, individuals cannot marry before reaching the age of eighteen unless the court grants permission after considering the individual's interests. For example, if a prospective bride is sixteen years old and submits a request, the court will consider psychological and social aspects, including financial stability and family support.

In contrast, in Indonesia, Law Number 16 of 2019 mandates that men and women must be at least nineteen years old to marry. However, there is a dispensation mechanism available for those who have not yet reached that age. In practice, this dispensation can be granted by the court based on urgent reasons, such as pregnancy or pressing social circumstances. For instance, if a seventeen-year-old prospective bride is pregnant, the court may grant permission based on that fact.

2. Dispensation Mechanism

The dispensation mechanism in both countries reflects significant differences. In Saudi Arabia, the process of applying for dispensation must go through a court that investigates every aspect of the application. The court forms a committee consisting of several judges to evaluate the best interests of the individual requesting it. For example, if a teenager is involved in a healthy relationship but risks facing early pregnancy, the judges ensure there is sufficient social support in place for the prospective bride.

In contrast, the dispensations in Indonesia are more administrative. Although they still involve the court, the procedures are generally quicker. Applications can be submitted by parents or guardians, and there tends to be more focus on established legal criteria. Practically, this implies that more cases of early

marriage can be processed through legal channels in Indonesia compared to Saudi Arabia, where a more conservative approach and caution in involving the courts are prominent.

المادة السابعة: الحلوة - في سبيل تطبيق هذا النظام - هي افراد الزوجين في مكان ليس عندهما من يميز. المادة الثامنة: ١. يجب توثيق عقد الزواج، وعلى الزوجين - أو أحدهما - توثيقه، وذلك وفق الأحكام المنظمة لذلك. ٢. يجوز لكل ذي مصلحة طلب إثبات عقد الزواج غير الموثق. ٣. يوثق عقد زواج غير المسلم لدى المختص بالتوثيق، وتبين لوائح هذا النظام الأحكام المتصلة بذلك. المادة التاسعة: ١٠ ن يمنع توثيق عقد الزواج لمن هو دون (ثانية عشر) عاماً، وللمحكمة أن تأذن بزواج من هو دون ذلك ذكراً كان أو أنثى إذا كان بالغاً بعد التحقق من مصلحته في هذا الزواج، وتبين لوائح هذا النظام الضوابط والإجراءات اللازمة لذلك. المادة العاشرة: ١٢٥ ن يكسب من تزوج وفق حكم المادة (التاسعة) من هذا النظام أهلية التقاضي في كل ما له علاقة بالزواج وآثاره إذا كان عاقلاً. المادة الحادية عشرة: للمحكمة أن تأذن بزواج المجنون أو المعتوه بناء على طلب ولي تزويجه، بعد توافر الشروط الآتية: الفهرس	Pasal 7 (1) Perkawinan hanya diizinkan apabila pria dan wanita sudah mencapai umur 19 (sembilan belas) tahun. (2) Dalam . . .  PRESIDEN REPUBLIK INDONESIA - 3 - (2) Dalam hal terjadi penyimpangan terhadap ketentuan umur sebagaimana dimaksud pada ayat (1), orang tua pihak pria dan/atau orang tua pihak wanita dapat meminta dispensasi kepada Pengadilan dengan alasan sangat mendesak disertai bukti-bukti pendukung yang cukup. (3) Pemberian dispensasi oleh Pengadilan sebagaimana dimaksud pada ayat (2) wajib mendengarkan pendapat kedua belah calon mempelai yang akan melangsungkan perkawinan. (4) Ketentuan-ketentuan mengenai keadaan seorang atau kedua orang tua calon mempelai sebagaimana dimaksud dalam Pasal 6 ayat (3) dan ayat (4) berlaku juga ketentuan mengenai permintaan dispensasi sebagaimana dimaksud pada ayat (2) dengan tidak mengurung ketentuan sebagaimana dimaksud dalam Pasal 6 ayat (6). 2. Di antara Pasal 65 dan Pasal 66 disisipkan 1 (satu) pasal yakni Pasal 65A yang berbunyi sebagai berikut:
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Figure 2. The Manifestations of Islamic Family Law in Indonesia and Saudi Arabia

3. Family Protection

Both legal systems prioritize the protection of the obligations and rights of individuals intending to marry. Within the framework of *Maqāṣid al-Sharī'ah*, the primary goal is to protect society from potentially harmful practices such as early marriage and exploitation. In Saudi Arabia, the provisions limiting age and providing strict oversight of the marriage process ensure that every individual is not only mentally prepared but also in a supportive social situation.

Conversely, the law in Indonesia recognizes the importance of space for special considerations. Through the dispensation mechanism, the law provides opportunities to support couples who may be caught in difficult situations. For example, if couples face social pressure to marry quickly, this regulation can offer a legal pathway.

4. *Maqāṣid al-Sharī'ah* and Social-Cultural Context (*al-'Urf*)

The *Maqāṣid al-Sharī'ah* theory implies that every law must be oriented towards greater goals, namely protecting the interests of individuals and society through five fundamental objectives: the protection of religion, life, intellect, lineage, and property. In this context, both Indonesia and Saudi Arabia implement laws while considering these objectives, taking into account prevailing social and cultural values, known as *al-'Urf*.

In Saudi Arabia, the conservative approach to marriage regulations reflects a commitment to Islamic principles and local cultural values that prioritize social stability. For instance, a stricter view on marriage age may be seen as an effort to maintain family honor and ensure individuals are socially and spiritually prepared.

Meanwhile, in Indonesia, the more flexible policies and dispensation mechanisms demonstrate recognition of the dynamic social needs and diversity within the community. By respecting *al-'Urf*, the government creates a legal environment that is responsive to different societal conditions. For example, in cases of unwed pregnancy where couples may not be able to wait until they reach the legal age, these regulations ensure that their rights and interests remain protected.

5. Global Context and SDGs Implications

On a broader scale, this comparison also has significant implications for the achievement of Sustainable Development Goals (SDGs). Both Indonesia and Saudi Arabia show that family law regulations need to be adapted to the social and cultural contexts of each country. Enforcement of fair laws can create a more conducive and sustainable environment for families, fulfilling the goals of social justice and welfare.

C. Comparative Reflection of the Manifestation of Islamic Family Regulation in Indonesia and Saudi Arabia

This study aims to analyze the manifestation of Islamic family law in Indonesia and Saudi Arabia with three theoretical perspectives. From the results of the analysis, it was found that both countries regulate family law in different ways normatively and textually, but both seek to protect individual rights and maintain the welfare of society. In Saudi Arabia, a stricter approach in terms of marriage age and court involvement places efforts to protect individuals in accordance with Islamic religious values. Meanwhile, Indonesia prioritizes responsible flexibility through a dispensation mechanism that allows society to respond to more dynamic, moral, and responsible social situations. Both countries apply the principle of justice in family law, but with different emphases in the mandate of its implementation. The role of *Maqāṣid al-Sharī'ah* is clearly fulfilled through legal efforts to avoid harm to society. These results indicate that despite the differences, the essential meaning of Islamic law is maintained in the socio-cultural context (*al-'Urf*) of each.

The results of this study reveal that differences in the manifestation of the substance, form, and interpretation of Islamic family law can be interpreted as a response to the social and cultural context of each country. Saudi Arabia uses a more rigid legal approach not only to maintain the integrity and sanctity of the institution of marriage according to traditional norms, but also to maintain the

image of the “birth capital” and the dominance of the Islamic population. This illustrates the need to enforce strict rules to ensure and guarantee the social and spiritual safety of its citizens. In Indonesia, the adaptability of the law is demonstrated through the dispensation mechanism that allows the court to play a role in assessing casuistic and unique conditions. This shows that the law does not only function as a textual and normative guideline, but also as a tool to achieve a balance between pluralistic traditions and disruptive contemporary realities. This entire process confirms a strong commitment to prioritizing social welfare within a contextual and varied legal framework.

In the context of the *Maqāṣid al-Sharī'ah* theory, the implementation of law in both countries pays close attention to the purpose of protecting society from the potential dangers of early marriage, both explicitly and implicitly. In Saudi Arabia, the firmness and seriousness of strict compliance with the requirements of marriage confirms the commitment to this principle. Indonesia displays a more contextual interpretation by offering opportunities for certain conditions through responsible, flexible, and moral legal procedures. The legal systems of both countries (namely the Kingdom of Saudi Arabia and the Republic of Indonesia) are rooted in the same principles, but are expressed in distinctive ways based on their respective social conditions. This study explores and demonstrates the basic elements of Islamic law that remain intact despite differences in geography, demographics, and contemporary adaptations. This emphasizes the importance of the theoretical framework of religious law and state law in understanding the dynamics of cross-legal systems.

The main implication of this study is the urgency to continue to adapt the law to the changing needs of society as a form of maintaining the fundamentals and essence of Islamic teachings, and maintaining a balance between tradition and modernity. The different manifestations in both countries indicate that a flexible and adaptive legal approach can provide better protection for individuals while still considering historical aspects, population and demographics, and the atmosphere of the legal system in each country. These results can be the basis for developing policies that are more oriented towards social justice, especially regarding the protection of women's and children's rights in the context of marriage and family sovereignty. At the international level, these findings underline and emphasize the need for dialogue between Muslim countries to learn from each other and collaborate in improving the quality of law that prioritizes welfare. The use of *Maqāṣid al-Sharī'ah* in a disruptive era like today as a guide allows Islamic law to remain relevant and effective. Therefore, policy makers are invited and even required to re-evaluate their legal frameworks to suit the stresses of the times. Thus, Islamic family regulation can continue to progress to meet the needs of individuals, society, and the principles of global justice.

This study is in line with previous studies on Islamic family law which prove that although there are universal values in Islamic law, its application varies greatly based on the context of the case, locale, and theme. Previously, much literature has highlighted how Saudi Arabia and Indonesia interpret Islamic law in different ways in an effort to meet their respective local needs and challenges (Al Qurtuby, 2021; Chaplin, 2014; Luhuringbudi et al., 2020). This comparison strengthens the view that flexibility in Islamic law can be a cultural capital or political strength in facing social dynamics (Ahmad, 2004; Crenshaw, 2019; Kuran, 2004; Luhuringbudi & Yani, 2018; Nur et al., 2020). Unlike studies that only highlight the rigidity of Saudi law (Al-Sulayman, 2020; Almutawa, 2021; Bashayreh, 2022), this study shows the steps taken to protect society with a comparative approach. This finding confirms that law can function as an adaptive tool in regulating family life that is needed and idealized. Reflections from previous studies inspire a new approach in recognizing or understanding law as a social instrument that coexists with the development of the times. Therefore, this study adds and matures insight into how theoretical frameworks can be realized in comparative legal analysis.

Based on the research results, several policy recommendations are proposed to strengthen the implementation (substance, form, and interpretation) of Islamic family law in both countries. First, there needs to be a periodic evaluation involving several government agencies of the marriage law to ensure its conformity with social changes and community needs. Second, promoting, organizing, and evaluating training for legal practitioners and courts periodically to strengthen understanding of *Maqāṣid al-Sharī'ah* and the theory of Justice so that they can be applied effectively. Third, encouraging dialogue between policy makers in Indonesia and Saudi Arabia to share best practices with categories of several themes or specific cases in the review-interpretation of normativity and essentiality to the application of family law. Fourth, involving civil society organizations in the process of reforming and evaluating legal products and their derivatives to ensure inclusiveness and representation of public interests. Fifth, evaluation of legal implementation needs to be carried out to measure the impact of policy implementation on social welfare and individual protection, then continued with socialization and education of the evaluation results to the wider community in a measurable, directed, and targeted manner. By adopting these steps carefully, it is possible to position the role of Islamic family law in a way that can address contemporary challenges and enhance justice in both local and global contexts.

D. Conclusion

This study reveals surprising findings that although Indonesia and Saudi Arabia implement family law within the framework of Islam, both show adaptive flexibility to their respective social contexts. It is unexpected that behind the rigidity and dedication of Saudi Arabian law, there is a mechanism that considers individual interests in a humane and civilized manner with the permission of the court as a decision-making factor. On the other hand, Indonesia is more proactive in addressing social issues responsibly and wisely by increasing the minimum age of marriage and providing legal space for dispensation. This phenomenon confirms that Islamic law has the ability to adapt according to social developments and modern challenges faced by society. The emphasis on the principle of *Maqāṣid al-Sharī'ah* in both legal systems in the Kingdom of Saudi Arabia and in Indonesia shows that the aspect of individual protection is always a priority. This finding shows that law and tradition can coexist in a society with dynamic social change.

This study contributes to the treasury of Islamic legal science by identifying the diversity of manifestations of textuality and normativity of family law products that are responsive to local contexts. Its novelty lies in the revelation that both countries are trying to achieve social welfare in a way that may not have been previously expected, namely by adopting flexibility inside the framework of Islamic family regulation which is measured strict. This study opens up a new perspective that Islamic law, which is often seen as static, has the potential for evolution while still adhering to the main objectives of *sharī'ah*. Another contribution is to emphasize the capacity of Islamic law to function as a sustainable and responsive instrument in responding to contemporary needs. This study acknowledges and declares several limitations, including the limitations of direct field data that can describe the practical nuances of implementing law in both countries more directly. In addition, a greater focus on theory rather than specific case studies can not only be considered less descriptive of the diversity of real situations in the field, but also reflects the urgent need for Islamic studies to achieve Comprehensive and Competitive Advantages. These shortcomings lead to the proposal for further research that focuses more on qualitative approaches and direct case analysis to dig deeper into the social impact and implementation of the manifestation of Islamic family law products in these two countries. Further research is expected to involve more stakeholders, such as legal practitioners, academics, related volunteers, and community leaders, to obtain a more holistic, responsible, and detailed picture. Thus, a comprehensive understanding of the dynamics of the manifestation (substance, form, and interpretation) and implications of Islamic family law products becomes the goal to be promoted and socialized in various cultural and social contexts.

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