

# Intersecting Spheres: Civil and Family Law in the Evolving Islamic Legal Landscapes of Iran, Egypt, and Indonesia

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## Abstract

This article examines the complex relationship between civil and family law in Iran, Egypt, and Indonesia. These three Muslim-majority nations, despite their unique legal systems shaped by varying integrations of Islamic jurisprudence and Western influences, all face the challenge of harmonizing modern legal frameworks with religious norms. The paper investigates this dynamic by analyzing how each country's legal system defines and governs the family within its civil law framework. We delve into their respective court structures, the hierarchy of statutory laws, and the significant role of religious authorities. Our comparative analysis reveals how these societies balance tradition and modernity in their legal landscapes, offering insights into their shared struggles and distinct approaches to personal status and broader civil regulation. The findings highlight the critical tension between traditional religious norms and modern legal frameworks, with the core result that Iran employs a unified religious-legal approach in which family law is part of civil law, While early Iranian family law, like that of Egypt and Indonesia, was influenced by civil-law individualism and limited largely to alimony obligations, contemporary Iranian law—similar to developments in Egyptian and Indonesian family law—has shifted toward prioritizing the protection and collective interests of the family. At the same time, Egypt maintains a dual system with state-controlled religious courts and codified civil law. Indonesia, on the other hand, utilizes a decentralized system that grants significant autonomy to religious courts but subjects them to national legal oversight. Each nation has developed a unique, albeit often conflicted, strategy to manage this delicate balance.

**Keywords:** Islamic Law, Family Law, Civil Law, Legal Pluralism, Indonesia, Egypt, Iran.

## I. Introduction

Family law represents one of the most enduring and sensitive areas of legal systems influenced by Islamic jurisprudence. Unlike commercial or criminal codes, family law

touches on deeply rooted cultural, religious, and moral values.<sup>1</sup> Civil Law, by contrast, tends to reflect modern, codified systems that regulate the relationships between individuals and the state, as well as among private individuals in non-personal domains.<sup>2</sup> The intersection of these two realms often results in significant legal and political tensions.

The coexistence of civil and Family Law is particularly evident in Muslim-majority countries that have experienced colonialism, postcolonial legal reform, and waves of Islamization. This duality creates legal pluralism, where a secular, codified Civil Law (governing contracts, commerce, and state authority) operates in parallel with a religious, Sharia-based Family Law (governing marriage, divorce, and inheritance).

One of the most striking examples of integration between Islamic family law and civil legal structures can be seen in Iran. Following the 1979 Islamic Revolution, Iran instituted a legal system rooted in Sharia, granting religion substantial influence over personal status laws. While the country maintains civil courts and codes, family law is primarily governed by religious principles, with courts applying interpretations of Ja'fari (Twelver Shia) jurisprudence.<sup>3</sup> This has resulted in legal outcomes that often prioritize traditional patriarchal norms—claimed as taking into consideration the natural characteristics and needs of both man and woman and their children—, particularly in areas such as marriage, divorce, and child custody. Civil law operates in parallel, but its authority is often subordinated to Islamic law in matters of personal status.

Egypt presents a more hybridized model, where Islamic principles inform family law, but within a firmly codified civil framework. Although Egypt's constitution recognizes Islam as the state religion and Sharia as the principal source of legislation, its personal status laws are codified and adjudicated by national courts.<sup>4</sup> The Egyptian state has introduced several reforms over the decades—such as the right of women to initiate divorce through *khul'*—reflecting attempts to reconcile religious tradition with modern legal standards.<sup>5</sup> Nevertheless, these reforms are frequently contested by conservative actors, creating a dynamic, sometimes contentious legal landscape.

Indonesia, the world's largest Muslim-majority country, provides yet another model, characterized by legal pluralism. Here, Islamic family law operates under the jurisdiction

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<sup>1</sup> Abdullahi Ahmed An-Na'im, "Religious Norms and Family Law: Is It Legal or Normative Pluralism?" *Emory International Law Review* 25, no. 2 (2011): 785-810.

<sup>2</sup> George N Sfeir, "The Place of Islamic Law in Modern Arab Legal Systems: A Brief for Researchers and Reference Librarians." *International Journal of Legal Information* 47, no. 1 (2019): 104

<sup>3</sup> Said Amir Arjomand, *After Khomeini: Iran Under His Successors* (Oxford: Oxford University Press, 2009), 88–91.

<sup>4</sup> Clark BLombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law* (Leiden: Brill, 2006), 55–58.

<sup>5</sup> Mulki Al-Sharmani, "Islamic Interpretations of Gender Justice in Egypt," *Religion and Gender* 4, no. 1 (2014): 90–108.

of religious courts (*Pengadilan Agama*), but only for Muslims.<sup>6</sup> The national legal system, based on Civil Law and influenced by Dutch colonial legacies, governs the broader legal environment. Indonesian Family Law incorporates elements of Islamic jurisprudence but also reflects the country's commitment to national unity and democratic principles.<sup>7</sup> Regional variations, such as the implementation of more comprehensive Islamic law in Aceh province, further illustrate the complexity of managing civil-religious legal coexistence in a diverse, decentralized state.<sup>8</sup>

Existing scholarship has extensively documented the historical origins of legal pluralism (e.g., the colonial carve-out of Sharia to the domain of Personal Status Law) and provided in-depth studies of individual country reforms.<sup>9</sup> However, a critical gap remains in contemporary comparative law: there is no systematic study that contrasts these fundamentally different institutional models—Iran's unified religious state, Egypt's state-segregated dualism, and Indonesia's decentralized legal pluralism. This article fills that gap by using these three nations to establish a typology of state strategies for legal integration, allowing for generalized conclusions about the relationship between a nation's judicial architecture and the persistent tension between religious tradition and global modernity.

Legal pluralism refers to the existence of multiple legal systems within one geographic area or society. In many Muslim-majority countries, including Indonesia, Egypt, and Iran, Sharia coexists with civil and, at times, customary law. Codification of Islamic law—once considered antithetical to its dynamic and interpretive nature—has become increasingly common, particularly in family law, where predictability and state oversight are prioritized.<sup>10</sup> Through codification, governments exert control over interpretations of Islamic norms, often narrowing the scope of religious discretion and aligning legal outcomes with state-defined goals.

In Indonesia, legal pluralism is institutionally recognized. Religious courts (*Pengadilan Agama*) adjudicate family law matters for Muslims, while civil courts govern all other legal matters.<sup>11</sup> The state has codified Islamic Family Law through national legislation, such as the 1974 Marriage Law and the 1991 Compilation of Islamic Law, which aim to

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<sup>6</sup> Mark E. Cammack, "Indonesia: Islamic Divorce Law in the Religious Courts," in *Islamic Divorce in the Twenty-First Century*, ed. Elisa Giunchi (Farnham: Ashgate, 2008), 147–164.

<sup>7</sup> Tim Lindsey, *Islam, Law and the State in Southeast Asia: Volume I: Indonesia* (London: I.B. Tauris, 2012), 110–114.

<sup>8</sup> Mirjam Künkler and Yuki Tatsumi, "Islamic Law and Legal Pluralism in Indonesia: The Role of the Constitutional Court," in *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*, ed. Rainer Grote and Tilmann Röder (Oxford: Oxford University Press, 2012), 191–218.

<sup>9</sup> Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (New York: Routledge, 2013), 17 and 35.

<sup>10</sup> Mohammad Fadel, "The Islamic Legal System: History and Jurisprudence," in *The Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumea Ahmed (Oxford: Oxford University Press, 2018), 135–160.

<sup>11</sup> Mark E. Cammack, "Indonesia: Islamic Divorce Law in the Religious Courts," in *Islamic Divorce in the Twenty-First Century*, ed. Elisa Giunchi (Farnham: Ashgate, 2008), 147–164.

standardize religious practice within a national legal framework.<sup>12</sup> At the same time, regional variations persist, most notably in Aceh province, where broader forms of Islamic law are implemented under a special autonomy arrangement. These multiple layers of legal authority reflect Indonesia's attempts to balance religious legitimacy with national unity and democratic governance.

Egypt's approach to legal pluralism is more centralized, yet it still reflects a dualism between Islamic principles and civil legislation. Islamic jurisprudence continues to guide family law, yet these principles are embedded in statutory codes and interpreted by state judges rather than religious scholars.<sup>13</sup> The codified personal status laws, influenced by Hanafi schools, apply uniformly to Muslims. At the same time, Christians follow separate legal provisions derived from their own ecclesiastical or customary laws, which are recognized by the state alongside, but distinct from, the Islamic Personal Status Codes.<sup>14</sup> Though family law remains grounded in Islamic tradition, the Egyptian state closely manages its application, reflecting a model where religion is harnessed to serve the interests of a modern legal order while retaining its symbolic and normative authority.

Iran's model of legal pluralism contrasts sharply with Indonesia and Egypt because it is rooted in a theocratic constitutional system where the Ja'fari (Twelver Shi'i) school holds supreme authority. Rather than treating Sharia as one component among several legal orders, the Islamic Republic embeds Shi'i jurisprudence into the entire state structure. Civil, criminal, and family law are grounded in fiqh, and all legislation must comply with Islamic principles as interpreted by clerical bodies such as the Guardian Council. Although Iran has statutory codes, their meaning is ultimately shaped by senior jurists.

Legal pluralism in Iran functions not through parallel legal systems but through multiple religious and state institutions that interpret Islamic law within a single overarching framework. Parliament, civil courts, and administrative agencies operate alongside bodies like the Guardian Council and the Expediency Council, producing an internal pluralism of competing juristic interpretations rather than the structural dualism seen elsewhere.

Family law illustrates this model clearly. The Family Protection Law—originating in the 1960s and revised after 1979—codifies Ja'fari doctrines on marriage, divorce, guardianship, and inheritance. Judges apply these statutes through the lens of classical Shi'i jurisprudence. While recognized minorities may follow their own traditions in limited matters, the state maintains strict oversight.

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<sup>12</sup> Tim Lindsey, *Islam, Law and the State in Southeast Asia: Volume I: Indonesia* (London: I.B. Tauris, 2012), 110–114.

<sup>13</sup> Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law* (Leiden: Brill, 2006), 62–70.

<sup>14</sup> Mulki Al-Sharmani, "Legal Pluralism, Family Personal Laws and Gendered Inequalities in Egypt," *Gender & Development* 25, no. 3 (2017): 293–307.

Overall, Iran represents a system in which codification reinforces clerical authority. By embedding *fiqh* across all legal domains, the state reduces jurisdictional pluralism but intensifies doctrinal pluralism, making Islamic jurisprudence the fundamental basis for all legal claims.<sup>15</sup>

Civil Law systems, rooted in traditions such as Roman law and the Napoleonic Code, emphasize codification and the systematic organization of legal principles. These systems are characterized by comprehensive legal codes that categorize matters into distinct areas such as civil, criminal, administrative, and family law.<sup>16</sup> Judges in Civil Law systems primarily apply these codified statutes rather than relying heavily on judicial precedent, as in common law systems. The emphasis on uniform application and legislative clarity has made Civil Law attractive to many modern states, particularly in postcolonial contexts seeking centralized legal authority.

In many Muslim-majority countries, Civil Law systems were introduced during colonial or postcolonial legal reforms and often overlaid or replaced existing religious and customary legal frameworks.<sup>17</sup> In countries like Egypt and Indonesia, civil codes govern a wide range of legal domains, but Islamic law remains authoritative in matters of personal status, especially family law. This creates a layered legal structure in which codified civil statutes coexist with religious norms, often leading to tensions over jurisdiction and legal interpretation.<sup>18</sup> The interaction between civil and Islamic legal traditions continues to shape debates over legal modernity, state sovereignty, and the role of religion in governance.

This article compares how Iran, Egypt, and Indonesia integrate or separate Civil and Family Law and explores the historical, religious, and legal underpinnings that contribute to these differences.<sup>19</sup> This paper argues that the state's institutional approach to managing legal pluralism—ranging from unification to segregation to decentralization—is the critical variable determining the degree of legal conflict and stability within the national legal system. The primary objective of this comparative analysis is to map these distinct institutional strategies and analyze the resulting jurisdictional and normative conflicts concerning personal status matters. The implication is that effective legal reform in Muslim-majority states requires not merely amending religious codes, but fundamentally restructuring the relationship between the civil judiciary, the religious judiciary, and the hierarchy of statutory laws.

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<sup>15</sup> Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law in Iran and Morocco* (London: I.B. Tauris, 2000), 45–78.

<sup>16</sup> John H. Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 4th ed. (Stanford: Stanford University Press, 2019), 1–15.

<sup>17</sup> Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: ISEAS Publishing, 2007), 25–30.

<sup>18</sup> Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge: Cambridge University Press, 1997), 45–50.

<sup>19</sup> Jamila Hussain, *Islamic Law and Society: An Introduction* (London: Pluto Press, 2004), 120

## II. Iran: Civil Law as Sharia Codification

### 1. Legal History

Iran's modern legal system began codification in the early 20th century under Reza Shah, culminating in the Civil Code of 1928. The Iranian Civil Code reflects Ja'fari (Twelver Shi'a) jurisprudence. Book 7 of the Civil Code integrates family law directly, covering issues such as marriage, divorce, guardianship, and inheritance. The Family Protection Law of 1967, seen as repealed after the revolution and replaced by the Family Protection Law of 2012.

### 2. The relationship between civil rights and family rights in Iran

Jurists have tried to recognize independence to the institution of the family against contracts and civil obligations.<sup>20</sup> The legislation that the legislator has made specifically in this field, as well as numerous legal sources that have examined the laws and regulations in the field of family law,<sup>21</sup> indicate the importance of this issue. However, it is noteworthy that the balance in the level of interference of legal rules in family matters must be observed; because just as the absence of laws in the field of family rights can cause problems, excessive interference of the law also causes instability in family relations.

### 3. Court Structure and Jurisdiction

The government is obliged in principle 21 of the Constitution to establish competent courts to preserve the identity and survival of the family. In this regard, family courts were established. This measure allows issues related to family law to be examined with greater delicacy and precision.<sup>22</sup> Given the importance of the family institution, the need for specialization, reducing formalities, and the need to observe ethical and social points in dealing with family issues, this measure has been taken in many countries.<sup>23</sup> Chapter 1 of the Family Protection Law 2012 has raised important points regarding the family court. According to Article 2 of the aforementioned law, a female consultant judge must also participate in the family court session, which is one of the new measures introduced by this law. Article 3 has considered conditions for family court judges so that they have more experience to work in family matters. Article 4 of the Family Protection Law also states the cases that are within the jurisdiction of these courts.

### 4. Hierarchy of family-related laws

After the approval of the Civil Code, which has devoted articles to various family issues ranging from engagement, courtship to alimony, divorce, and custody, a law entitled

<sup>20</sup> Katouzian, Naser, 2017, *Elementary Course of Civil Law: Family*, Mizan, 9th ed. pp. 10-12.

<sup>21</sup> Cf. for example: Katouzian, Naser, op.cit.; Safaei, Sayyed Hossein, Emami, Assadallah, 2019, *Concise Family Law*, 6th ed, Mizan, Shiravi, Abdalhossain, 2016, *Family law, Marriage, Divorce and Children*, Samt

<sup>22</sup> Rasaei nia, Naser, 2000, *Family Law*, Behineh, 6.

<sup>23</sup> Safaei, Emami, op. cit. 27-28.

Family Support was approved in 1967, and amendments were made to it in 1974. After the Islamic Revolution, the Family Support Bill was submitted to the Islamic Consultative Assembly in 1987, and after much consideration, it was approved in 1992. This law, which contains 58 articles, explicitly repealed previous laws except for the 1974 law and introduced new provisions in this field. Therefore, it can be said that the Civil Code is the general law in the field of family law, and the Family Support Law is a specific law in this field.

#### 5. Religious rulings in family law

Iran constitution sees marriage as in the Holy Quran, marriage is mentioned as a "solemn covenant." One of the important features of family law is the influence of morality and religion on it. "Marriage" is not a private contract similar to other contracts; rather, it has a religious face that distinguishes it from other contracts. The main guarantor of adherence to obligations in this contract is also traditions and ethics, and the law does not play a significant role in regulating emotional and fundamental relationships. This issue can be seen both in the relationship between spouses and in the relationship between children and parents. The purpose of this contract is not comparable to other contracts, and this moral face has also affected the laws governing this area and the way they are interpreted.<sup>24</sup>

Family is not defined in the Civil Code and other laws of Iran, but it can be said that in the legal provisions, it is used in two general and specific meanings. Family in its general sense refers to a group of people who are connected to each other due to marriage or affiliation. These persons are distinguished from other families by a specific surname, and each family member is also distinguished from others by a first name.<sup>25</sup> Some scholars believe that the criterion of family in this sense is inheritance from each other. Family in its specific sense - also called nuclear family - means a man and a woman and the children under their care. The headship and management of the family in this sense is with the man. Some lawyers have defined the family as follows: "It is a group that has acquired legal and social solidarity due to relationship or marriage and has been placed under the leadership and presidency of an authority."

### III. Egypt: Dualism and Religious Identity

#### 1. Civil Code and Al-Sanhuri

Egypt's modern civil law system owes much to the pioneering work of Abd al-Razzaq al-Sanhuri, a prominent jurist who sought to harmonize Islamic legal principles with European civil law traditions, particularly those of the French and Ottoman codes.<sup>26</sup>

<sup>24</sup> Katouzian, op. cit. p. 15. For more information on the characteristics of marriage contract cf. Shiravi, op. cit, pp. 13 et seq.

<sup>25</sup> Katouzian, op. cit. pp. 9-10; Safaei, Emami, op. cit. pp. 21-22.

<sup>26</sup> Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 312-317.

Appointed as the chief architect of Egypt's Civil Code in 1948, Sanhuri aimed to create a legal framework that was both modern and culturally resonant, reflecting the country's Islamic heritage while embracing the rationalist and codified structure of Western law. His approach significantly influenced not only Egypt but also many other Arab countries, where versions of the Egyptian Civil Code were adopted or adapted. The 1948 Code addressed contracts, property, and torts, providing a comprehensive statutory foundation for civil transactions.<sup>27</sup>

Despite this comprehensive codification, personal status laws—including marriage, divorce, inheritance, and custody—were deliberately excluded from the Civil Code and remained under the jurisdiction of religious courts.<sup>28</sup> For Muslims, these matters are governed primarily by Islamic law as interpreted through the Hanafi schools of jurisprudence, while Christian and other minority communities follow their respective religious laws.<sup>29</sup> This dual legal structure reflects Egypt's legal pluralism and the state's recognition of religious communities as key arbiters of personal matters. It also highlights the ongoing tension between modernizing civil law and preserving religious legal traditions within the Egyptian judicial system.

## 2. Personal Status Law Structure

Family law for Muslims in Egypt is primarily based on Sunni Islamic jurisprudence, particularly the Hanafi school, which historically has been influential in the region. Rather than a single, unified family code, Egyptian Muslim family law consists of a collection of legislative acts and judicial interpretations that govern matters such as marriage, divorce, custody, and inheritance.<sup>30</sup> This patchwork approach allows for a degree of flexibility but also creates complexities in application and interpretation. Among the most significant legislative instruments is Law No. 25 of 1929, which regulates divorce and has undergone several amendments to address evolving social realities. The law outlines procedures for divorce initiated by either spouse, maintenance obligations, and child custody, embedding Islamic principles within a statutory framework that the civil courts enforce.

One of the most notable developments in Egyptian family law in recent decades has been the formal recognition of *khul'*—a woman-initiated divorce mechanism. Introduced through judicial innovation in 2000, *khul'* permits a wife to seek divorce by returning her dowry or compensating the husband, offering an alternative to the

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<sup>27</sup> Enid Hill, "Al-Sanhuri and Islamic Law: The Place and Significance of Islamic Law in the Life and Work of 'Abd al-Razzāq al-Sanhūrī, Egyptian Jurist and Scholar, 1895–1971," *Arab Law Quarterly* 3, no. 1 (1988): 33–64.

<sup>28</sup> Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge: Cambridge University Press, 1997), 85–90.

<sup>29</sup> Mohamed 'Arafa, "Egyptian Interreligious Law: Public Policy or Sharie'a Dominion?" *Dartmouth Law Journal* 2, no. 1 (2025): 59

<sup>30</sup> Amira El Azhary Sonbol, *Women, the Family, and Divorce Laws in Islamic History* (Syracuse: Syracuse University Press, 1996), 132–138.



traditional husband-initiated ṭalāq divorce.<sup>31</sup> The introduction of khul' sparked considerable public and scholarly debate,<sup>32</sup> highlighting tensions between modern legal reforms and conservative interpretations of Islamic law. Advocates argued that it empowered women and advanced gender justice, while opponents feared it undermined family stability and religious norms. This judicial innovation reflects ongoing struggles within Egypt to reconcile Islamic legal traditions with contemporary demands for women's rights and legal equity.

In Egypt, the legal framework for marriage is governed by Law No. 1 of 2000 on the organization of litigation procedures for specific family law issues, alongside the foundational principles of the Personal Status Law (which largely defers to classical Sunni jurisprudence). Unlike Iran, which has a comprehensive Civil Code governing family law, the Egyptian approach primarily centers on the judicial and procedural organization of personal status matters. Article 1 of Law No. 1/2000 indirectly affirms the courts' role in these issues. However, the substance of the marriage contract itself is rooted in the dominant Hanafi/general Sunni school of fiqh.

For a marriage to be considered valid and enforceable in Egypt, the underlying Personal Status Provisions require, first, Valid Consent: i.e., the consent of both parties must be obtained. Second, Shari'a-Compliant Contract, i.e., the contract must fulfill the classical requirements of *Nikah*, which mandates the presence of two competent witnesses and the stipulation of an acceptable dowry (*mahr*).

The legal system here illustrates the 'sintered sphere' by relying heavily on uncoded religious doctrine (unlike Iran and Indonesia), with the state's central interventions being procedural requirements for registration and the establishment of the court system to enforce these principles.<sup>33</sup>

### 3. Religious Courts and Implementation

Although Egypt formally abolished Sharia courts in the 1950s as part of its legal modernization efforts, the influence of Islamic principles remains deeply embedded in the administration of family law.<sup>34</sup> Personal status cases involving Muslims are adjudicated in secular family courts established to unify and secularize judicial proceedings. However, these courts do not operate independently of religious doctrine; instead, judges apply Islamic legal principles derived from the Sharia to govern matters

<sup>31</sup> Mervat F. Hatem, *Women and Family Law Reform in Arab States: A Comparative Overview of Recent Trends* (Cairo: American University in Cairo Press, 2002), 75–79.

<sup>32</sup> Monika Lindbekk, "Implementing the Law of Khul' in Egypt: Tensions and Ambiguities in Muslim Family Law," *HAWWA: Journal of Women of the Middle East and the Islamic World* 6, no. 1 (2008): 52–74.

<sup>33</sup> M. Lindbekk (2017). "The Analyzes how judges apply the codified Personal Status Law, and how it modifies classical Islamic jurisprudence (Hanafi school) regarding the marriage bond Enforcement of Personal Status Law by Egyptian Courts." *Islamic Law and Society*, 24(1/2), 17–44. The article

<sup>34</sup> McGlinn, Sen, *Family Law in Iran*, (University of Leiden, 2001), 218

such as marriage, divorce, custody, and inheritance.<sup>35</sup> This fusion creates a unique hybrid legal system where state courts enforce religious norms, thereby maintaining the centrality of Islamic law within Egypt's legal order despite the formal abolition of religious courts.

Judges in Egyptian family courts frequently rely on authoritative interpretations issued by al-Azhar, the foremost Sunni Islamic institution, as well as on fatwas (legal opinions) issued by recognized religious councils.<sup>36</sup> Al-Azhar's fatwa councils guide complex and evolving legal questions, effectively shaping judicial precedent even though Egypt's legal system is nominally secular. This institutional relationship ensures that family law remains consistent with mainstream Islamic jurisprudence while allowing the state to retain ultimate jurisdiction over personal status matters. Consequently, Egyptian family law reflects a negotiated balance between secular legal structures and religious authority, a balance that continues to provoke legal and social debate.

#### 4. Women's Legal Activism

Legal reforms in Egypt have frequently been driven by feminist and human rights organizations seeking to challenge entrenched patriarchal norms in family law. Among the most influential voices is Nawal El Saadawi, a prominent Egyptian feminist writer and activist who has tirelessly critiqued the male-dominated interpretations of Islamic family law.<sup>37</sup> El Saadawi's work emphasizes the need for secular legal reforms to ensure gender equality and protect women's rights, advocating for the separation of religion from state law in matters of personal status. Her writings and activism have sparked important debates within Egyptian society about the compatibility of Islamic law with contemporary human rights standards and the necessity of reform to address systemic gender discrimination.

Despite these efforts, feminist legal activism in Egypt has encountered substantial opposition from conservative and Islamist groups who view reforms as threats to religious traditions and social stability.<sup>38</sup> These groups often frame family law within broader cultural and religious identities, resisting changes perceived as Western impositions or as secular encroachments on Islamic norms. The tension between progressive reformers and conservative forces creates a complex landscape for legal change, where advances in women's rights must navigate political, religious, and social obstacles. This ongoing struggle highlights the challenges of balancing respect for religious heritage with demands for modernization and equality in Egyptian family law.

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<sup>35</sup> Lama Abu-Odeh, "Modernizing Muslim Family Law: The Case of Egypt," Oxford University Comparative Law Forum 3 (2004), accessed 18/11/2025, <https://ouclf.law.ox.ac.uk/modernizing-muslim-family-law-the-case-of-egypt/>.

<sup>36</sup> Zaidam Yusuf, "Daur al-Azhar fi Tafsir al-Shariah al-Islamiyah wa Tathbiqiha fi Al-Mahakim Al-Madaniyah al-Misriyyah", *Islamic Studies Journal*, Vol. 45, NO. 3 (2014): 112-130

<sup>37</sup> Nawal Al-Sa'dawi, , *Al-Mar'ah wa Al-Jins*, (Cairo: Dar Al-Sharq, 1986), 45-60

<sup>38</sup> Haideh Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* (London: Zed Books, 1999), 83-95.

#### IV. Indonesia: Pluralism and Segmented Jurisdiction

##### 1. Colonial Legacy and Post-Independence Reforms

Indonesia's legal system is a complex tapestry woven from its colonial Dutch legal heritage, Islamic law, and indigenous customary (*adat*) traditions.<sup>39</sup> During the colonial period, Dutch Civil Law was introduced and codified, particularly influencing commercial and criminal law. However, in matters of family and personal status, Islamic law for Muslims and *adat* norms for indigenous people have remained highly influential,<sup>40</sup> reflecting Indonesia's diverse religious and cultural landscape. The coexistence of these legal traditions creates a pluralistic legal environment where state law, religious principles, and customary practices intersect and sometimes conflict.

Following independence, Indonesia undertook significant family law reforms to unify and regulate marriage and related matters of personal status. The Marriage Law No. 1 of 1974 was enacted to provide a national framework governing marriage for all Indonesians, regardless of religion, and to emphasize the role of religion and belief systems in determining the validity of marriage.<sup>41</sup> For Muslim citizens, the *Kompilasi Hukum Islam* (KHI), introduced in 1991, codified Islamic family law principles relating to marriage, divorce, inheritance, and custody, serving as a guide for religious courts. These reforms reflect the Indonesian government's efforts to balance religious identity, legal unity, and respect for plural traditions within its legal system.

##### 2. Dual Legal Administration

In Indonesia, family law for Muslims is primarily administered by religious courts, which have exclusive jurisdiction over personal status matters such as marriage, divorce, inheritance, and child custody.<sup>42</sup> These religious courts apply Islamic law as codified in the *Kompilasi Hukum Islam* (KHI), ensuring that family law disputes among Muslims are resolved in accordance with Islamic principles. This system reflects the country's recognition of religious identity as a key factor in legal governance, particularly in matters of personal status. The religious courts operate alongside the general civil court system, which handles non-Muslim family law cases and other civil matters not governed by religious law.

Although the Marriage Law No. 1 of 1974 formally applies to all Indonesian citizens regardless of religion, its practical implementation is religiously segmented, reflecting the country's pluralistic legal framework.<sup>43</sup> While the law provides a uniform legal foundation for marriage, each religious community administers marriage registration and related family matters through its respective religious or customary institution (*Lembaga Adat*).

<sup>39</sup> H. M. R. Feener, *Islamic Legal Reform and Indonesia's Religious Courts* (Singapore: ISEAS Publishing, 2014), 27–35.

<sup>40</sup> Peter Burns, *The Leiden Legacy: Concepts of Law in Indonesia* (Leiden: KITLV Press, 2004), 58

<sup>41</sup> Tim Lindsey, *Indonesia: Law and Society* (Sydney: Federation Press, 2010), 112–115.

<sup>42</sup> *ibid*, p. 116–119.

<sup>43</sup> Feener, *Islamic Legal Reform*, p. 42–45.

This segmentation ensures that religious norms and traditions remain central in family law, but it also creates a dualistic system in which legal procedures and outcomes may vary by religious affiliation. This arrangement highlights the complexity of balancing national legal unity with respect for Indonesia's diverse religious and cultural identities.

Indonesia presents a unique example of syncretism in which state law and religious compendia are explicitly harmonized. The legal requirements for marriage are set out in both Law No. 1 of 1974 on Marriage (*Undang-Undang Perkawinan*) and the Compilation of Islamic Law (*Kompilasi Hukum Islam - KHI*). The Indonesian framework, influenced by a blend of Shafi'i fiqh and local custom, provides both a general state definition and specific Islamic requirements:

- a. State Recognition (Law No. 1/1974): Article 2 is the foundational provision, stipulating that a marriage is valid only if it is performed in accordance with the laws of the relevant religion/belief and is formally recorded in accordance with prevailing legislation. This requirement of state registration is a mandatory procedural element that overrides any purely religious ceremony.
- b. Islamic Pillars (KHI): Article 14 (KHI) defines the required Pillars of Marriage (*Rukun Nikah*) for Muslims. These codified pillars include: the prospective groom, the prospective bride, the *wali* (guardian of the bride), two witnesses, and the *sighat* (the utterance of *Ijab* and *Qabul*/offer and acceptance).

This dual-source approach perfectly exemplifies how the Civil/State Law actively introduces procedural requirements (such as registration and minimum age) that modify classical fiqh to serve state and social welfare goals, thereby establishing the defined "sintered sphere" of the analysis.<sup>44</sup>

### 3. Harmonization Efforts

The Indonesian legal system has been undergoing efforts to harmonize the coexistence of civil and religious laws, aiming to achieve greater coherence and administrative efficiency within its pluralistic framework.<sup>45</sup> One significant development in this regard is the establishment of judicial guidelines that facilitate coordination between religious courts and civil authorities. For instance, while religious courts adjudicate family law cases involving Muslims, including marriage, divorce, and inheritance, the enforcement of their decisions often depends on civil court mechanisms. As explained in Article 54 of the Religious Court Law, concerning religious court procedural law, which still uses district court procedural law, as stated in the sentence that follows, this is an administrative matter. This administrative integration helps bridge the divide between the parallel legal

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<sup>44</sup> N.D. Yazidi, S.D. Silva, & M.F. Al Amruzi (2025/2024). "Legal Implications of Law No. 1/1974 and the Compilation of Islamic Law on The Validity of Adult Marriage in Indonesia..." *Journal of Islamic and Law Studies*, 9(1). This article Examines the core tension between religious validation (Art. 2(1)) and state administrative/legal recognition (Art. 2(2)), which is central to Indonesia's approach

<sup>45</sup> Feener, *Islamic Legal*, p. 57-61

systems, ensuring that rulings issued by religious courts are recognized and implemented within the broader legal order.

Disputes concerning inheritance or marital property in Indonesia frequently necessitate cross-referencing between civil codes and Islamic legal norms, reflecting the complex interplay of statutory and religious law.<sup>46</sup> Because family law matters for Muslims are primarily governed by Islamic jurisprudence as codified in the *Kompilasi Hukum Islam* (KHI), civil enforcement authorities must navigate these religious prescriptions alongside general civil regulations. This dual legal framework requires judges, lawyers, and administrators to be versed in both legal traditions to resolve conflicts effectively, highlighting ongoing challenges in achieving complete legal harmonization in Indonesia's pluralistic legal landscape.

#### 4. Feminist and Religious Reactions

Reform initiatives aimed at modifying family law in Indonesia have often faced significant opposition from conservative Muslim groups. These groups tend to uphold traditional interpretations of Islamic law and view attempts at reform as threats to religious values and social cohesion.<sup>47</sup> Their resistance is rooted in concerns that changes could undermine the moral fabric of society and disrupt established religious norms governing family and gender roles. This opposition has posed substantial challenges to policymakers and reform advocates seeking to introduce legal changes that promote equality and modernize family law within an Islamic framework.

In contrast, Muslim feminists and progressive ulama (Islamic scholars) in Indonesia have actively campaigned for a reinterpretation of Islamic law that better accommodates principles of gender justice and contemporary social realities.<sup>48</sup> These reform-minded voices argue that Islamic jurisprudence is dynamic and adaptable, and that *ijtihad* (independent reasoning) can be employed to promote more equitable outcomes for women within family law. Their efforts emphasize reconciling faith with human rights, advocating for legal reforms that respect both religious tradition and the need for social progress. This ongoing debate illustrates the dynamic and contested nature of legal reform in Indonesia's pluralistic society. A notable example is the strong opposition from conservative religious bodies to bills such as the RUU PKS (Anti-Sexual Violence Bill), which they argued would undermine the traditional religious mandate of the male-headed family and promote liberal, Western-centric gender autonomy.

### V. Comparative Analysis of the Legal Systems of Iran, Egypt, and Indonesia

The legal systems of Iran, Egypt, and Indonesia represent three distinct models of how Islamic family law intersects with civil law traditions in Muslim-majority societies. Each

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<sup>46</sup> Lindsay, p.122-125

<sup>47</sup> Mirjam Künkler, *Islam, Law and Identity Politics: The Changing Politics of Family Law in Southeast Asia* (Singapore: ISEAS Publishing, 2014), 101–105.

<sup>48</sup> Sharyn Graham Davies, *Gender and Family Law Reform in Indonesia* (London: Routledge, 2007), 78–83.

country reflects unique historical trajectories, jurisprudential foundations, and institutional structures that shape how family law is understood, applied, and reformed. While Iran exhibits a highly theocratic model rooted in Shia jurisprudence, Egypt presents a dualist system blending Sunni Islamic tradition with civil codes, and Indonesia follows a pluralist framework that incorporates Islamic, civil, and indigenous (*adat*) norms.

In Iran, the legal system is theocratic and centralized under the doctrine of Velayat-e Faqih (Guardianship of the Jurist), in which religious authority is not only prominent but also institutionalized within the judiciary. The Iranian Civil Code (*Qanun-e Madani*), enacted in the 1920s and later revised after the 1979 Islamic Revolution, integrates Ja'fari (Twelver Shia) jurisprudence into state law. Family law is embedded directly into the Civil Code, particularly in Book 7, which governs marriage, divorce, child custody, and inheritance. Additionally, the *Qanun-e Hedayat az Khanevadeh* (Family Protection Law) regulates procedural aspects of family matters, though conservative religious authorities tightly constrain its reforms. In this integrated system, clerics often serve as judges, and fiqh plays a decisive role in legal interpretation, with little room for secular reasoning or judicial precedent. A definitive example is the enduring judicial distinction between a mother's right to custody (*hadānah*) and the father's fiqh-derived, exclusive right to financial guardianship (*wilayah*) over the child's property (Article 1181, Civil Code), a rule routinely upheld despite reformist arguments for granting mothers equal guardianship based on the child's welfare. Consequently, legal reform tends to be conservative and limited in scope, as changes to family law must pass both political and clerical approval.

Egypt, by contrast, follows a dualist legal structure in which the civil Code governs most areas of law, while family law remains the domain of Islamic jurisprudence. The Egyptian Civil Code of 1948, drafted by Abd al-Razzaq al-Sanhuri, was strongly influenced by French legal traditions and serves as a model for Civil Law across the Arab world. However, it intentionally excludes personal status law from its purview. Matters such as marriage, divorce, and inheritance are governed by separate statutes that draw on Hanafi fiqh and the broader Sunni tradition. Civil family courts administer these laws, but judges rely heavily on Islamic principles, often citing guidance from religious institutions such as al-Azhar. Al-Azhar, as a leading center of Sunni Islamic thought, plays an influential—though not formal—role in shaping legal interpretation through fatwas and religious commentary. A key example is the reliance on the Grand Mufti's fatwa (No. 953, 1988) on gender change; this religious ruling established the necessary Sharia framework that allowed civil authorities to subsequently grant an individual the legal right to alter their gender status on state identity documents.<sup>49</sup> While the judiciary is technically

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<sup>49</sup> Usep Matin, Asep Saepudin Jahar, and Asmawi Asmawi, "The Care Ethic of Ṭanṭawī's Fatwā (Legal Opinion) on Sally Muḥammad 'Abdullah's Sex Change (Male to Female) in Egypt," in Proceedings of the 3rd International Colloquium on Interdisciplinary Islamic Studies, ICIS 2020, 20-21 October 2020, Jakarta, Indonesia (Singapore: EAI, 2021).

civil, religious norms strongly shape legal outcomes. In recent decades, social pressure from feminist movements and international human rights discourse has contributed to gradual legal reforms, such as the introduction of *kebul'* (woman-initiated divorce) in 2000. Nonetheless, reform remains cautious and often faces strong pushback from Islamist and conservative groups.

Indonesia offers yet another model through its pluralist legal system, which recognizes Islamic law alongside civil and customary law (*adat*). The legacy of Dutch colonial Civil Law remains influential, particularly in commercial and administrative fields. However, family law for Muslims is governed mainly by Shafi'i fiqh, as codified in the *Kompilasi Hukum Islam* (KHI) and implemented through the Marriage Law No. 1 of 1974. Non-Muslims are subject to different legal norms depending on their religious affiliation. Notably, Indonesia maintains a dual court system: religious courts for Muslim family matters and civil courts for all other matters. Religious courts have jurisdiction over marriage, divorce, inheritance, and custody, but must operate within the framework of national law, which includes oversight by civil enforcement bodies. For example, when a religious court wants to auction confiscated assets, it must coordinate with the State Auction Office. Religious authority is shared with the state; while Islamic judges preside over family cases, their decisions are subject to appeal and administrative review. The institution responsible for performing the function of administrative review (administrative and technical oversight) internally within the Religious Courts (PA) environment is the Supreme Court (MA), operating through the Directorate General of the Religious Courts (*Ditjen Badilag*). This dual authority creates a complex interplay between codified Islamic law, regional *adat*, and national legislation.

The role of civil codes varies significantly among the three countries. In Iran, the Civil Code not only incorporates Islamic family law but also makes it central to the country's entire legal framework. In Egypt, the Civil Code explicitly excludes family law, instead allowing Islamic principles to guide that realm through separate legislation and judicial interpretation. Indonesia, meanwhile, applies its civil Code selectively, primarily for non-Muslims or in domains unrelated to family matters, leaving the religious courts significant autonomy over Muslim family law.

Reform trajectories also differ across these contexts. Iran's approach is generally conservative, with limited reform efforts that the clerical establishment tightly monitors. Reforms that appear to challenge religious orthodoxy—such as proposals to restrict polygamy or broaden women's rights—often stall or are watered down.<sup>50</sup> In Egypt, legal reform is more responsive to civil society activism and public discourse, although constrained by political and religious sensitivities. The introduction of *kebul'* and other amendments reflects a slow but ongoing process of liberalization. Indonesia's reforms

<sup>50</sup> Eliz Sanasarian, "The Politics of Gender and Development in the Islamic Republic of Iran," in *Women and Development in the Middle East and North Africa*, ed. N.A. (Leiden: Brill, 2021), 56–68, [https://doi.org/10.1163/9789004474130\\_006](https://doi.org/10.1163/9789004474130_006).

are incremental and vary by region, influenced by local customs and the relative autonomy of regional religious authorities. Initiatives to harmonize Islamic and Civil Law, such as judicial guidelines and administrative coordination, demonstrate a pragmatic attempt to balance plural legal identities. Specifically, initiatives like *PERMA* No. 1 of 2015 (Mediation and Divorce) harmonize procedural law with religious values by mandating the use of certified mediators in divorce cases, thereby making reconciliation (*sulh*) a required step in the civil process while simultaneously protecting the welfare of children.

In summary, the interaction between civil and Islamic family law in Iran, Egypt, and Indonesia illustrates the diversity of legal hybridity in Muslim-majority societies. While Iran exemplifies a deeply integrated, religiously driven system, Egypt maintains a formal separation between civil and family law, with religious influence retained through institutions. Indonesia's pluralist model presents a flexible yet complex framework in which multiple sources of authority coexist. These models reflect not only differences in legal architecture but also broader political ideologies, religious interpretations, and societal demands that shape the evolution of law in each context.

Table 1. Comparative Overview of the Legal Systems of Iran, Egypt, and Indonesia

Aspect	Iran	Egypt	Indonesia
Legal System	Theocratic (Shia)	Dualist (Sunni, civil law blend)	Pluralist (Islamic, civil, <i>adat</i> )
Family Law Source	Ja'fari fiqh (codified)	Hanafi fiqh, legislation & fatwa	Shafi'i fiqh, adat, and legislation
Court Structure	Unified judiciary	Civil family courts applying Islamic norms	Dual court system: civil and religious
Role of Religious Authority	Central (All judges have necessary expert religious knowledge)	Influential (al-Azhar guides interpretation)	Shared (religious courts have jurisdiction)
Role of Civil Code	Integrates some rules of family law	Excludes family law	Applies selectively, mostly to non-Muslims
Reform Trends	Conservative, limited-reasonable reforms	Gradual liberalization under social pressure	Incremental, regionally varied

Source: Author's own analytical analysis.



After analysis, we find overlap between civil law and family (personal status) law in Iran, Indonesia, and Egypt. Here is a highlight of how civil law principles affect family law, even when family law is religiously based. What we mean by overlap: Civil law refers to general legal principles covering contracts, property, obligations, legal capacity, and court procedures, and Family Law (or personal status law) deals with marriage, divorce, custody, inheritance, among otherfs, often based on religious law in Muslim-majority countries.

In Iran, there is a high degree of integration between family and civil law. Civil Code (1928) incorporates Shia Islamic jurisprudence (Ja'fari fiqh) into a codified system. Personal status laws (e.g., marriage, divorce, inheritance) are directly embedded within the Civil Code. For example, Book 7 of the Civil Code is entirely devoted to family law and applies Shia interpretations. Such interpretations include Articles 1075–1077, which legally recognize the Shia practice of temporary marriage (*mut'ah*). Overlap includes legal capacity, marriage contract rules, and property laws, which are derived from the Civil Code and shaped by Shia fiqh. This framework is established by Article 4 of Iran's Constitution, which mandates that all laws be based on Islamic criteria. The Civil Code then directly codifies fiqh rulings, such as the husband's unilateral right to divorce (*talāq*, Article 1133) and the assignment of legal capacity based on the age of puberty (Article 1210).

Furthermore, judges are legally required to refer to authoritative fiqh sources to resolve any matter where the statutory law is silent. Courts use civil law procedures for family disputes, and Guardianship and maintenance (*nafaqa*) rules are both religious and civil. In Iran, family law is part of the civil law, but that civil law is itself Islamic in substance.

While in Indonesia, there is a partial overlap with civil law (for Muslims). Indonesia has a dual legal system; religious courts (*Pengadilan Agama*) handle Muslim family law, and Civil courts handle non-Muslim family law and general civil matters. Overlap includes religious courts applying state-enacted laws, such as Marriage Law No. 1/1974 — a secular statute that governs all citizens but defers to religious law for details — and the Compilation of Islamic Law (KHI) — a codified Islamic law created by the state, applied in religious courts. Civil principles appear in: Legal capacity, Procedural law (same as general civil court procedures), and Appeal and enforcement mechanisms (shared with general courts). Legal capacity, for example, is defined by the civil age of 19 for marriage (Law No. 1/1974, Article 7) and the requirement of parental consent until age 21 (Article 6).

Furthermore, all family judgments, regardless of religious source, are governed by the uniform national procedural Code and are subject to final appeal before the Supreme Court (*Mahkamah Agung*). In Indonesia, civil law structures (codes, procedures, judges' training) influence family law even in religious courts. However, family law is formally separate from civil law and tied to religion for Muslims.

In Egypt, there is Moderate overlap with civil law; Egypt's family law is not part of the Civil Code, but is based on religious law (primarily Sunni Hanafi), Specific statutes (e.g., Law No. 25 of 1920 and amendments), and Civil courts handle all personal status cases (no religious courts). Overlap includes: Civil procedure law governs how family cases are processed (filing, appeals, evidence), Contract principles from civil law apply to: Marriage contracts, Dower (mahr) agreements, and Inheritance share technical/legal mechanisms with civil law (e.g., division of property, succession order). Egypt keeps family law separate from the civil Code but applies civil law methods and frameworks in court.

Table 2. Overlap Between Civil Law and Family Law in Iran, Egypt, and Indonesia

Feature	Iran	Indonesia	Egypt
Family law in the Civil Code?	✓ Yes, integrated in the Islamic civil Code	✗ No, separate (Compilation of Islamic Law)	✗ No, separate personal status statutes
Religious law basis	✓ Yes (Shia Ja'fari fiqh)	✓ Yes (Sunni/Shafi'i, state-compiled)	✓ Yes (Sunni Hanafi, with state amendments)
Use of civil procedure	✓ Yes	✓ Yes (religious courts use civil procedures)	✓ Yes (family courts follow civil procedures)
Marriage = contract law	✓ Treated as a contract in the Civil Code	✓ Treated as religious+contractual act	✓ Treated as a religious contract
Court system	Unified religious-civil courts	Dual: religious (Muslims) & civil (others)	Unified civil court system

Source: Author's own analytical analysis.

Iran is the most substantial overlap. Family law is contained in the Civil Code, which itself is Islamic. Civil and family law are fully integrated. Indonesia has moderate overlap. Family law for Muslims is administered separately, but influenced by civil law structures and procedures. Meanwhile, in Egypt, Family law is separate from the civil Code, but operates within the civil court system, using civil procedures and borrowing some legal concepts.

## VI. Conclusion

Layered historical developments, political ideologies, and varying interpretations of Islamic jurisprudence shape the interaction between civil and family law in Muslim-majority countries. These legal systems are not monolithic but reflect diverse paths shaped by colonial legacies, religious authority, and post-independence legal engineering. The way each country integrates—or separates—civil and religious law reveals much about its broader state-religion relationship and institutional priorities.

Iran stands as a clear example of an integrated model in which civil law serves as codified Sharia. Following the 1979 Islamic Revolution, the country transformed its legal system to align with Ja'fari (Twelver Shia) jurisprudence. In this system, family law is treated as a separate sphere but some of its main rules are directly within the civil code, interpreted and administered by expert judges.

In contrast, Egypt embodies a hybrid legal system. It retains a civil law foundation heavily influenced by European models, particularly the Napoleonic Code, but preserves Islamic principles in personal status law. While civil courts have jurisdiction over most legal matters, family law for Muslims is governed by Sunni jurisprudence and religious doctrine, applied by judges trained in secular institutions yet guided by religious reference points such as al-Azhar. This dualist configuration reflects Egypt's attempt to modernize without fully secularizing family law, creating legal tensions between reformist ambitions and traditionalist safeguards.

Indonesia offers a pluralist model in which civil, religious, and customary (*adat*) laws coexist within a single legal system. Here, Muslims are subject to religious courts in personal status matters, while civil courts handle other areas of law. Despite a unified national marriage law, its implementation is religiously segmented, allowing different communities to follow their respective traditions. This flexible approach acknowledges Indonesia's religious and ethnic diversity but also poses challenges to consistency and equity. Understanding these layered legal systems is essential for any meaningful reform aimed at promoting gender justice, institutional coherence, and fair access to legal remedies across the Muslim world.

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