

Legal Evaluation of Family Laws: A Comparative Study between Indonesia and Iraq

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ABSTRACT

Islamic family law in Iraq and Indonesia shares a common Shariah basis but differs in its application due to the influence of their respective legal systems, cultures, and state policies. This comparison is important to understand the variation of regulations and their implications for Muslim communities in both countries. This study aims to analyze the similarities and differences between Islamic family law in Iraq and Indonesia, particularly in marriage, polygamy, and inheritance, and to examine the effectiveness of its implementation. This study uses a normative juridical method with a comparative approach. Primary data sources include current Iraqi laws such as the Iraqi Penal Code No. 111 of 1969, the Iraqi Personal Status Law No. 188 of 1959, and the Compilation of Islamic Law of the Republic of Indonesia, including Regulation Number 1 of 1974 concerning Marriage, and Regulation Number 16 of 2019, regarding Amendments to Law Number 1 of 1974 about Marriage. Data collection techniques were carried out through library research, with data analysis using descriptive analysis and content analysis of applicable legal provisions. Research exhibits that although Iraq and Indonesia are both based on sharia, Iraq tends to be more structured in regulating polygamy and inheritance. Concurrently, Indonesia is more flexible by considering customary law. Differences are also evident in the authority of the judicial institution: Iraq has autonomous Shariah Courts in each province, while Indonesia operates a centralized system through the Religious Courts. This article argues that Maqāṣid al-Sharī'ah (the higher objectives of Islamic law) provides a dynamic and authentic framework for reconstructing Indonesian Islamic family law. By reinterpreting traditional legal provisions through the lens of Maqāṣid—emphasizing justice ('Adl), welfare (Maṣlaḥah), and human dignity (karāmah insāniyyah)—Indonesia can harmonize its Islamic legal identity with universal human rights principles, ensuring a progressive, inclusive, and effective legal system in the digital era.

1. Introduction

Family law is a cornerstone of every legal system, governing marriage, divorce, child custody, inheritance, maintenance, guardianship, and family rights. Hitherto, both jurisdictions, namely Indonesia and Iraq, recognize Islamic law as a significant source of family legislation. Albeit each has developed a distinct legal framework harboured by different constitutional structures, legal traditions, political histories, and social contexts. Indonesia employs a pluralistic legal system integrating Islamic law, customary (Adat) law, and civil law. In contrast, Iraq primarily applies codified personal status laws influenced by Islamic jurisprudence and civil law traditions [1]. This article critically evaluates the similarities and differences between the two countries' family law regimes, assessing their effectiveness in protecting family rights while remaining consistent with constitutional principles and international human rights standards [2].

Hitherto, Shariah law has proven to be an imperative, plausible solution to various problems faced by society, especially in the context of family law in Muslim countries. Through evolving times, challenges arising are subsequently complex and far-reaching, prompting the need for more equitable and relevant legal adjustments for Muslims worldwide [3]. Islam, as a religion, not only provides spiritual guidance but also gives direction for thought, enabling its people to develop their teachings in the realm of taqniyyah (laws and regulations) [4]. The development of family law reform in the Islamic world began in the early 20th century, with reforms primarily initiated in Istanbul, Türkiye, which in 1917 introduced family law through the Ottoman Law of Family Rights (Qanun Qarar al-Huquq al-'Ailah al-'Otmانيyah), including rules on marriage, divorce, and inheritance [5]. This reform was then followed by various other Muslim countries, such as Egypt in 1920, Iran in 1931, Syria in 1953, Tunisia in 1956, Pakistan in 1961, and Indonesia in 1974 [6].

In Southeast Asia, Malaysia is recorded as the first country to reform Islamic family law through the Mohammedan Marriage Ordinance, No. V of 1880 in the Straits Settlements (Penang, Malacca, and Singapore) [7]. This regulation, which appeared before independence, is considered the first step in family law reform in the region. One of the important provisions of this regulation is the obligation to register Muslim marriages and divorces. Thus, the Mohammedan Marriage Ordinance not only became the basis for Muslim marriage law in the region but also marked the beginning of the modernization of Islamic family law in Southeast Asia [8].

In Indonesia, efforts to reform family law began with the enactment of Law No. 22 of 1946 on marriage and divorce, marking the first step in modernizing the country's marriage law.

Initially, this law only applied to the Java Island area. However, post Indonesia's independence, its scope was expanded to all regions of Indonesia through Law No. 32 of 1954 concerning Marriage Registration, Talak, and Referral [9]. The existence of Law No. 22 of 1946 is inseparable from previous legal developments, namely, as a continuation of Staatsblad (Stbl.). No. 198 of 1895, as well as the successor of the Huwelijks Ordonantie (Stbl. No. 348 of 1929 jo. Stbl. No. 467 of 1931) and the Vorstenlandse Huwelijks Ordonantie (Stbl. No. 98 of 1933) [10]. Thus, this law marks an important phase in the history of Indonesian family law and serves as the basis for future marriage regulations [11].

In contrast, the Iraqi legislator, in the context of potential family violence, enacts various legal rules and legislations, in particular the Personal Status Law, the provisions of marriage, divorce, alimony, and other issues. The Iraqi Penal Code is keen to protect the family through several texts and articles that are enacted in the context of responding to family violence. However, in this regard, the Iraqi legislator has not yet enacted a specific law to protect the family from violence; for comparison, several jurisdictions have enacted special laws for this purpose [12].

The present research seeks to review the protection of the family under current Iraqi legislation, such as the Iraqi Penal Code No. 111 of 1969 [13], and the Iraqi Personal Status Law No. 188 of 1959 [14], which has been enacted to create a unified state-centered framework for all Muslims, drawing from both Hanafi and Jafari jurisprudence, as it requires official judicial registration of marriages and divorces to limit informal tribal practices. The Kurdistan Region implements its own distinct framework via Personal Status Law Act No. 15 of 2008 [15].

2. Research Problem

Despite sharing Islamic legal foundations, Indonesia and Iraq have adopted different legislative approaches to family law. These differences raise questions regarding legal certainty, gender equality, judicial discretion, harmonization with international human rights norms, and the protection of vulnerable family members. There remains limited comparative scholarship examining how both jurisdictions reconcile religious principles with contemporary legal reforms. Procedural matters, divorce, polygamy, and the custody of children are addressed. Consequently, the Iraqi law consists of 88 Articles (which is still quite short when compared with similar Codes enacted by other Middle Eastern countries) and attempts to cover, in outline, the full scope of family law [16]. The Iraqi Law of Personal Status was a radical piece of legislation at the time of its enactment, though not as radical as the Tunisian Law, and it is by no means as revolutionary as the Family Protection Act [17].

This article argues that although both legal systems have principles that conform to the Maqāṣid Al-Shari'ah, the substance, form, and interpretation in Indonesia are more receptive to the needs of diverse communities than in Iraq, which tends to be rigid [18]. The conservative approach to the application of law in Iraq may hinder the reforms needed to achieve social justice. On the other hand, Indonesia has the potential to accommodate both local values and broader global demands through a more flexible legal system. Subsequent challenges remain in ensuring that all individuals receive equal and normatively fair protection, as this research paper examines how family law, as a social instrument, can function more effectively in the context of sustainable development. The material object of this study is Islamic Family Law, which is integrated with the challenges and opportunities within the context of the Sustainable Development Goals, especially SDG 16 [19].

This study selects Islamic Family Law as the unit of analysis because of its high relevance to the shaping of social structures and community values in Indonesia and Iraq. The selection of this object is based on the urgency of understanding the differences and developments in the family law system to support community welfare while maintaining family harmony. Researchers seek to explore the substance, form, and interpretation of family law in relation to sustainable development in both countries. The selection process for this object involves a thorough and careful study of applicable laws and insights into emerging social issues. Thus, this material object has the potential to significantly influence policies based on derivative-continued laws that are oriented towards sustainability. The study aims to shed light on wrongdoings for which the Iraqi legislator might consider a person who committed them to be a criminal who committed an offense against the family, and to present the punishments stipulated by the Iraqi legislator for offenses of family violence.

Hitherto, the statement of the research provides that there is widespread belief in Iraq that the criminal justice system in Iraq properly protects the family and efficiently provides guarantees against actions of violence and family crimes. The current research aims to test the validity of the aforementioned belief by objectively examining Iraqi law, without seeking to prove that Iraq's legal system has fully failed to protect the family institution. Nonetheless, the research leads the author to the clear conclusion that the Iraqi legislator neglected to criminalize certain acts that can be considered crimes against the family, and it identifies considerable shortcomings examined in the study [20].

The researchers are duty-bound to present a comprehensive overview that compares the family laws of Indonesia and Iraq and bridges the gap between the application of Islamic law in both countries.

3. Research Objectives

R01-To examine the legal framework governing family law in Indonesia and Iraq.

R02-To compare the laws on marriage, divorce, child custody, inheritance, guardianship, and maintenance in both jurisdictions.

R03 - To evaluate the judicial interpretation and implementation of family law.

R04-To analyze compliance with international human rights standards.

R05-To identify legal reforms and best practices that may strengthen family law in both countries.

4. Research Questions

RQ1-What are the principal legal sources governing family law in Indonesia and Iraq?

RQ2- How do both jurisdictions regulate marriage, divorce, custody, inheritance, and family responsibilities?

RQ3-What are the major similarities and differences between the two legal systems?

RQ4- How effectively do both legal frameworks protect women, children, and vulnerable family members?

RQ5-What legal reforms can improve family justice while respecting Islamic legal principles?

5. The Significance of the Study

This comparative study contributes to comparative family law scholarship by providing an interdisciplinary evaluation of Islamic family law, constitutional law, and international human rights. It offers practical recommendations for legislators, judges, legal practitioners, and policymakers engaged in family law reform. This study holds significant scholarly and practical value by illuminating the complexities of family law within two jurisdictions that share a common foundation in Islamic jurisprudence yet diverge in their legal structures and implementation. By juxtaposing Indonesia's pluralistic legal model, which integrates statutory, religious, and customary

norms, with Iraq's centralized personal status framework, the research provides critical insights into how different institutional designs shape legal certainty, judicial efficiency, and the protection of vulnerable groups. The findings contribute to the broader discourse on gender justice, child protection, and human rights compliance, offering a nuanced understanding of how Islamic legal principles can be harmonized with contemporary demands for fairness and equity. Furthermore, beyond academic contribution, the study has practical implications for policymakers, legal practitioners, and reform advocates, as it identifies areas requiring reform to strengthen family law systems while preserving doctrinal fidelity. Ultimately, this comparative evaluation underscores the importance of balancing tradition with modernity, thereby advancing the development of family law in Muslim-majority societies and enriching global debates on law, religion, and human rights.

6. Legal Framework of Family Law in Indonesia

The Kompilasi Hukum Islam (KHI), enacted in 1991 via Presidential Instruction (INPRES No. 1, 1991), serves as the primary legal reference for Muslim family matters in Indonesia [21]. This legal instrument represents a unique codification effort that blends classical Islamic Fiqh principles with national legal norms and local customary law (Adat) [22]. Such an emphatic hybrid model reflects Indonesia's pluralistic legal system, where Islamic law coexists with and interacts with the European Continental Legal System inherited from the Dutch colonial period. Despite its hierarchical position as a Presidential Instruction rather than a formal Law (Undang-Undang) according to Indonesia's legislative hierarchy (Law No. 12 of 2011) [23], judges in Religious Courts consistently apply the KHI as a primary reference and legal basis [24].

Hitherto, this de facto authority stems from its acceptance as a consensus of the Scholars and a "series of written laws", providing legal certainty where traditional Fiqh offers multiple interpretations [25]. The consistent use of the KHI as the primary reference by Religious Court judges, despite its status as a Presidential commandment, highlights a significant disconnect between its formal legal standing and its practical authority [26]. Such a framework suggests that the KHI's legitimacy in the eyes of the judiciary and the Muslim community is derived more from its content than from its legislative form. This unique interplay of formal legal hierarchy, religious authority, and judicial practice in Indonesia underscores that any reform efforts must acknowledge this distinct source of the KHI's authority. Guidance from Islamic Scholars and judicial bodies is therefore crucial to ensuring effective implementation and public acceptance, rather than merely imposing top-down legislative changes.

The development of Islamic law in Indonesia dates back to the Dutch East Indies period, with regulations on religious courts established in 1882 and ordinances on Muslim marriages in

Java and Madura in 1929 [27]. Post-independence, Law No. 1 of 1974 on Marriage became pivotal, defining marriage as a bond based on belief in Almighty Allah and confirming the jurisdiction of Religious Courts for Muslims [28]. This law also adopted many Islamic legal concepts, such as rules on polygamy. The KHI was promulgated to unify legal references and address contemporary family problems that arose post the 1974 Marriage Law [29]. Its creation aimed to accommodate state interests, local practices, and women's concerns, particularly regarding polygamy, divorce, and marital property rights. The rapid advancement of digital technology has introduced novel issues into family law, such as online marriage, technology-based divorce, digital marriage dowry, and online sexual relations between spouses. Furthermore, such nascent realms expose the limitations of conventional, often static, legal frameworks, as the digital era gives rise to new types of cases and fundamentally challenges the conventional nature of existing family law. The explicit mention of "*Urf of cyberspace*," [30] tantamount to "*worthy of being used as a legal basis for the renascent of the Compilation of Islamic Law*," [31] indicates that technological advancements are creating nascent social norms that demand legal recognition and adaptation [32]. This dynamic relationship between technology, society, and law suggests that technology serves as a powerful catalyst for legal evolution. This necessitates a shift from a reactive legal posture to a proactive one, in which legal reform anticipates future technological developments and their societal impacts and integrates nascent social realities into the legal framework. This notion requires continuous evaluation and adaptation of laws, moving beyond traditional, slower legislative cycles.

The digital era also amplifies existing demands for gender equality and child protection, as digital platforms present nascent risks like exposure to negative content, digital addiction, and online violence. There is a huge theoretical gap between approaches towards traditional interpretations of Islamic legal principles and universal human rights standards, particularly regarding gender equality and freedom. While some post-modernist liberals argue for aligning Shariah with human rights and democracy, practicing Muslims advocate for an uncompromising implementation of "*Pure Shariah*" [33]. Subsequently, such a torsion is not merely academic but manifests in practical challenges, as some Shariah practices have been deemed incompatible with human rights, gender equality, and freedom of speech [34]. This ideological divide significantly influences the discourse and feasibility of Islamic family law reform in Indonesia [35].

This article addresses the critical imperative of reforming Islamic family law in Indonesia. As the world's most populous Muslim-majority nation, Indonesia faces unprecedented challenges in its legal landscape, particularly in its family law, as enshrined in the Kompilasi Hukum Islam (KHI), amid rapid digitalization and evolving human rights norms. The digital age introduces novel legal issues such as online marriages and technology-driven divorces, while global human rights

standards, notably those related to gender equality and child protection, exert pressure on traditional legal interpretations [36].

7. Legal Framework of Family Law in Iraq

Iraq possesses a hybrid legal system that draws on both Sunni and Shi'ite Fiqh for the law applied in Shari'ah courts [37]. The legal system as a whole also includes constitutional law, legislation and statutory provisions, usage and custom, judicial precedent and authoritative juridical opinion. Matters regarding marriage and family relations of the Muslim majority population in Iraq are mainly governed by the Iraqi Personal Status Law No. 188/1959 (IPSL). The Kurdistan Region has its own Personal Status Law – Act No. 15/2008 [38]. The IPSL, drawn from both Hanafi and Jafari jurisprudence (Fiqh), applies to all Iraqi Muslims, regardless of sect, as the IPSL confers many rights on women regarding marriage, divorce, custody, and inheritance [39]. However, post 2003, due to the fragile security situation in Iraq, the weaknesses in law enforcement, and the dominance of tribal customs and religious edicts, women's organizations have documented breaches of the law [40].

Despite the equality guarantees under the Constitution, the IPSL provides for a marital framework based on 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him to a certain extent.⁸ Furthermore, Article 25 states that a wife is no longer entitled to financial maintenance if: **(i)** she leaves her husband's home without his permission and without legitimate reason; **(ii)** if she refuses to travel or move with her husband; or **(iii)** if she is convicted and imprisoned for a crime or debt. However, Article 25 also stipulates that a wife shall not be bound to obey her husband if he is arbitrary in his demands for obedience and intends to injure or oppress her. The court must give due consideration to the wife's disobedience before ruling that a wife is disobedient. It must understand the reasons for her refusal to obey her husband and do its utmost to remove the causes of a wife's disobedience. The minimum legal age for marriage is 18 for both females and males under Article 7(1) of the IPSL. However, Article 8 provides that a judge may permit girls and boys who are and above to marry if the judge is convinced that: **(i)** they have reached puberty and are physically capable of being married, and **(ii)** the marriage is a "*doctrine of necessity*". The judge is obligated to obtain the views of the girl's or boy's guardian regarding the marriage; if the guardian objects to the marriage, the judge may nevertheless authorize the marriage if the judge considers the objection unreasonable [41].

Child marriages are further eschewed, as the ages of both parties are verified before an appropriate officer, who then concludes the marriage in a competent court. The parties are required

to submit a statement exhibiting their age as a condition of marriage registration. The Personal Status (Jafari) Bill proposed in 2014 threatened to allow for the marriage of girls as young as nine years old in exceptional circumstances [42]. Women's rights advocates also note that there is still a tribal practice where women are exchanged between tribes as wives. In other cases, where there is a dispute or conflict between clans/tribes, women are exchanged between the tribes as compensation (and in some cases as blood money) [43]. This occurs without the consent of the women in question. Temporary marriage is neither legally recognized nor is it socially acceptable. These temporary marriages are not legally codified and mostly take place outside the courts through certain 'clerical offices' that arrange them. The temporary contracts they obtain do not guarantee the rights of either the wife or any subsequent children, as they are informal and not recognized by law unless ratified by the court [44].

In cases where the couple seeks to get court recognition, the women/girl in many cases, faces consequences in the event she married without the consent of her male guardians. Women from the rural and poor areas are particularly susceptible to unregistered marriages and their adverse impact, as Qadhi conduct their marriages, as the women remain in oblivion, to the requirements of the official channels to register their marriages [45]. The non-registration of their marriages causes complications for themselves and their children, particularly in instances where their husbands travel, die, or initiate a divorce [46].

As for Polygamy, a Muslim man may marry up to four wives at one time, unless the prospective bride is a widow; Article 3 of the IPSL18 prohibits a man from marrying more than one woman except with the authorization of a judge (qadi). A judge may only authorize the polygamous marriage if three conditions are met: (i) the husband has financial capacity; (ii) there is a legitimate interest; and (iii) there is no fear of injustice between wives. Article 3 also provides for a penalty of imprisonment and/or a fine if a man concludes a marriage with more than one wife without first obtaining the court's authorization. Article 26(1) of the Personal Status Code does not permit a husband to house more than one wife in the same home unless the wives consent. Article 40(5) provides that a wife may file for divorce if a husband takes a second wife without court permission [47]. Women's rights advocates note an exception in the law where it is permissible for a man to marry more than one woman if the wife he intends to take is a widow, regardless of his present wife's consent. In the Iraq Kurdistan Region, the Personal Status Law states that marrying more than one woman is not allowed unless authorized by the judge. A judge may only authorize the polygamous marriage if certain conditions are met, as a man who concludes a polygamous marriage without the authorization of a judge will be subject to a penalty of imprisonment and fine, and judges are prohibited from suspending the penalties [48].

Regarding violence against women, the law stipulates that Article 29(4) of the Constitution prohibits all forms of violence and abuse in the family. However, Iraq has not yet adopted specific legislation to criminalize acts of domestic violence [49]. In 2016, the Iraqi Parliament was completing its review of the draft Anti-Domestic Violence Law, which was introduced in 2015 [50]. Parliament's approval of the draft law is still pending, as it has faced stiff resistance from religious political parties and conservative politicians/Ministers. The Penal Code contains some general prohibitions that apply to domestic violence. The Penal Code criminalizes and provides for penalties for certain offenses involving the family (issuing and obtaining an invalid marriage certificate, etc.) as well as rape, indecent assault, etc. However, under the Penal Code, Article 41(1) permits a husband to use physical discipline against his wife “*within the bounds of what is permissible by Shari’ah, law, or custom*” [51]. Marital rape is not specifically criminalized in Iraq. According to women’s rights advocates, even though under the Constitution all forms of violence and abuse in the family are prohibited, the context of Iraq has posed challenges for women in overcoming vulnerable and violent situations. While civil society has advocated for a law to address domestic violence and more than one draft law has been put forward to the government, many politicians, including religious parties, are still against the adoption of this law because they believe in giving the right to husbands, fathers, and teachers to use violence under the pretext of discipline as stipulated in Article 41 of the Penal Code [52].

8. Research Methodology

This research uses a normative juridical analysis with a comparative approach to examine Islamic family law materials in Iraq and Indonesia. Doctrinal legal research has been adopted in this study, and both primary and secondary data sources, drawn from scholarly works and prior publications, have been assessed. These steps include doctrinal and comparative legal research; qualitative comparative analysis; constitutions, statutes, judicial decisions, legal commentaries, international treaties, and academic literature; and comparative legal analysis supported by thematic content analysis. To achieve its aims, the present study adopts standard legal analyses of the relevant laws. It draws on the experience of foreign laws whose provisions, by their nature, are consistent with the Iraqi legal system and relevant to the protection of the family. The data sources in this study consist of primary and secondary data. Primary data sources based on Islamic family law and regulations in Iraq include the compilation of Islamic Law and other regulations. Secondary data sources are books, articles on Islamic family law, and other relevant literature. The data collection technique employs library research, and the data obtained is analyzed using the descriptive-analytical method. “

Figure 1 depicts the research methodology in a significant way

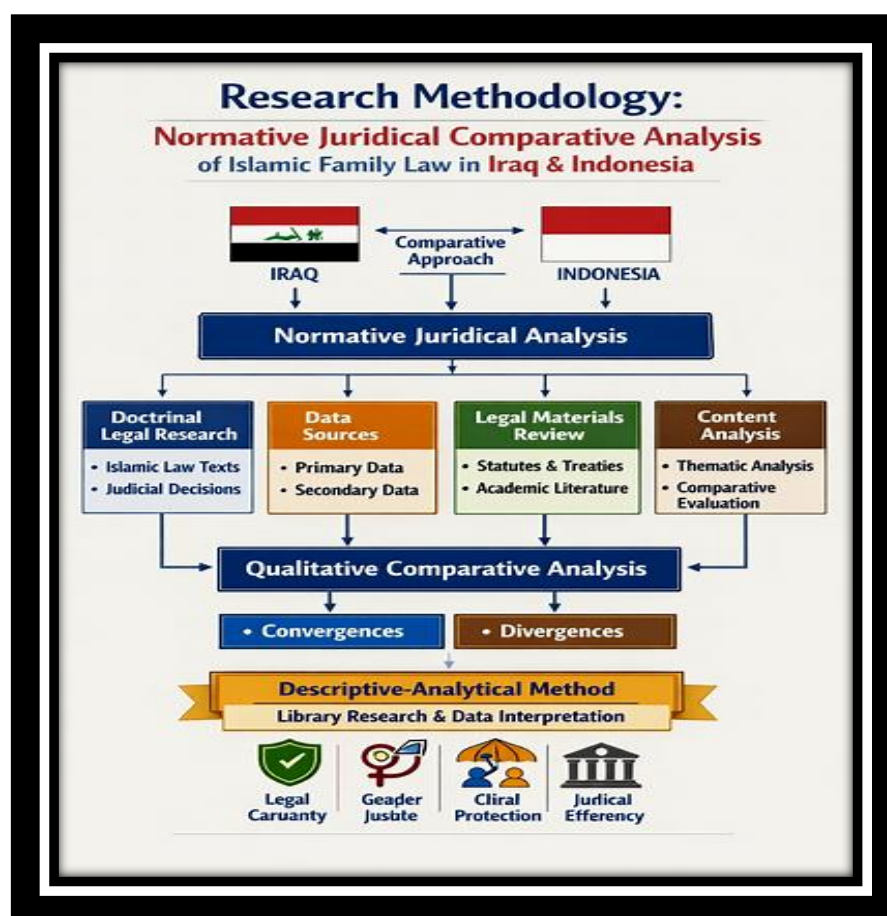


Figure 1- Research Methodology

9. The Scope of the Study

The study comprehensively examines the multifaceted dimensions of family law, addressing both substantive and procedural aspects. It explores the foundations of marriage formation and validity, as well as the legal mechanisms governing divorce procedures and their implications for family stability. Central to the analysis are issues of child custody and guardianship, which highlight the balance between parental rights and the welfare of minors. The study also considers maintenance obligations as a means of ensuring financial support within familial relationships, while inheritance principles are assessed in light of equity and cultural traditions. Furthermore, the role of judicial institutions is scrutinized, particularly their capacity to adjudicate family disputes and uphold justice. Complementing this is an evaluation of family dispute resolution mechanisms, including mediation and restorative approaches, which aim to

foster reconciliation and reduce adversarial conflict. Finally, the study situates these themes within the broader framework of human rights compliance, emphasizing the need for family law systems to align with international standards of dignity, equality, and protection of vulnerable groups.

10. Comparative Analytical Framework

The comparative analytical framework for evaluating family laws in Indonesia and Iraq is grounded in a multidimensional approach that integrates doctrinal, institutional, and socio-legal perspectives. It begins with a textual analysis of statutory provisions, examining how each jurisdiction codifies principles of marriage, divorce, custody, guardianship, maintenance, inheritance, and dispute resolution. This is complemented by an institutional assessment that considers the roles of judicial bodies, administrative agencies, and religious authorities in implementing and interpreting family law. A socio-legal lens is applied to contextualize these frameworks within broader cultural, religious, and political environments, highlighting Indonesia's pluralistic model, which accommodates diverse normative systems, and Iraq's centralized personal status regime, which emphasizes uniformity. Methodologically, the framework employs comparative categorization to identify convergences and divergences, while ensuring that differences are interpreted in light of each jurisdiction's historical and social realities. This structured approach enables a balanced evaluation of legal certainty, gender justice, child protection, and judicial efficiency, ensuring that reforms are assessed not only in terms of doctrinal coherence but also their fidelity to Islamic jurisprudential foundations and responsiveness to contemporary human rights standards.

1.1. Minimum Age for Marriage

The comparison of the manifestations of Islamic family law in Indonesia and Iraq reveals significant differences and important similarities in the context of Al-Shatitbi's Maqāṣid al-Sharī'ah theory [53]. This analysis will discuss several key aspects in detail, including the minimum age requirement for marriage, the mechanisms of dispensation, the practical impact of each regulation, and the relevance of Maqāṣid al-Shari'ah theory and the sociocultural context (al-'Urf) in shaping a just legal environment [54].

In Iraq, there are strict provisions regarding the minimum age for marriage, as pursuant to the Iraqi Marriage Regulations, individuals cannot marry before the age of eighteen unless the court grants permission post considering the individual's interests [55]. For example, if a prospective bride is sixteen years old and submits a request, the court will consider psychological and social factors, including financial stability and family support [56].

In contrast, in Indonesia, Law Number 16 of 2019 mandates that men and women must be at least 19 years old to marry [57]. However, a dispensation mechanism is available for those who have not yet reached that age. In practice, this dispensation can be granted by the court for 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 [58].

1.2. Dispensation Mechanism

The dispensation mechanism in both countries differs significantly. In Iraq, the process of applying for a dispensation must go through a court that investigates every aspect of the application [59]. The court forms a committee of several judges to evaluate the best interests of the individual requesting it. Contextually, 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 [60]. In contrast, the dispensations in Indonesia are more administrative in nature; although they still involve the court, the procedures are generally quicker. Parents or guardians can submit applications, and there tends to be more focus on established legal criteria [61]. In practice, this implies that more cases of early marriage can be processed through legal channels in Indonesia than in Iraq, where a more conservative approach and caution in involving the courts are prominent.

1.3. Family Protection

Both legal systems prioritize the protection of the rights and obligations of individuals intending to marry. Within the framework of Maqāṣid al-Shari'ah, the primary goal is to protect society from potentially harmful practices such as early marriage and exploitation. In Iraq, provisions that limit age and provide strict oversight of the marriage process ensure that every individual is not only mentally prepared but also in a supportive social environment. Conversely, Indonesian law recognizes the importance of space for special considerations [62]. 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 [63].

1.4. Maqāṣid al-Shari'ah and Social-Cultural Context (al-'Urf)

The Maqāṣid al-Shari'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 Iraq implement laws while considering these objectives and prevailing social and cultural values, known as al-'Urf. In Iraq, the conservative approach to marriage regulations reflects a commitment to Islamic principles and local cultural values that prioritize social stability

[64]. For instance, a stricter view on marriage age may be seen as an effort to maintain family honour 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 [65]. Alternatively, through honouring Al-'Urf, the government creates a legal environment that is responsive to diverse 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 [66].

1.5.Global Context and SDGs Implications

On a broader scale, this comparison also has significant implications for the achievement of Sustainable Development Goals (SDGs) [67]. Both Indonesia and Iraq demonstrate that family law regulations need to be adapted to each country's social and cultural context [68]. Enforcement of fair laws can create a more conducive and sustainable environment for families, fulfilling the goals of social justice and welfare [69].

Figure 2 depicts the Comparative Analytical Framework in a diagrammatic form:

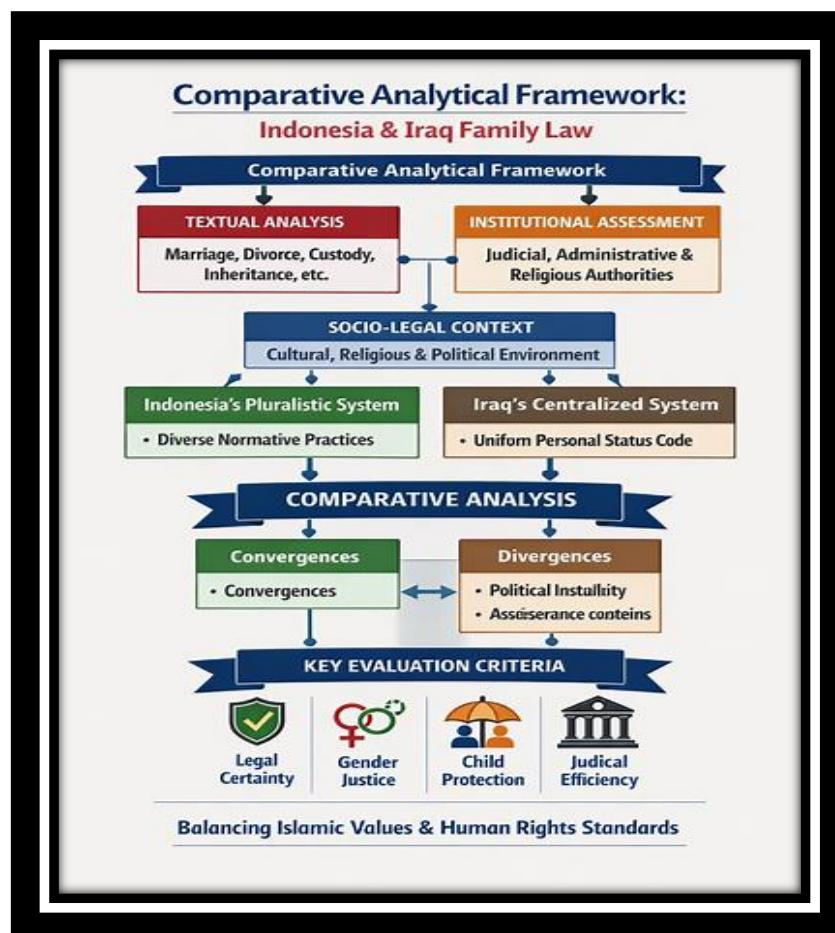


Figure 2-Comparative Analytical Framework

10. Findings

The study demonstrated that while both Indonesia and Iraq derive their family law systems substantially from Islamic jurisprudence, they diverge significantly in terms of codification and implementation. Indonesia's pluralistic legal model, which accommodates diverse religious and customary practices alongside statutory law, provides greater institutional flexibility and adaptability to social contexts. In contrast, Iraq's centralized personal status framework offers a higher degree of legal uniformity, ensuring consistency across cases. Still, it faces persistent challenges in effective implementation due to political instability and administrative constraints. Despite these differences, both jurisdictions share a common need for reform to strengthen legal certainty, gender justice, child protection, and judicial efficiency, while remaining faithful to the underlying principles of Islamic law. This comparative analysis underscores the importance of balancing doctrinal fidelity with pragmatic reforms to ensure that family law systems not only uphold tradition but also respond to contemporary demands for fairness, protection, and institutional effectiveness. This information is further displayed in Figure 3

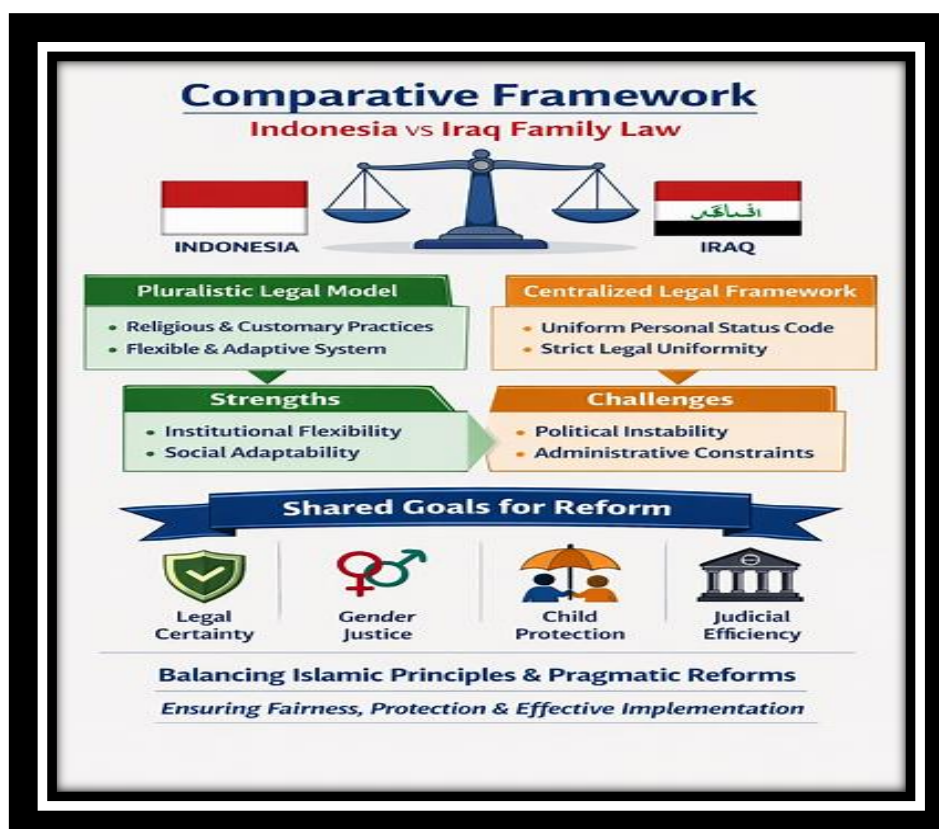


Figure 3-Findings

11. Recommendations

The article recommends that Harmonization of family legislation with constitutional guarantees should be introduced in both jurisdictions. The strengthening of judicial specialization in family courts should be promulgated. Enhanced protection of women and children, especially in the case of Iraq, should be implemented. Modernization of procedural rules, geared to meet international best practices, should be employed to achieve optimum results. Greater incorporation of mediation and other alternative dispute resolution methods. Legislative reforms informed by comparative experiences between Indonesia and Iraq, which will hopefully lead to Improved compatibility with international human rights obligations in both jurisdictions.

12. Conclusion

This study reveals astounding findings, although Indonesia and Iraq implement family law within the framework of Islam, both exhibit adaptive flexibility in their respective social contexts. It is unexpected that, behind the rigidity and dedication of Iraqi law, there is a mechanism that considers individual interests in a humane and civilized manner, with the court's permission as a decision-making factor. On the other hand, Indonesia is more proactive in addressing social issues responsibly and wisely by raising the minimum age of marriage and providing legal grounds for dispensation. This phenomenon confirms that Islamic law can adapt to social developments and the modern challenges society faces. The emphasis on the principle of Maqāṣid Al-Shari'ah in both legal systems in Iraq and Indonesia shows that individual protection is always a priority. This finding shows that law and tradition can coexist in a society undergoing dynamic social change. This study contributes to the treasury of Islamic legal science by identifying the diverse manifestations of textuality and normativity in family law products that are responsive to local contexts. Its novelty lies in the revelation that both countries are seeking to achieve social welfare in a way that may not have been expected before, namely by adopting flexibility within the framework of Islamic family regulation, which is considered strict. This study offers a nascent perspective: Islamic law, often seen as static, can evolve while still adhering to the core objectives of Shari'ah. Another contribution is to emphasize the capacity of Islamic law to function as a sustainable and responsive instrument for addressing contemporary needs. This study acknowledges several limitations, including the lack of direct field data that could more directly describe the practical nuances of implementing law in both countries. 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 the implications of Islamic family law products becomes the goal to be promoted and socialized across various cultural and social contexts.

List of Abbreviation: SDGs: Sustainable Development Goals; (KHI): The Kompilasi Hukum Islam.

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