



Codification of Islamic Law in Comparative Perspective: Between Tradition and Modernity

Ratno Lukito

State Islamic University Sunan Kalijaga Yogyakarta, Indonesia

Marsya Salsabilla Az-Zahra

State Islamic University Sunan Kalijaga Yogyakarta, Indonesia

Email: ratnolukito@yahoo.com

Abstract: This paper examines the transformation of Islamic law through the process of codification from a comparative legal perspective. While classical Islamic law was traditionally pluralistic, jurist-driven, and uncodified, modern developments, especially since the 19th century, have seen states systematically incorporate Islamic legal principles into codified legal systems. The study explores how codification, influenced by European civil law models, reshapes the epistemology and authority of Islamic law, shifting interpretation from scholars to state actors. Through comparative case studies such as the Ottoman Majalla, Egypt, Iran, Malaysia, and Indonesia, the paper illustrates diverse models of codification ranging from centralized statutory codes to non-legislative presidential directives. The analysis highlights key debates around legal pluralism, gender reform, and the tension between tradition and state centralization. Codification, the paper argues, is not merely a legal technique but a transformative process that redefines the relationship between divine law and state sovereignty, producing hybrid legal systems that negotiate between Islamic authenticity and modern legal rationality.

Keywords: Codification, Islamic Law, Comparative Law, Legal Pluralism, Legal Transplants, Hybrid Legal Systems.

Abstrak: Artikel ini mengkaji transformasi hukum Islam melalui proses kodifikasi dari perspektif hukum perbandingan. Jika dalam tradisi klasik hukum Islam bersifat pluralistik, digerakkan oleh para fuqaha, dan tidak dikodifikasikan, maka dalam perkembangan modern terutama sejak abad ke-19 negara-negara mulai secara sistematis memasukkan prinsip-prinsip hukum Islam ke dalam sistem hukum tertulis (kodifikasi). Kajian ini menelaah bagaimana kodifikasi, yang dipengaruhi oleh model hukum sipil Eropa, membentuk ulang epistemologi dan otoritas hukum Islam dengan mengalihkan kewenangan penafsiran dari para ulama kepada aktor-aktor negara. Melalui studi kasus komparatif seperti Majalla Utsmani, Mesir, Iran, Malaysia, dan Indonesia artikel ini menunjukkan beragam model kodifikasi, mulai dari kodifikasi statuter yang terpusat hingga bentuk non-legislatif seperti instruksi presiden. Analisis ini menyoroti perdebatan utama seputar pluralisme hukum, reformasi gender, serta ketegangan antara tradisi dan sentralisasi negara. Artikel ini berargumen bahwa kodifikasi bukan sekadar teknik hukum, melainkan sebuah proses transformatif yang mendefinisikan ulang hubungan antara hukum ilahi dan kedaulatan negara, sehingga melahirkan sistem hukum hibrida yang menegosiasikan antara otentisitas Islam dan rasionalitas hukum modern.

Kata Kunci: Kodifikasi, Hukum Islam, Perbandingan Hukum, Pluralisme Hukum, Transpalntasi Hukum, Sistem Hukum Hibrida.

Introduction

The codification of Islamic law represents a pivotal transformation in the historical development of Muslim legal systems. Unlike the civil law tradition, which is deeply rooted in systematic, state-enacted legal codes, Islamic law (*sharī'a*) evolved primarily through the independent efforts of jurists (*ulamā'*) and religious scholars over many centuries. The classical Islamic legal tradition developed between the 8th and 13th centuries was founded on a combination of textual sources, including the Qur'an, the Sunnah (Prophet Muhammad's traditions), consensus (*ijmā'*), and analogical reasoning (*qiyās*). This body of law, known as *fiqh* (jurisprudence), was decentralized, pluralistic, and interpretive, producing a diversity of legal opinions across multiple schools of thought (*madhāhib*), such as the Hanafī, Maliki, Shāfi'ī, and Hanbali traditions.¹ Unlike civil law systems, where the state assumes the role of legislator and enforcer of codified norms, in classical Islam, the state had a more limited function, often confined to the appointment of judges and the enforcement of selected rules, without producing comprehensive legal codes.²

¹Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge, MA: Cambridge University Press, 2005), p. 27–49.

²N.J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), p. 117–22.

Codification in the Western legal sense defined as the process of reducing legal principles into an organized and written statutory form did not emerge in Islamic legal systems until the 19th century. This shift was catalyzed by a range of historical and political pressures, most notably the encroachment of European colonial powers, internal drives for modernization, and the need for administrative standardization. The process of codification marked a significant departure from classical methods of legal interpretation, as it centralized legal authority in the hands of the state and limited the flexibility traditionally afforded to jurists and judges.³ The Ottoman Empire's promulgation of the *Majalla al-Ahkām al-ʿAdliyya* between 1869 and 1876 a civil code based on Hanafi jurisprudence but structured in a Western coda format is widely considered the first successful attempt to codify Islamic law.⁴

From a comparative law perspective, the codification of Islamic law reflects a broader set of legal transplants and adaptations that accompanied the spread of modern legal institutions. Legal scholars such as Alan Watson and Esin Örüçü have highlighted how legal systems often evolve through the borrowing and modification of foreign legal elements, especially in the context of colonialism and globalization.⁵ In the Muslim world, the adoption of codification techniques—often modelled on French or other European civil codes coincided with attempts to consolidate national identity and assert legal sovereignty in newly independent or reforming states. However, these codification efforts rarely entailed the wholesale adoption of Western law. Instead, they often resulted in hybrid codes that selectively incorporated Islamic legal norms within a civil law framework, leading to what scholars describe as “Islamic civil law” or “shari‘a-based codification.”⁶

In his foundational work, Noel J. Coulson traces the development of Islamic law, emphasizing the growing tension between the traditional, interpretive nature of *fiqh* and the more rigid structure introduced by modern state codification. He argues that this shift toward codification represents a move away from the dynamic, scholarly discourse of classical jurisprudence toward a more

³Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari' A* (Cambridge: Harvard University Press, 2008), p. 20–25.

⁴Noel. J. Coulson, “Law in the Middle East,” in *Origin and Development of Islamic Law*, ed. Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: Middle East Institute, 1955), p. 215–20.

⁵Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Athens: University of Georgia Press, 1993), p. 21–34; Esin Örüçü, “Law as Transposition,” *International and Comparative Law Quarterly* 2, no. 51 (2002), p. 205–23.

⁶Baudouin Dupret, “What Is Islamic Law?: A Praxiological Answer and an Egyptian Case Study,” *Theory, Culture & Society* 24, no. 2 (2007), p. 79–100; Arif A. Jamal, “Islamic Legal Hybridities and the Modern State: Methodological and Theoretical Reflections,” in *The Law Applied: Contextualizing the Islamic Shari' a*, ed. Peri Bearman, Wolfhart Heinrichs, and Bernard G. Weiss (London: I.B. Tauris, 2008), p. 149–70.

static, legislated framework.⁷ Expanding on this concern, Wael Hallaq warns that codification marked a fundamental break from the classical Islamic legal tradition, relocating legal authority from jurists to the state.⁸ Meanwhile, Asifa Quraishi-Landes, though focused on constitutional design, explores the difficulties of embedding Islamic principles within state legal systems and offers models for codification that honour both tradition and modern legal norms.⁹ In a complementary perspective, Clark Lombardi illustrates how contemporary judges, particularly in countries like Egypt, still interpret codified Islamic laws through the lens of classical *fiqh*, pointing to a continuing hybridity in legal reasoning.¹⁰ Collectively, these scholars reveal that codification did not eliminate the diversity of Islamic legal thought but rather restructured its foundational sources and key legal actors within modern institutional contexts.

This paper examines the codification of Islamic law through the analytical lens of comparative law, exploring how this legal transformation has manifested differently across Muslim-majority jurisdictions. It will consider the historical drivers behind codification, its theoretical and jurisprudential consequences, and the diverse models ranging from centralized state legislation to non-binding religious guidelines that characterize codified Islamic law today. By analyzing the codification process in comparative perspective, this study highlights the ongoing negotiation between tradition and modernity in shaping Islamic legal identity in the contemporary world.

Codification in Comparative Legal Theory

Codification is a core concept and legal technique in comparative legal theory. It refers to the systematic organization of law into a comprehensive legislative text enacted by sovereign authority. Its essence lies not only in formal structure and systematic arrangement but also in its function of ensuring legal certainty, accessibility, and coherence. Codification is closely associated with the civil law tradition, which regards it as an ideal means of legal organization and communication. The French Code Civil (1804) and the German *Bürgerliches Gesetzbuch* (BGB) (1900) are classic models of codified systems, reflecting different stages and philosophies of modern European legal development. Both sought to unify fragmented legal sources, centralize state authority, and establish

⁷Coulson, "Law in the Middle East," p. 102–5.

⁸Hallaq, *The Origins and Evolution of Islamic Law*, p. 167–72.

⁹Asifa Quraishi-Landes, "Islamic Constitutionalism: Not Secular. Not Theocratic. Not Impossible," *Rutgers Journal of Law & Religion* 16 (2015), p. 553–79.

¹⁰Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law* (Leiden: Brill, 2006), p. 85–102.

a rational legal order inspired by Enlightenment ideals of clarity and universality.¹¹

In the French model, codification was conceived as a means of consolidating the achievements of the French Revolution. The Code Civil was not merely a legal instrument but also an ideological statement affirming the primacy of secular and rational principles over the feudal and ecclesiastical norms of the *Ancien Régime*. It was designed as a relatively concise and flexible text, formulated in general terms so that judges could interpret it in light of fundamental principles and evolving social needs.¹² Codification thus served both to unify the law and to project a new political and moral order grounded in equality, property rights, and contractual freedom. By contrast, the German *Bürgerliches Gesetzbuch* (BGB) embodied a more scientific and systematic approach to codification. Influenced by legal positivism and the German Historical School, it sought to construct a comprehensive and logically ordered legal system expressed through abstract concepts and technical precision. Its detailed structure aimed to minimize judicial discretion, reinforce legislative supremacy, and ensure internal coherence across the entire body of private law.¹³

Comparative law scholarship often treats codification as a defining feature of the civil law tradition, distinguishing it from the common law system, where law develops primarily through judicial decisions and precedent. In common law jurisdictions, statutes and codes play a supplementary role, while judges exercise a creative law-making function through *stare decisis*.¹⁴ Civil law systems, in contrast, regard codified legislation as the authoritative and exhaustive source of law, with judges acting mainly as appliers of written norms. Codification therefore represents not only a legal technique but also a broader philosophical orientation toward law, governance, and institutional authority.

Against this backdrop, Islamic law presents a unique case. The classical Islamic legal tradition did not develop codified laws in the modern sense. Instead, it evolved through a decentralized and jurist-driven process known as *fiqh* (Islamic jurisprudence). *Fiqh* represents the human interpretation of divine law (*sharī'a*), which itself is derived from primary sources such as the Qur'an, the Hadith (prophetic traditions), *ijmā'* (consensus), and *qiyās* (analogical

¹¹Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, Trans. Tony Weir (Oxford: Clarendon Press, 1998), p. 70–75.

¹²Jean-Louis Halpérin, "The French Civil Code," in *The Oxford Handbook of European Legal History*, ed. Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey (Oxford: Oxford University Press, 2018), p. 739–43.

¹³Reinhard Zimmermann, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (Durham: Carolina Academic Press, 1996), p. 123–27.

¹⁴Mathias Reimann and Reinhard Zimmermann, *The Oxford Handbook of Comparative Law* (Oxford: Oxford University Press, 2006), p. 228–32.

reasoning).¹⁵ Legal authority resided not in the state, but in a scholarly class of *'ulamā'* who developed, taught, and issued legal opinions (*fatāwā*) within a pluralistic and dialogical framework.

The absence of codification in classical Islamic law can be explained by both theological and institutional factors. Theologically, Islamic law is seen as divine in origin and therefore not subject to human encapsulation in a fixed text.¹⁶ Juristic interpretation was considered a form of *ijtihad*, or independent reasoning, and allowed for multiple valid opinions on a single issue, depending on the school of law (*madhhab*) to which a scholar belonged. This legal pluralism was institutionalized through the coexistence of multiple *madhāhib*, each with its own methodology and corpus of jurisprudence.¹⁷ Institutionally, Islamic polities such as the Abbasid and Ottoman empires did not centralize law-making in the hands of the state. While rulers issued administrative regulations (*siyāsa*), these were considered distinct from *fiqh* and did not override the juristic consensus.

From a comparative law standpoint, Islamic law does not neatly fit into the civil–common law dichotomy. Instead, it has been classified by scholars such as Harold Berman and John Henry Merryman as a “religious legal tradition”—a tradition where law is fundamentally intertwined with religion, morality, and theology.¹⁸ Berman emphasizes that religious legal traditions are historically older than secular ones and are rooted in divine revelation rather than legislative sovereignty.¹⁹ This classification has implications for how codification is understood within Islamic contexts. In Western legal traditions, codification often implies a transition from customary or ecclesiastical law to state-centered, rationalized legislation. In Islamic contexts, codification signifies a shift from juristic pluralism and scholarly autonomy to state control and legal uniformity. The codification of Islamic law in modern states reconfigures legal authority and epistemology. Instead of preserving the methodological diversity of *fiqh*, codification selects particular rulings from one or more schools, removes conflicting interpretations, and presents the outcome as a single authoritative text.²⁰ This process is shaped by practical and ideological considerations. Practically, codification meets the administrative needs of modern states by providing clarity, uniformity, and predictability in legal relations. Ideologically,

¹⁵Wael. B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), p. 22–34.

¹⁶Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), p. 371–74.

¹⁷Coulson, “Law in the Middle East,” 115–20.

¹⁸Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), p. 9–12.

¹⁹John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (Stanford: Stanford University Press, 2007), p. 2–4.

²⁰Baudouin Dupret, *What Is the Sharia?* (London: Hurst, 2018), p. 79–100.

it reflects efforts to align Islamic law with the structural demands of modern legal systems, many of which derive from colonial legacies or European models.²¹

Examples of this transformation appear across the Muslim world. The Ottoman Empire's *Majalla* (1869–1876) was an early codification of Hanafi civil law, structured in the style of European codes.²² In Egypt, Islamic personal status law was codified in the 1920s and 1930s, while civil and commercial laws were modeled on French and Swiss systems.²³ In postcolonial states such as Pakistan, Indonesia, and Malaysia, Islamic legal principles have been codified in family law, inheritance, and religious endowments, often through state-led initiatives that marginalize traditional juristic authorities.²⁴ These developments demonstrate how codification reshapes both legal content and institutional authority. Critics argue that codification freezes a dynamic legal tradition by privileging selected interpretations and weakening the discursive character of Islamic jurisprudence.²⁵ It narrows the scope for *ijtihad* and reduces the law's adaptability to changing social conditions. Codification also transfers interpretive authority from religious scholars to judges and legislators, many of whom lack deep training in Islamic legal theory. From a comparative perspective, these critiques echo broader concerns about the rigidity and ossification of codified law. In Islamic contexts, however, the stakes are higher, as codification not only restructures legal practice but also redefines the relationship between divine law and human governance.

In conclusion, codification in comparative legal theory provides a useful lens through which to understand the evolution and transformation of Islamic law in the modern era. While codification is a central feature of civil law systems and reflects a particular vision of legal rationality and state authority, its application to Islamic legal traditions involves deeper epistemological and institutional shifts. Islamic law, as a religious legal tradition, developed through non-codified, pluralistic, and juristic methods that are fundamentally different from the legislative models of Europe. The movement toward codification, therefore, entails not merely a change in form but a profound reconfiguration of legal authority, interpretation, and identity.

²¹An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'ah*, 20–25.

²²Coulson, "Law in the Middle East," p. 215–20.

²³Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge: Cambridge University Press, 1977), p. 101–9.

²⁴Mark E. Cammack, "Indonesia's Islamic Courts," in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, ed. R. Michael Feener and Mark E. Cammack (Cambridge: Harvard University Asia Center, 2007), p. 146–77.

²⁵Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton: Princeton University Press, 1999), p. 65–89.

The Emergence of Codification in Islamic Legal Systems

Codification of Islamic law began in earnest during the 19th century, often in response to colonial pressures and efforts by Muslim rulers to modernize their legal systems. The colonial era brought with it the expansion of European legal systems into Muslim-majority territories, necessitating legal reform by local rulers who sought to assert sovereignty and demonstrate administrative competence. The most notable and influential early codification was the *Majalla al-Ahkām al-‘Adliyya* (commonly referred to as the *Majalla* or *Mecelle*), compiled in the late Ottoman Empire between 1869 and 1876. Drafted by a commission under the leadership of Ahmed Cevdet Pasha, the *Majalla* applied principles of Hanafī jurisprudence to civil transactions and was designed in the format of a modern civil code, comprising 1,851 articles. Although rooted in Islamic legal doctrine, its systematic organization into titles, chapters, and articles mirrored the structural form of European codified law, particularly the French *Code Civil*.

The *Majalla* was a landmark effort to reconcile the substance of traditional Islamic jurisprudence with the procedural and structural form of Western legal systems. It was applied in Ottoman civil courts and remained in force in several post-Ottoman successor states, including Jordan, Lebanon, and Syria, well into the 20th century.²⁶ The code addressed areas such as contracts, torts, and property, but deliberately excluded criminal law and family law, areas still governed by classical *fiqh*. The *Majalla* represented a compromise: it sought to modernize legal administration without abandoning Islamic identity. Its adoption signaled a shift from reliance on juristic manuals and *fatwā* collections to state-legislated legal texts.

The 20th century witnessed the rapid acceleration of codification across the Muslim world, particularly in the realm of personal status law. In most cases, this process was driven by the need for legal modernization in the wake of decolonization, nation-state formation, and the development of centralized bureaucracies. Egypt became a forerunner in this area. While it retained a civil code heavily influenced by the French model, it enacted Islamic family law statutes beginning in the 1920s. Laws No. 25 of 1920 and 25 of 1929 regulated issues such as maintenance, polygamy, divorce, and judicial separation.²⁷ These statutes retained legitimacy by adhering to Hanafī *fiqh*, which had long been the state-sanctioned school of law in Egyptian courts.²⁸

The Egyptian model of legal dualism—combining a secular civil code for commercial and criminal matters with codified Islamic law in family and personal

²⁶Baber Johansen, “The Ottoman Majalla and the Nature of Islamic Law,” in *Law and Empire in the Middle East*, ed. Chibli Mallat (London: I.B. Tauris, 1990), p. 128–41.

²⁷Kenneth Cuno, *Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt* (Syracuse: Syracuse University Press, 2015), p. 165–74.

²⁸Lama Abu-Odeh, “Modernizing Muslim Family Law: The Case of Egypt,” *Vanderbilt Journal of Transnational Law* 37 (2004), p. 1043–1112.

matters was widely replicated across the Arab world. Syria's 1953 Personal Status Law was modeled on both the Egyptian statutes and Hanafi jurisprudence, with additions and reforms tailored to local conditions.²⁹ In Morocco, the 1957 *Mudawwana* (Family Code) codified Maliki doctrine but introduced procedural safeguards and court oversight in divorce and marriage contracts, thus reflecting a hybrid approach to Islamic legal reform.³⁰ Tunisia, by contrast, undertook more radical reforms under President Habib Bourguiba, who introduced the 1956 Code of Personal Status that outlawed polygamy and enhanced women's rights, while invoking Islamic principles of *ijtihad* to justify legislative innovation.³¹ Tunisia's reforms were particularly significant for their symbolic and practical break with classical *fiqh* in favor of state-defined gender equity, and Bourguiba openly challenged the binding authority of traditional interpretations.

In South Asia, Islamic legal codification unfolded under different colonial and postcolonial dynamics. During British rule, Islamic law was gradually confined to the private domain. The enactment of the Muslim Personal Law (Shariat) Application Act in 1937 marked a legislative reaffirmation of Islamic family law in British India, covering areas such as marriage, inheritance, and *waqf*.³² After partition, Pakistan inherited this system and undertook further codification through the Muslim Family Laws Ordinance (MFLO) of 1961. The MFLO introduced significant reforms, including mandatory registration of marriages, restrictions on polygamy, and a reinterpreted inheritance provision that granted orphaned grandchildren a share in the estate of their deceased grandfather.³³ These reforms reflected both modernist aspirations and a reassertion of Islamic principles under state control.

In Southeast Asia, the codification process followed yet another trajectory. Indonesia, which had inherited a Dutch civil law system, formally codified Islamic family law in the *Kompilasi Hukum Islam* (Compilation of Islamic Law) of 1991. Although issued as a presidential instruction and not passed by parliament, the Compilation became the principal reference for Islamic courts in family law cases.³⁴ It synthesized doctrines from the Shāfi'ī school with modern statutory requirements, such as registration of marriages and procedural guarantees for divorce. The document's quasi-legal status gave it flexibility but also left it vulnerable to executive revision, a concern raised by scholars regarding

²⁹Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, p. 40–52.

³⁰Mounira M. Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (Berkeley: University of California Press, 2001), p. 144–53.

³¹Charrad, p. 179–83.

³²Quraishi-landes, "Islamic Constitutionalism: Not Secular. Not Theocratic. Not Impossible.", p. 553–679.

³³Ruby Mehdi, *The Islamization of the Law in Pakistan* (Richmond: Curzon Press, 1994), p. 77–85.

³⁴Arskal Salim, *Challenging the Secular State: The Islamisation of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), p. 131–42.

the accountability of religious adjudication. In Malaysia, Islamic family law was codified at the state level beginning in the 1980s, based on a model law formulated by the federal government. Although each state retained autonomy, most enacted versions of the Islamic Family Law (Federal Territories) Act 1984. The Malaysian codes were notable for blending traditional *fiqh* with contemporary policy concerns, including protections for women and children.³⁵ In both Indonesia and Malaysia, debates over codification have centered on the scope of judicial discretion, the integration of customary practices, and the tension between religious authority and constitutional law.

Iran offers an exceptional case of codification due to its post-revolutionary political structure. Following the 1979 Islamic Revolution, the Iranian legal system underwent a comprehensive Islamization. The Civil Code and Penal Code were revised in accordance with Ja'farī Shi'a jurisprudence. The Islamic Penal Code reintroduced *hudūd* (fixed) and *qiṣāṣ* (retaliatory) punishments, while civil law reforms restored traditional rules regarding marriage, custody, and divorce.³⁶ The Guardian Council was tasked with ensuring all legislation conformed to Islamic law. Unlike other states that compartmentalized Islamic law into family matters, Iran extended Islamic norms into nearly all legal domains. The Iranian example demonstrates how codification can serve revolutionary and theocratic agendas by embedding religious doctrine into the very structure of the state's legal identity.

Across these jurisdictions, codification of Islamic law has followed distinct yet overlapping patterns. First, it has involved a reconfiguration of legal authority. In classical Islamic jurisprudence, legal norms were derived by independent scholars operating outside state control. Codification, by contrast, centralizes legal authority within the state, often through ministries of justice or parliamentary legislation. Second, codification necessitates the selection of specific doctrines from among the multiple schools of Islamic law, thereby reducing juristic pluralism. Third, the process reflects the influence of Western legal forms and institutions, resulting in hybrid legal systems where Islamic norms are presented in the format of civil codes.

This process has been subject to both praise and critique. Proponents argue that codification increases legal certainty, facilitates reform, and allows Islamic principles to be harmonized with modern state administration. Critics, however, contend that codification freezes Islamic law, curtails its adaptability, and shifts interpretive authority away from qualified scholars. As Sami Zubaida notes, the codification of Islamic law has often served the interests of state elites, who use it to legitimize authoritarian rule while curbing the influence of independent

³⁵Nurul Huda Mohd. Aziz, *Family Law in Malaysia: Cases and Commentary* (Selangor: Sweet & Maxwell Asia, 2013), p. 5–12.

³⁶Ziba Mir-Hosseini, "Islam and Gender Justice," *Social Research* 67, no. 2 (2000), p. 351–78.

religious authorities.³⁷ Legal anthropologists have observed that codification transforms Islamic law from a discursive and interpretive practice into a textual and bureaucratic one, removing much of its local embeddedness and cultural nuance. The replacement of muftis with state judges further alters the socio-legal role of law in Muslim communities.

Moreover, codification has raised fundamental questions about the relationship between *sharīʿa* and state sovereignty. In classical theory, *sharīʿa* transcended political boundaries and was not subject to state legislation. Codification, however, reconfigures *sharīʿa* as a source of positive law, subject to repeal, amendment, and reinterpretation by legislative bodies. This transformation not only alters the epistemology of Islamic law but also redefines the concept of legal legitimacy. While classical *fiqh* derived its legitimacy from scholarly consensus and textual interpretation, codified Islamic law derives its authority from the state's legislative will. This has implications for how Muslim societies conceptualize the relationship between divine authority and temporal governance.

We see, therefore, that the emergence of codification in Islamic legal systems reflects a complex interplay of legal tradition, political power, colonial legacy, and modern administrative rationality. From the Ottoman *Majalla* to contemporary family codes in Egypt, Tunisia, Malaysia, and Iran, the movement to codify Islamic law illustrates how states have selectively institutionalized Islamic norms in pursuit of national legal modernization. These efforts have resulted in systems that are neither wholly Islamic nor fully secular, but instead embody the tension between tradition and modernity, jurisprudential plurality and state centralization, divine law and legislative sovereignty. Codification, therefore, is not merely a technical legal process but a transformative act that reshapes the role of Islam in public life.

Comparative Models of Codification

The codification of Islamic law has taken diverse forms across the Muslim world, shaped by each country's historical trajectory, political priorities, and prevailing legal philosophies. While some states, like Iran, have implemented highly centralized and theologically grounded codifications, others, such as Malaysia and Indonesia, have opted for hybrid or decentralized models that reflect plural legal heritages. In places like Egypt and Jordan, Islamic law is codified alongside civil law norms, resulting in systems that selectively integrate Islamic principles within modern legislative frameworks. These varying approaches

³⁷Sami Zubaida, *Law and Power in the Islamic World* (London: I.B. Tauris, 2003), p. 43–56.

illustrate how codification is not a monolithic process but one deeply influenced by local context and institutional dynamics.

1. Centralized Codification: Iran and Saudi Arabia

Iran and Saudi Arabia represent two of the most significant examples of centralized Islamic legal systems in the contemporary Muslim world. While both states ground their legal authority in Islamic jurisprudence, they have followed divergent paths in relation to codification, institutionalization, and the balance between religious interpretation and state authority. Iran has pursued an aggressive program of legal codification since the Islamic Revolution in 1979, grounded in the principles of Jaʿfari (Twelver) Shiʿa jurisprudence. Saudi Arabia, conversely, has historically resisted codification, relying on the Hanbali school and its associated judicial discretion. However, recent developments suggest a gradual shift in Saudi Arabia toward formal codification, albeit within the framework of preserving religious legitimacy.

In Iran, the Islamic Revolution of 1979 ushered in a theocratic republic premised on the idea of *velāyat-e faqīh* (Guardianship of the Jurist), a concept developed by Ayatollah Ruhollah Khomeini. This doctrine conferred ultimate legal and political authority on a supreme jurist, the *faqīh*, who oversees the conformity of state law with Islamic principles. Consequently, post-revolutionary Iran embarked on an extensive legal transformation aimed at aligning national law with Islamic norms. Central to this transformation was the codification of both civil and criminal law in line with Jaʿfari jurisprudence.³⁸

One of the most prominent outcomes of this process was the Islamic Penal Code, originally enacted in 1991 and subsequently revised in 2013. The code incorporates classical Islamic criminal categories such as *hudūd* (fixed punishments for specific crimes), *qiṣās* (retaliation for homicide and bodily harm), and *diyāh* (monetary compensation for injury or death).³⁹ For example, the *hudūd* punishments include amputation for theft, stoning for adultery, and flogging for alcohol consumption, although the implementation of these penalties often depends on stringent evidentiary requirements.⁴⁰ In addition to criminal law, family law in Iran is also governed by codified statutes that reinforce patriarchal authority and male guardianship, reflecting traditional Shiʿa interpretations. The Civil Code incorporates rules governing marriage, divorce, custody, and

³⁸Shahrough Akhavi, *Religion and Politics in Contemporary Iran: Clergy–State Relations in the Pahlavi Period* (Albany: SUNY Press, 1980), p. 211–15.

³⁹Hossein Esmacili, “The Nature and Development of Law in Iran: Toward a New Definition of Islamic Law,” *University of Queensland Law Journal* 27, no. 2 (2008), p. 351–79.

⁴⁰Farideh Farhi, “Iran’s Islamic Penal Code: Legalising Violence,” in *Gender and Equality in Muslim Family Law*, ed. Ziba Mir-Hosseini (London: I.B. Tauris, 2013), p. 135–53.

inheritance that prioritize male authority and clerical control over judicial interpretation.⁴¹

What distinguishes Iran's approach is not only the content of its laws but also the mechanisms for ensuring their compliance with Islamic principles. The Guardian Council, an unelected body composed of Islamic jurists and legal experts, is tasked with reviewing all legislation passed by the Iranian Parliament (Majles) to ensure its conformity with Islamic law and the Constitution. This institutional arrangement reflects a deep entrenchment of clerical oversight in the legislative process, effectively making the codification of Islamic law an ongoing and centrally managed endeavor.⁴²

By contrast, Saudi Arabia has historically adhered to a legal tradition grounded in uncodified Hanbali jurisprudence. The Hanbali school is considered the most textually conservative of the four Sunni madhāhib and emphasizes strict adherence to the Qur'an and Hadith with minimal reliance on analogical reasoning or juristic discretion.⁴³ For much of the 20th century, Saudi Arabia resisted codification on the grounds that it would impose artificial constraints on the judge's obligation to apply divine law directly from its sources. Judicial decisions were based on individual interpretation of Hanbali doctrine, and legal reasoning remained largely oral, unpublished, and immune from standardization.⁴⁴

However, this resistance to codification began to erode in the early 21st century under the leadership of Crown Prince Mohammed bin Salman, whose Vision 2030 program seeks to modernize and diversify the Saudi economy and legal infrastructure. In 2021, the Saudi government announced plans to introduce four major codifications: a Personal Status Law, a Civil Transactions Law, a Penal Code for Discretionary Sentences, and an Evidence Law.⁴⁵ The stated purpose of these reforms is to enhance legal transparency, consistency, and predictability—hallmarks of codified systems—while retaining fidelity to Islamic principles.

In March 2022, Saudi Arabia issued its first codified Personal Status Law, marking a historic departure from purely judge-made family law. The new law regulates marriage, divorce, child custody, and inheritance within a statutory framework. While it remains rooted in Hanbali jurisprudence, the codification introduces procedural safeguards and standardizes judicial discretion, signaling a

⁴¹Haideh Moghissi, *Women and Islam: Critical Concepts in Sociology* (London: Routledge, 2005), p. 143.

⁴²Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008), p. 195–98.

⁴³Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden: Brill, 2000), p. 65–70.

⁴⁴Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, 120.

⁴⁵“Saudi Arabia to Introduce Major Legal Reforms,” *Al Arabiya*, February 8, 2021, <https://english.alarabiya.net/News/gulf/2021/02/08>.

move toward greater formalization.⁴⁶ For example, the law specifies conditions for marriage contracts, introduces guidelines for alimony and child support, and curtails arbitrary repudiation (*talāq*) by husbands, thereby enhancing legal protection for women.⁴⁷ Saudi Arabia's shift toward codification does not imply a departure from its Islamic identity. Rather, it reflects a pragmatic adaptation of Islamic law to the demands of modern governance, economic globalization, and international legitimacy. In implementing these reforms, the state has emphasized that the new codes remain consistent with sharīʿa principles, and Islamic scholars have been involved in their drafting.⁴⁸ This continuity ensures that religious legitimacy is maintained even as the state consolidates legal authority.

Despite these developments, critics have raised concerns about the extent to which codification in both Iran and Saudi Arabia serves to centralize power in the hands of the state and reduce the autonomy of the juristic community. In Iran, the dominance of the Guardian Council and the monopoly of the ruling clerical elite have led to accusations that Islamic law has become a tool of political control rather than a living juristic tradition.⁴⁹ In Saudi Arabia, codification risks marginalizing traditional judges and scholars whose authority was previously grounded in mastery of Hanbali texts and local jurisprudential customs. Moreover, while codification may enhance legal predictability, it can also curtail the interpretive flexibility that has historically characterized Islamic law. In both countries, the move toward codification involves selecting particular interpretations of Islamic norms and entrenching them in statutory form, thereby excluding alternative views and reducing legal pluralism.⁵⁰ The transformation of Islamic law from a dynamic, dialogical process into a set of binding state laws carries significant implications for the evolution of Islamic legal theory and practice.

From a comparative legal perspective, Iran and Saudi Arabia exemplify two poles of centralized codification within Islamic legal systems. Iran's model represents an ideologically driven codification project anchored in revolutionary Shi'ism and clerical oversight. Saudi Arabia's model, by contrast, reflects a gradualist approach to legal modernization that balances codification with continuity in Hanbali doctrine. In both cases, codification has served as a

⁴⁶Bader Al-Saud, "Saudi Arabia's Codification of Family Law: A Step toward Legal Reform," *Middle East Institute*, March 2022, <https://www.mei.edu>.

⁴⁷Lina Alhathloul and Alya Alasaker, "The New Saudi Personal Status Law: A Missed Opportunity for Reform," *Lawfare*, April 15, 2022, <https://www.lawfareblog.com>.

⁴⁸Ahmed Fekry Ibrahim, *Pragmatism in Islamic Law: Legal Flexibility and Judicial Reasoning in Egypt* (Syracuse: Syracuse University Press, 2015), p. 98.

⁴⁹Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin: University of Texas Press, 2002), p. 189.

⁵⁰Ziba Mir-Hosseini, "The Politics of Codifying Muslim Family Law: Gender, Legal Pluralism and the Moroccan Reforms," *International Journal of Law in Context* 9, no. 3 (2013), p. 400–425.

mechanism for state-building, legal standardization, and the assertion of sovereignty, while simultaneously reshaping the epistemology and institutional structure of Islamic law.

2. Hybrid Codification: Egypt, Jordan, and Malaysia

Egypt and Jordan represent prominent examples of hybrid legal systems in which Islamic personal status laws are codified and coexist with civil law frameworks influenced by European models. These systems reflect a complex interplay between the preservation of Islamic legal identity and the pragmatic demands of modern state governance. Similarly, Malaysia though geographically and culturally distinct demonstrates how a multi-tiered legal structure can accommodate Islamic norms within a constitutional and federal system. In all three cases, codification functions as both a tool of legal modernization and a means of preserving religious tradition, often through selective adaptation of Islamic jurisprudence to contemporary legal norms.

Egypt: Codification through Selective Adaptation

Egypt's legal system is a paradigmatic case of hybridization, combining a civil law structure inspired by the French Napoleonic model with codified Islamic family law. The country began codifying Islamic personal status law in the early 20th century, most notably through Law No. 25 of 1920 and Law No. 25 of 1929. These laws addressed issues of marriage, divorce, maintenance, and custody, drawing primarily from the Hanafi school of jurisprudence, which was the official madhhab of the Egyptian legal system.⁵¹ However, the codification process in Egypt did not involve a wholesale adoption of Hanafi doctrine. Rather, the Egyptian state selectively adapted Islamic legal principles to achieve particular policy goals. For instance, Law No. 25 of 1929 introduced judicial divorce (*tafrīq*) on grounds of harm, thereby allowing women greater legal recourse in marital disputes.⁵² This provision marked a departure from classical Hanafi doctrine, which traditionally limited women's access to divorce. The law also restricted a man's right to polygamy by requiring a demonstration of fairness and just treatment among wives, even though polygamy itself remained legally permissible.⁵³

Subsequent reforms have continued this trend of selective modernization. In the 1970s and 1980s, Egyptian legislation introduced further procedural reforms aimed at improving women's access to family courts, including mandatory documentation of marriage contracts and enhanced judicial oversight

⁵¹Dupret, *What Is the Sharia?*, p. 103.

⁵²Lynn Welchman, *Women and Muslim Family Laws in Arab States* (Amsterdam: Amsterdam University Press, 2007), p. 57–61.

⁵³Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, p. 88.

of child custody and visitation rights.⁵⁴ The 2000 Khul‘ Law (Law No. 1 of 2000) granted women the right to unilaterally terminate a marriage in exchange for foregoing financial entitlements, a measure inspired by Maliki jurisprudence but adapted for statutory application.⁵⁵ While Egypt's family law retains Islamic legitimacy through its grounding in *fiqh*, the codification process has transformed both its form and institutional logic. Legal authority now resides not in religious scholars but in state judges, who interpret and apply the statutory provisions. This transition reflects a broader shift from juristic pluralism to legal centralization, characteristic of modern codified systems.⁵⁶ Yet, Islamic law continues to serve as a legitimating framework, allowing the state to present legal reforms as both modern and authentically Islamic.

Jordan, like Egypt, maintains a dual legal system in which Islamic personal status law is codified alongside a civil code inspired by European models, particularly the Egyptian and French civil codes. The cornerstone of Jordanian personal status law is the Personal Status Law of 1976, which was revised in 2010 and again in 2019. The law is primarily based on Hanafi jurisprudence but also draws on other Sunni schools, allowing for legislative flexibility.⁵⁷

The Jordanian Personal Status Law addresses marriage, divorce, custody, maintenance, and inheritance. It incorporates procedural and substantive reforms intended to promote gender equity and legal clarity. For instance, the 2010 amendment raised the legal marriage age to 18, established clear guidelines for alimony and maintenance, and enhanced women's rights in child custody cases.⁵⁸ While preserving the Islamic framework, the law introduced standardized court procedures and documentation requirements, ensuring legal certainty and administrative efficiency. Judicial authority in Jordan's Sharia courts is exercised by qadis trained in both Islamic jurisprudence and state law. These courts operate under the supervision of the Chief Justice Department, a governmental body responsible for overseeing the administration of Islamic family law.⁵⁹ The codification of personal status law in Jordan serves to unify legal interpretation, reduce arbitrariness, and align Islamic norms with the broader goals of legal modernization.

⁵⁴Mulki Al-Sharmani, *Islamic Feminism and Reforming Muslim Family Laws* (Zed Books, 2013), p. 59–65.

⁵⁵Mir-Hosseini, "Islam and Gender Justice," p. 65–68.

⁵⁶Abu-Odeh, "Modernizing Muslim Family Law: The Case of Egypt," p. 1043–76.

⁵⁷Dawoud S. El Alami and Doreen Hincheliffe, *Islamic Marriage and Divorce Laws of the Arab World* (London: Kluwer Law International, 1996), p. 113–16.

⁵⁸Muhammad Khalid Masud, *Shariah Law and Modern Muslim Ethics* (Leiden: Brill, 2015), p. 132.

⁵⁹Samir Badran, "The Development of Sharia Courts in Jordan," *Islamic Law and Society* 12, no. 1 (2005), p. 31–54.

Despite these reforms, critiques persist regarding the limitations imposed on women and the judiciary's reliance on patriarchal interpretations of Islamic law. For example, the grounds for divorce remain more favorable to men, and legal guardianship continues to be vested in male relatives.⁶⁰ Nonetheless, Jordan's model exemplifies how a codified Islamic legal system can operate within a broader civil law framework while retaining Islamic identity.

Malaysia: Federalism, Pluralism, and State-Level Codification

Malaysia provides a distinctive example of Islamic legal codification in a pluralistic and federal legal environment. As a federation of 13 states and 3 federal territories, Malaysia maintains a dual legal system in which Islamic law is applicable to Muslims in matters of personal status and religious observance. Each state has the constitutional authority to enact its own Islamic family laws, although these laws are often based on a federal model law developed by the Department of Islamic Development Malaysia (JAKIM).⁶¹

The codification of Islamic family law in Malaysia began in earnest in the 1980s, culminating in statutes such as the Islamic Family Law (Federal Territories) Act 1984. These statutes regulate marriage, divorce, custody, inheritance, and maintenance, drawing primarily from the Shāfi'ī school of law while incorporating elements of other Sunni schools as needed.⁶² The laws also establish Syariah Courts as specialized judicial bodies with jurisdiction over Muslims in personal status matters. These courts operate parallel to the civil courts, creating a bifurcated legal structure. Malaysia's codified Islamic family laws reflect both traditional *fiqh* and modern statutory norms. For instance, the laws require formal registration of marriages and divorces, mandate court approval for polygamous marriages, and provide judicial mechanisms for divorce and custody disputes.⁶³ These provisions enhance procedural clarity and safeguard the rights of women and children, even as they operate within an Islamic normative framework. Judicial decisions in Syariah Courts are subject to appeal and review, and the courts are staffed by judges trained in both Islamic jurisprudence and Malaysian law. Furthermore, the constitutional framework allows for judicial review of Syariah legislation to ensure compliance with

⁶⁰Suad Joseph and Afsaneh Najmabadi, eds., *Encyclopedia of Women & Islamic Cultures* (Leiden: Brill, 2003), p. 398–403.

⁶¹Azizan Baharuddin and Zaharah Nawawi, "Islamic Legal Framework in Malaysia: The Issue of Jurisdiction and Harmonisation," *Journal of Islamic Law Review* 14 (2018), p. 87–95.

⁶²Nik Noraini Nik Badli Shah, "Islamic Family Law in Malaysia: New Challenges in Harmonization," *Journal of Islamic Law* 15 (2021), p. 203–18.

⁶³Norani Othman, "Muslim Women and the Challenge of Islamic Fundamentalism/Extremism: An Overview of Southeast Asian Muslim Women's Struggle for Human Rights and Gender Equality," *Women's Studies International Forum* 29, no. 4 (2006), p. 339–53.

fundamental rights under the Federal Constitution.⁶⁴ This arrangement introduces a layer of legal accountability and illustrates the interaction between Islamic law and constitutional principles in a plural legal system.

Malaysia's codification process has also sparked significant public and academic debate. Women's rights organizations have challenged discriminatory provisions and called for reforms to align Islamic family law with international human rights standards.⁶⁵ In response, some states have amended their laws to enhance gender equity, including reforms to maintenance enforcement, custody rights, and protection against domestic violence. Nonetheless, the decentralized nature of Islamic legal administration means that implementation varies across states, leading to inconsistencies and legal fragmentation.⁶⁶

We can conclude that Egypt, Jordan, and Malaysia exemplify how Islamic personal status law is codified across differing legal and political environments. All three systems draw on Sunni *fiqh* as a normative foundation, embed Islamic law within broader civil or constitutional frameworks, and employ codification to modernize and standardize legal practice. Important differences persist, however. Egypt and Jordan adopt centralized models, characterized by national statutes and unified court structures. Malaysia, in contrast, operates a decentralized federal system in which each state maintains its own codified Islamic family law. This arrangement enhances responsiveness to local values but also generates diversity in legal standards and enforcement. From a comparative legal perspective, these hybrid systems demonstrate the adaptive capacity of Islamic law when mediated through state institutions. Codification serves to institutionalize Islamic norms while aligning them with principles of legal rationality and administrative efficiency. Nonetheless, persistent tensions remain, particularly in reconciling claims of Islamic authenticity with demands for gender equality, judicial consistency, and human rights.⁶⁷

3. Non-Legislative Codification: Indonesia

Indonesia presents a distinctive model of Islamic legal codification shaped by its plural legal heritage, Dutch colonial legacy, and post-independence efforts to harmonize Islamic jurisprudence with a modern legal state. Unlike many Muslim-majority countries that codify Islamic law through parliamentary statutes, Indonesia has adopted a softer form of institutionalization through non-legislative codification. The Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI),

⁶⁴Shad Saleem Faruqi, *Document of Destiny: The Constitution of the Federation of Malaysia* (Kuala Lumpur: Star Publications, 2008), p. 114–20.

⁶⁵Sisters in Islam, "Policy Brief on Reform of Islamic Family Law," *SIS Malaysia*, 2010, <https://sistersinislam.org.my>.

⁶⁶Maznah Mohamad, "Legal Pluralism and Islam in Malaysia," *Islamic Studies* 46, no. 3 (2007), p. 311–36.

⁶⁷An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'ah*, p. 205–8.

issued under Presidential Instruction No. 1 of 1991, serves as the principal reference for marriage, divorce, inheritance, and other aspects of Muslim family law.⁶⁸ Although not enacted as formal legislation, the KHI functions as the de facto legal guide for religious courts (*peradilan agama*), operating within Indonesia's broader civil law framework.⁶⁹

Indonesia's plural legal system consists of three overlapping sources of law: statutory civil law derived from Dutch colonial codes, customary or traditional law (*adat*), and Islamic law (*hukum Islam*).⁷⁰ Following independence in 1945, Indonesia retained much of the Dutch civil law structure but incorporated Islamic law selectively, especially in areas relevant to Muslim personal status. Article 29 of the 1945 Constitution affirms that the state is based on belief in the One and Only God and guarantees freedom of religion, but it does not explicitly declare Islam—or any religion—as the source of legislation.⁷¹ This constitutional ambiguity has allowed for Islamic law to be accommodated without being elevated to the status of national law, thus paving the way for a unique mode of codification through executive action rather than legislative authority.⁷²

The KHI was drafted by Islamic scholars, legal experts, and judges under the Ministry of Religious Affairs to achieve legal uniformity across Indonesia's Islamic courts, which had previously relied on diverse interpretations of classical *fiqh*, primarily from the Shāfi'ī school.⁷³ The text consists of 229 articles organized into three books: Marriage, Inheritance, and Religious Endowments (*waqf*). It integrates traditional jurisprudence with contemporary social needs, regulating matters such as marriage age, polygamy, divorce procedures, guardianship, and property rights. For instance, Article 3(2) permits polygamy only under strict conditions, requiring judicial approval and proof of the husband's ability to provide equally for multiple wives.⁷⁴ A defining feature of

⁶⁸M.B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: ISEAS, 2008), p. 19–23.

⁶⁹Mark Cammack, "Indonesia's Compilation of Islamic Law: A Study in Legal Politics," *Washington International Law Journal* 17, no. 1 (2008), p. 1–35.

⁷⁰Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford: Hart Publishing, 2012), p. 163–68; see also, the convergence and divergence of Islamic, adat and Civil adat laws in Indonesia in Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable, Legal Pluralism in Indonesia: Bridging the Unbridgeable* (London and New York: Routledge, 2013); Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah* 5, no. 1 (2021), p. 426–49.

⁷¹Butt and Lindsey, *The Constitution of Indonesia: A Contextual Analysis*, p. 163–68.

⁷²Salim, *Challenging the Secular State: The Islamisation of Law in Modern Indonesia*, 115–25.

⁷³Nurrohman Syarif, "Religious Courts and Legal Pluralism in Indonesia," in *Law and Religion in Indonesia*, ed. Melissa Crouch (London: Routledge, 2014), p. 141–56.

⁷⁴Tim Lindsey, "Syariah and National Law in Indonesia," in *Shari'a Incorporated*, ed. Jan Michiel Otto (Leiden: Leiden University Press, 2010), p. 235–36.

the KHI is its non-legislative status. Issued through a presidential instruction rather than enacted by parliament, it lacks formal legislative authority. Nonetheless, it operates as a binding legal reference for religious courts through administrative directives from the Ministry of Religious Affairs and the Supreme Court. Judges in the *peradilan agama* consistently apply its provisions, while legal practitioners and law faculties regard the KHI as the foundational text of Muslim family law in Indonesia.⁷⁵

The KHI's ambiguous legal status has generated ongoing scholarly debate. Some regard it as an unconstitutional delegation of legislative power to the executive, while others see it as a pragmatic solution to Indonesia's need for legal certainty in religious matters without politicizing Islamic law in parliament.⁷⁶ Its implementation has also raised broader concerns about legal pluralism, gender equality, and the state's role in interpreting religious norms. Feminist legal scholars, for example, criticize several KHI provisions for reinforcing patriarchal assumptions, particularly in male guardianship, unequal divorce rights, and polygamy. At the same time, the KHI is credited with introducing procedural safeguards into family law, including mandatory court approval for divorce and mechanisms for child custody and alimony.⁷⁷ The KHI's significance must be situated within the evolution of Indonesia's religious court system. Originally confined to marriage and divorce, the jurisdiction of the *peradilan agama* was substantially expanded by Law No. 7 of 1989, later amended by Laws No. 3 of 2006 and No. 50 of 2009.⁷⁸ These reforms integrated religious courts more fully into the national judiciary under the Supreme Court, enhancing their institutional legitimacy and administrative capacity. Within this framework, the KHI operates as the principal source of substantive law, guiding judges in cases ranging from marital dissolution to inheritance disputes.⁷⁹

Another significant development is the growing role of judicial interpretation within Indonesia's religious courts. Although the KHI provides standardized rules, judges frequently draw on classical *fiqh*, statutory law, and even international human rights norms when resolving complex cases.⁸⁰ This practice has opened space for judicial reformism and contextualized legal reasoning. In matters such as domestic violence or child custody, some judges

⁷⁵Arskal Salim and Azyumardi Azra, "Shari'a and Politics in Modern Indonesia," in *Islam in Southeast Asia*, ed. D.R. Sardesai (New York: Routledge, 2011), p. 175–95.

⁷⁶Adnan Buyung Nasution, *The Aspiration for Constitutional Government in Indonesia* (Jakarta: Pustaka Sinar Harapan, 1992), p. 212–18.

⁷⁷B.J. van den Berg, "The Role of Islamic Law in the Legal System of Indonesia," *Die Welt Des Islams* 44, no. 3 (2004), p. 394–413.

⁷⁸Wahyudi Kumorotomo, "Law Reform and Islamic Family Law in Indonesia," *Journal of Indonesian Islam* 3, no. 1 (2009), p. 80–102.

⁷⁹Kumorotomo, p. 80–102.

⁸⁰Cammack, "Indonesia's Compilation of Islamic Law: A Study in Legal Politics," p. 25–29.

have departed from the literal text of the KHI to prioritize justice and the protection of vulnerable parties. This interpretive flexibility shows that, despite its codified form, the KHI retains a degree of juristic dynamism.⁸¹ At the same time, regional variation in the application of Islamic law persists. Aceh, the only province granted special autonomy to implement *shari‘a*-based regulations, has enacted local by-laws (*qanun*) that extend beyond the KHI, including criminal sanctions for moral offenses.⁸² This has produced a form of legal dualism within Indonesia’s Islamic legal landscape, where some regions enforce more conservative norms while others adhere strictly to the KHI. These differences underscore the ongoing challenge of harmonizing Islamic law within a decentralized and diverse polity.⁸³

In recent years, there have been calls to revise or replace the KHI with a more comprehensive and rights-based codification of Islamic law. The Ministry of Religious Affairs, in cooperation with legal reform advocates, has proposed a new draft called the *Kompilasi Hukum Islam yang Disempurnakan* (Revised Compilation of Islamic Law), which seeks to address criticisms of gender inequality and procedural ambiguity in the original text.⁸⁴ However, the initiative has encountered resistance from conservative religious groups, who view such reforms as contrary to Islamic principles.⁸⁵ The resulting debates reflect broader tensions between religious authority, legal pluralism, and democratization in post-Reformasi Indonesia.

From a comparative legal perspective, Indonesia’s experience with non-legislative codification offers important insights. First, it demonstrates that codification need not be legislative to operate effectively when supported by institutional practice and administrative authority. Second, it shows how Islamic legal norms can be harmonized with modern judicial procedures without losing their religious character. Third, it highlights the political and epistemological implications of state-led codification, particularly regarding who holds authority to interpret and apply Islamic law. The KHI embodies a distinctively Indonesian approach, balancing respect for tradition with the demands of modern governance. Its effectiveness derives not from parliamentary enactment but from its integration into judicial and administrative structures. While the KHI has promoted legal uniformity and procedural regularity in Muslim personal status law, it also exposes the limits of non-legislative codification in addressing deeper issues of gender justice, legal pluralism, and democratic participation. As

⁸¹Syarif, “Religious Courts and Legal Pluralism in Indonesia,” p. 150–53.

⁸²Salim, *Challenging the Secular State: The Islamisation of Law in Modern Indonesia*, p. 145–55.

⁸³Hooker, *Indonesian Syariah: Defining a National School of Islamic Law*, p. 92–96.

⁸⁴Kumrotomo, “Law Reform and Islamic Family Law in Indonesia,” p. 95–102.

⁸⁵Salim and Azra, “Shari‘a and Politics in Modern Indonesia,” p. 188–90.

Indonesia continues to negotiate its Islamic and constitutional identities, the future of the KHI will remain central to debates over religion's role in public law.

Comparative Law and the Codification of Islamic Law as Legal Transplant

From a comparative law perspective, the codification of Islamic law can be fruitfully analyzed through the framework of legal transplants. Legal transplants refer to the process by which legal ideas, norms, or institutions are borrowed from one jurisdiction and adopted in another. This concept, widely discussed in the literature of comparative law, is crucial for understanding how Islamic law—traditionally rooted in pre-modern, juristic, and uncoded methodologies—came to be expressed through the forms and structures of modern codified law. In particular, the work of Alan Watson and Otto Kahn-Freund provides contrasting theoretical perspectives on the viability and consequences of such transplants.

Alan Watson, one of the leading proponents of the legal transplant theory, argues that legal borrowing is a frequent and often successful means of legal development. He emphasizes that legal systems are not closed entities and that the movement of laws across cultures and jurisdictions is both natural and historically prevalent. According to Watson, laws are often transplanted not because of institutional or cultural compatibility, but because of political decisions, the influence of elites, or the prestige of foreign legal systems. He contends that the internal logic of law is largely autonomous and that legal rules can function effectively in contexts quite different from those in which they originated.⁸⁶ In contrast, Otto Kahn-Freund adopts a more cautious and skeptical view of legal transplants. He stresses the importance of the socio-political environment in shaping legal institutions and warns that uncritical transplants may lead to dysfunction or rejection. For Kahn-Freund, law is deeply embedded in a society's political, cultural, and economic context, and its effectiveness depends on this embeddedness. He argues that transplanting a legal rule or structure from one system to another without adapting it to local circumstances can result in legal formality without substantive efficacy.⁸⁷

Applying these theories to the codification of Islamic law highlights both the promise and the risks of legal transplantation. The adoption of codified legal structures, particularly those modelled on the civil law tradition, represents a clear example of a legal transplant. Codification emerged from European Enlightenment rationalism and state centralization, embodying a positivist conception of law in which legal norms are created and authorized by the state through legislation. This contrasts sharply with classical Islamic legal

⁸⁶Watson, *Legal Transplants: An Approach to Comparative Law*, p. 21–23.

⁸⁷Otto Kahn-Freund, "On Uses And Misuses Of Comparative Law," *The Modern Law Review* 37, no. 1 (1974), p. 1–27.

epistemology, where law derives from divine revelation and is developed through juristic reasoning and scholarly consensus. Muslim-majority countries that codify Islamic law frequently adopt the format and institutional mechanisms of civil law systems. This includes organizing law into codes, expressing rules in numbered articles, and consolidating diverse legal principles into unified statutory texts. The Ottoman *Majalla* (1869–1876), among the earliest Islamic legal codes, was structured in a style resembling the French *Code Civil*. Similarly, Egypt's personal status laws in the 1920s and 1930s employed civil law techniques to codify principles drawn from Hanafi jurisprudence.⁸⁸

While these efforts have made Islamic law more accessible and administratively manageable, they also entail significant conceptual shifts. Codification imposes rigidity and finality on a tradition that was historically dialogical, pluralistic, and adaptable. In classical Islamic jurisprudence (*fiqh*), multiple interpretations were possible on a given issue, depending on the *madhhab* (school of law), the context, and the qualifications of the jurist. Legal opinions (*fatāwā*) were not binding but persuasive, and legal reasoning (*ijtihad*) was a dynamic and ongoing process.⁸⁹ Codification, by contrast, tends to reduce this interpretive space. Once a rule is codified, it gains the status of state law and becomes binding within the jurisdiction. The plurality of opinions is often lost, and the state—rather than the scholarly community—becomes the arbiter of legal validity. This transformation has been described by scholars as a shift from “jurists’ law” to “statutory law,” and it has profound implications for the authority structure within Islamic legal systems.⁹⁰

The codified form of law can obscure the theological and moral reasoning underlying Islamic jurisprudence. Civil law codes are typically written in abstract and general terms, detached from the discursive and justificatory context that characterizes classical *fiqh*. This can depersonalize law and diminish its ethical dimension. Classical *fiqh* texts, by contrast, are embedded with moral guidance, contextual reasoning, and references to scriptural sources. In codified formats, these elements are often omitted or reduced to brief preambles or explanatory notes.⁹¹ In practice, the transplantation of codified legal forms into Islamic systems has produced hybrid structures that combine Islamic substantive norms with Western legal techniques. In Egypt, Islamic family law is codified within a civil law framework and administered by state judges who often lack traditional training in Islamic legal theory. The result is a system Islamic in content but operating through a secular bureaucratic apparatus.⁹² In Malaysia, state-level

⁸⁸Wael B. Hallaq, *Shari‘a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), p. 381–84.

⁸⁹Kamali, *Principles of Islamic Jurisprudence*, p. 453–56.

⁹⁰Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, p. 92–94.

⁹¹An-Na’im, *Islam and the Secular State: Negotiating the Future of Shari‘A*, p. 132–36.

⁹²Abu-Odeh, “Modernizing Muslim Family Law: The Case of Egypt,” p. 1043–1146.

Islamic family law statutes employ codified formats and procedures shaped by common law and British colonial practice, while substantively drawing on Sunni *fiqh*.⁹³ These hybrid arrangements demonstrate how Islamic law can be reshaped through institutional and formal legal transplants.

These hybrids illustrate the uneven and context-dependent nature of legal transplantation. In some cases, codification has facilitated legal modernization and reform. By providing clear rules and administrative procedures, codification has enabled states to address issues such as gender equality, child protection, and access to justice. It has also allowed for the harmonization of Islamic law with constitutional and international human rights norms.⁹⁴ However, codification can also produce tensions and contradictions. In Iran, for example, the post-1979 Islamic Penal Code codifies Shi'i doctrines in a rigid and hierarchical manner, enforced by a centralized clerical authority. This has led to critiques of the code's inflexibility and its failure to reflect the diversity of Shi'i legal thought.⁹⁵ In Indonesia, the Compilation of Islamic Law (1991) reflects an effort to codify Shāfi'i *fiqh* in a modern administrative format, but its lack of legislative status and ambiguous binding force raise questions about its legal legitimacy and practical effectiveness.⁹⁶

From a comparative law standpoint, the codification of Islamic law demonstrates both the utility and the limits of legal transplants.⁹⁷ While formal legal structures can be borrowed, their success depends on institutional adaptation and cultural resonance. The tension between form and content—between the Western technique of codification and the Islamic substance of *fiqh*—remains a central challenge. Thus, analyzing the codification of Islamic law as a legal transplant reveals a complex interaction between legal form, cultural meaning, and political authority. Watson's optimism about the adaptability of legal rules is borne out by the widespread adoption of codification in the Muslim world. Yet Kahn-Freund's caution about the socio-political embeddedness of law highlights the risks of transplanting legal structures without adequate adaptation. The codification of Islamic law thus represents both a transformation of legal form and a reconfiguration of legal meaning, situated at the intersection of tradition and modernity.

⁹³Zaitoon D. Othman, *Muslim Family Law in Malaysia: A Study of the Federal Territories Islamic Family Law Act 1984* (Kuala Lumpur: Malayan Law Journal, 1994), p. 67–69.

⁹⁴Alami and Hinchcliffe, *Islamic Marriage and Divorce Laws of the Arab World*, p. 15–17.

⁹⁵Ziba Mir-Hosseini, "Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Contexts," *SUR International Journal on Human Rights* 8, no. 15 (2011), p. 171–95.

⁹⁶Hooker, *Indonesian Syariah: Defining a National School of Islamic Law*, p. 112–15.

⁹⁷On the case of legal transplant of Islamic law in Indonesia see Ratno Lukito, "Legal Transplants in Indonesia: Bridging Tradition and Modernity," *Social Sciences* 14, no. 2 (2025), p. 60–77.

Debates on the Codification of Islamic Law: Juristic Pluralism, Gender Reform, and Legal Pluralism

The codification of Islamic law has generated significant debate among Islamic scholars, reformists, and comparative law theorists. While codification aims to clarify and systematize legal norms for governance and societal regulation, it simultaneously raises profound questions regarding the nature of Islamic jurisprudence, gender justice, and the coexistence of multiple legal orders. This section examines three critical axes of this debate: the tension between juristic pluralism and state centralization, the gendered implications of codified personal status laws, and the challenges posed by legal pluralism in contemporary Muslim societies.

1. *Juristic Pluralism vs. State Centralization*

Classical Islamic law (*fiqh*) is characterized by inherent pluralism and interpretive flexibility. The diversity of legal opinions (*ikhtilāf*) reflects the coexistence of multiple schools of thought (*madhāhib*), each with distinct methodologies and jurisprudential conclusions. Major Sunni schools—the Hanafi, Maliki, Shafi'i, and Hanbali—as well as Shia traditions such as the Ja'fari, developed extensive bodies of law that accommodated diverse social and regional contexts.⁹⁸ The traditional role of the '*ulamā*' as autonomous legal interpreters ensured that law remained dynamic and continuously responsive to changing circumstances. Through *fatāwā* (legal opinions) and *ijtihad* (independent reasoning), jurists sustained a discursive and dialogical legal tradition. This pluralistic framework was decentralized and lacked a singular state authority enforcing uniform rulings.⁹⁹

Codification challenges this pluralism by centralizing legal authority in the state. Legislatures or executive bodies select specific rulings—often from a single school—and consolidate them into fixed written codes. This process marginalizes alternative interpretations and narrows the interpretive space once inherent in classical jurisprudence. The dynamic interplay of multiple valid opinions is replaced by a statutory framework with legislative finality.¹⁰⁰ Centralization also diminishes the traditional authority of the '*ulamā*', transferring interpretive power to state institutions, including legislatures and secular courts. In many Muslim-majority states, these bodies are staffed by officials who may lack deep expertise in Islamic jurisprudence, raising concerns

⁹⁸Hallaq, *Shari'a: Theory, Practice, Transformations*, p. 86–89.

⁹⁹Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), p. 31–35.

¹⁰⁰Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), p. 70–75.

about selective interpretation and the reshaping of Islamic norms under state control.¹⁰¹

Scholars such as Wael Hallaq have criticized this shift, arguing that codification “imposes modern state-centered legal norms on a juridical tradition that is inherently plural and decentralized.”¹⁰² Hallaq contends that this transformation risks ossifying Islamic law, undermining its adaptability and responsiveness to new social realities. Other commentators note that the codification process often reflects the interests and ideologies of ruling elites rather than an organic development of Islamic legal thought.¹⁰³ Comparative law theory helps contextualize these dynamics by framing codification as a form of legal transplantation and institutional change. The transition from decentralized jurisprudential pluralism to state-centered codification parallels shifts observed in other legal traditions during modernization. However, the unique religious and normative foundations of Islamic law complicate this transformation.¹⁰⁴ Thus, the debate over juristic pluralism versus state centralization remains a fundamental tension in the modern codification of Islamic law.

2. Gender and Social Reform

The codification of Islamic personal status laws governing family relations, marriage, divorce, and inheritance carries significant implications for gender justice and social reform. Many codified family laws reinforce patriarchal structures by privileging male authority and limiting women’s rights.¹⁰⁵ Common provisions include male guardianship (*wilāyah*), unequal divorce rights favouring men, restrictions on women’s custody, and inheritance rules granting women smaller shares than men.¹⁰⁶ These norms are often justified through selective readings of Islamic scripture and classical jurisprudence. Reformist scholars, notably Ziba Mir-Hosseini, critique these patriarchal biases, arguing that they reflect political and cultural choices rather than immutable religious commands.¹⁰⁷ They emphasize that classical Islamic jurisprudence historically accommodated plural and evolving views on gender relations, but codification has narrowed interpretive possibilities and constrained more egalitarian

¹⁰¹An-Na’im, *Islam and the Secular State: Negotiating the Future of Shari‘A*, p. 153–58.

¹⁰²Hallaq, *The Impossible State: Islam, Politics, and Modernity’s Moral Predicament*, 72.

¹⁰³Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran*, 42–46.

¹⁰⁴Watson, *Legal Transplants: An Approach to Comparative Law*, p. 7–10.

¹⁰⁵Valentine M. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (Boulder, CO: Lynne Rienner Publishers, 2003), p. 124–29.

¹⁰⁶Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), p. 202–5.

¹⁰⁷Mir-Hosseini, “Islam and Gender Justice,” p. 83–85.

readings.¹⁰⁸ Moreover, codified laws frequently fail to engage with contemporary understandings of human rights and gender equality, creating tensions between national legal systems and international human rights frameworks, particularly regarding women's rights in marriage, divorce, and custody.¹⁰⁹ In response, reformists advocate renewed engagement with *ijtihad* and the *maqāṣid al-sharī'a* (higher objectives of Islamic law) to reconcile Islamic legal principles with modern norms of social justice. This approach seeks to recover the ethical and flexible spirit of classical jurisprudence while addressing present-day demands for gender equality and legal reform.¹¹⁰

These debates have practical consequences. For example, in Egypt, family law reforms introduced judicial divorce (*khul'*) and procedural safeguards for women, but polygamy remains legally permissible and widely practiced.¹¹¹ In Tunisia, by contrast, the 1956 Code of Personal Status banned polygamy and granted women enhanced legal rights, invoking Islamic principles in support of reform.¹¹² These divergent trajectories underscore the political nature of codification decisions and their gendered outcomes. Legal feminist scholars also highlight that codification tends to institutionalize male-dominated interpretations by placing interpretive authority in the hands of male judges and legislators, further marginalizing women's voices within the legal process.¹¹³ Thus, the gendered dimensions of codification are inseparable from broader questions of power, representation, and social change.

3. Legal Pluralism and Fragmentation

Many Muslim-majority countries operate under plural legal systems in which Islamic law coexists with secular civil law, customary norms (*'urf* or *adat*), and international legal obligations. This pluralism reflects layered histories of legal authority and social diversity, particularly in multi-ethnic and multi-religious societies.¹¹⁴ Codification, by imposing a unified statutory framework for

¹⁰⁸Ziba Mir-Hosseini, "Between Scripture and Politics: Interpretive Politics and the Construction of Gender Justice in Islam," *Human Rights Quarterly* 30, no. 1 (2008), p. 104–26.

¹⁰⁹Nadera Shalhoub-Kevorkian, *Military Occupation and Gendered Violence: Palestinian Women's Bodies as a Battlefield* (Tucson: University of Arizona Press, 2010), p. 45–49.

¹¹⁰Abdullahi Ahmed An-Na'im, *Islamic Family Law in a Changing World: A Global Resource Book*, n.d.

¹¹¹Samia Mehrez, *Egypt's Culture Wars: Politics and Practice* (London: Routledge, 2013), p. 78–82.

¹¹²Manon Tremblay, "Women's Rights in the Middle East and North Africa: Citizenship and Justice," in *Women and Citizenship*, ed. Marilyn Friedman (New York: Palgrave Macmillan, 2010), p. 116–20.

¹¹³Zainah Anwar, *Islamic Feminism in Malaysia: An Interview* (London: Women Living Under Muslim Laws, 2002), p. 19–22.

¹¹⁴Annelies Moors, *Women, Property, and Islam: Palestinian Experiences 1920–1990* (Cambridge: Cambridge University Press, 2007), p. 109–13.

Islamic law, can oversimplify this complex landscape. Privileging a single codified version of Islamic law may marginalize customary practices and community-based dispute resolution mechanisms that remain socially significant.¹¹⁵ In countries such as Indonesia and Nigeria, where religious, customary, and civil laws operate simultaneously, codification can generate jurisdictional tensions and legal fragmentation.¹¹⁶

From the perspective of comparative legal pluralism, flexibility and accommodation are essential for managing diversity within legal systems. Legal pluralist theories emphasize that law functions not only through formal state institutions but also through social practices and communal norms.¹¹⁷ Rigid codification may disrupt these pluralistic arrangements, producing legal uncertainty or social resistance. Indonesia illustrates this layered legal authority. The *Kompilasi Hukum Islam* codifies Islamic family law but coexists with *adat* customary law, requiring courts to navigate between religious and local norms depending on context and affiliation.¹¹⁸ Nigeria presents a similar pattern: Islamic law governs personal status matters for Muslims in northern states, yet intersects with customary and statutory law, leading to continuous negotiation and contestation.¹¹⁹ Critics argue that the centralizing logic of codification risks marginalizing local legal traditions and failing to reflect the lived realities of Muslim communities. Proponents, however, maintain that codification promotes legal certainty, equality before the law, and the integration of Islamic norms into modern state governance.¹²⁰ Balancing these competing imperatives remains a central challenge for policymakers and legal scholars in plural legal systems.

We can say, therefore, that the codification of Islamic law embodies a profound legal and sociopolitical transformation with far-reaching implications. Centralizing authority over a previously pluralistic jurisprudential tradition raises critical questions about legal interpretation, legitimacy, and adaptability. Codified personal status laws simultaneously reflect and reinforce gendered power structures, prompting urgent debates over reform and human rights. Meanwhile, the complexity of legal pluralism in Muslim societies complicates the imposition of unitary codes and calls for nuanced approaches that respect legal diversity.

¹¹⁵Scott Wilson, *Legal Pluralism and the Colonial Legacy in Indonesia* (Leiden: Brill, 2012), p. 67–70.

¹¹⁶Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives* (Philadelphia: University of Pennsylvania Press, 1992), p. 89–93.

¹¹⁷Sally Engle Merry, "Legal Pluralism," *Journal of Law and Society Review* 22, no. 5 (1988), p. 870–73.

¹¹⁸David H. Weaver, *Islamic Law and Legal Pluralism in Indonesia* (New York: Southeast Asia Program Publications, Cornell University, 2005), p. 45–50.

¹¹⁹Foluke Adebayo, "Islamic Law in Nigeria: Challenges of Legal Pluralism," *Journal of African Law* 53, no. 1 (2009), p. 81–85.

¹²⁰Mark Ellis, *Law, Culture and Ritual: Disputing Systems in Cross-Cultural Context* (Vancouver: University of British Columbia Press, 2001), p. 130–33.

From a comparative law perspective, the codification of Islamic law illustrates the tensions inherent in legal transplantation, modernization, and state-building. It requires balancing respect for tradition with responsiveness to contemporary needs, and navigating the competing demands of religious authority, political power, and social justice.

Conclusion

The codification of Islamic law, when analyzed through the lens of comparative law, emerges as a multifaceted process that encapsulates the ongoing negotiation between the enduring legacies of Islamic legal tradition and the imperatives of modern state governance. It is neither a mere technical or administrative reform nor a straightforward transplantation of Western legal models. Instead, codification embodies a profound reconfiguration of legal authority and interpretive sovereignty, reflecting broader socio-political transformations and cultural negotiations within Muslim-majority societies. Historically, Islamic law developed within a decentralized, pluralistic framework. Juristic pluralism the coexistence of multiple schools of thought and diverse legal opinions was a hallmark of classical *fiqh*. Legal interpretation was vested in the '*ulamā*', who exercised independent reasoning (*ijtihad*) grounded in the Qur'an, the Sunnah, and centuries of jurisprudential scholarship. This system allowed for flexibility, responsiveness to local conditions, and an ongoing ethical discourse about justice and law. Codification, by contrast, marks a decisive shift toward centralization of legal authority within state institutions. It replaces the discursive and pluralistic tradition with fixed, written codes enacted and enforced by legislatures and judicial bodies, thereby narrowing the interpretive space and privileging legislative finality over juristic dialogue. This transition raises fundamental questions about the nature of Islamic law itself. Codified Islamic laws often reflect selective interpretations, privileging certain doctrinal strands or schools while excluding others. The resulting legal texts are hybrids: substantively rooted in Islamic norms yet formally modeled on Western civil law codes. This hybridization reveals the tension between maintaining religious authenticity and accommodating the administrative rationality and uniformity demanded by modern states. In many contexts, codification is a political act as much as a legal one, serving state interests in consolidating sovereignty, controlling religious authority, and projecting legitimacy. Codification has also generated extensive debate regarding its implications for social justice, especially gender equality. While codified family laws provide clarity and predictability, they often institutionalize patriarchal norms, constraining women's rights within rigid legal frameworks justified by selective scriptural readings. Reformist scholars and activists highlight the need to re-engage Islamic jurisprudence's ethical and pluralistic traditions to promote more equitable interpretations consistent with contemporary human rights standards. Thus, codification can both

facilitate legal reform and ossify conservative social hierarchies, depending on the political and cultural context. Another critical dimension is the relationship between codification and legal pluralism. Many Muslim societies are characterized by overlapping legal orders Islamic law, customary practices, secular civil codes, and international human rights obligations. Codification, by imposing a unitary legal framework, risks marginalizing local customs and social realities, thereby creating tensions between formal law and lived experience. Comparative law scholarship underscores the importance of legal pluralism and flexibility in managing cultural and religious diversity, suggesting that codification strategies must be sensitive to this complexity to achieve legitimacy and social cohesion. Therefore, the codification of Islamic law is a dynamic and contested phenomenon situated at the crossroads of tradition and modernity, religious norms and state sovereignty, universal legal principles and local cultural particularities. It is not a neutral, technocratic exercise but a deeply political process with significant normative and social implications. A nuanced comparative law perspective recognizes the tensions inherent in codification and advocates for approaches that preserve the ethical richness and pluralism of Islamic jurisprudence while addressing the governance and social needs of contemporary Muslim societies. Achieving this balance remains one of the most pressing challenges in the ongoing evolution of Islamic legal systems.

* Prof. Ratno Lukito, Visiting Scholar in the first cohort of the Japan Foundation Program (2025), is affiliated with the Center for Southeast Asian Studies at Kyoto University, Japan, and the Faculty of Shariah and Law at Sunan Kalijaga State Islamic University, Yogyakarta. The author expresses deep gratitude to Prof. Michael Feener for his careful reading of the draft; any remaining errors are entirely the responsibility of the author.

References

Journals and Books

- Abu-Odeh, Lama. "Modernizing Muslim Family Law: The Case of Egypt." *Vanderbilt Journal of Transnational Law* 37 (2004).
- Adebayo, Foluke. "Islamic Law in Nigeria: Challenges of Legal Pluralism." *Journal of African Law* 53, no. 1 (2009).
- Akhavi, Shahrough. *Religion and Politics in Contemporary Iran: Clergy–State Relations in the Pahlavi Period*. Albany: SUNY Press, 1980.
- Al-Sharmani, Mulki. *Islamic Feminism and Reforming Muslim Family Laws*. Zed Books, 2013.
- Alami, Dawoud S. El, and Doreen Hinchcliffe. *Islamic Marriage and Divorce Laws of the Arab World*. London: Kluwer Law International, 1996.
- An-Na'im, Abdullahi Ahmed. *Human Rights in Cross-Cultural Perspectives*. Philadelphia: University of Pennsylvania Press, 1992.

- . *Islamic Family Law in a Changing World: A Global Resource Book*, n.d.
- An-Na'im, Abdullahi Ahmed. *Islam and the Secular State: Negotiating the Future of Shari'ah*. Cambridge: Harvard University Press, 2008.
- Anwar, Zainah. *Islamic Feminism in Malaysia: An Interview*. London: Women Living Under Muslim Laws, 2002.
- Aziz, Nurul Huda Mohd. *Family Law in Malaysia: Cases and Commentary*. Selangor: Sweet & Maxwell Asia, 2013.
- Badran, Samir. "The Development of Sharia Courts in Jordan." *Islamic Law and Society* 12, no. 1 (2005).
- Baharuddin, Azizan, and Zaharah Nawawi. "Islamic Legal Framework in Malaysia: The Issue of Jurisdiction and Harmonisation." *Journal of Islamic Law Review* 14 (2018).
- Barlas, Asma. *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an*. Austin: University of Texas Press, 2002.
- Berg, B.J. van den. "The Role of Islamic Law in the Legal System of Indonesia." *Die Welt Des Islams* 44, no. 3 (2004).
- Berman, Harold J. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge: Harvard University Press, 1983.
- Brown, Nathan J. *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*. Cambridge: Cambridge University Press, 1977.
- Butt, Simon, and Tim Lindsey. *The Constitution of Indonesia: A Contextual Analysis*. Oxford: Hart Publishing, 2012.
- Cammack, Mark. "Indonesia's Compilation of Islamic Law: A Study in Legal Politics." *Washington International Law Journal* 17, no. 1 (2008): 1–35.
- Cammack, Mark E. "Indonesia's Islamic Courts." In *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, edited by R. Michael Feener and Mark E. Cammack, Cambridge: Harvard University Asia Center, 2007.
- Charrad, Mounira M. *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco*. Berkeley: University of California Press, 2001.
- Coulson, N.J. *A History of Islamic Law*. Edinburgh: Edinburgh University Press, 1964.
- Coulson, Noel. J. "Law in the Middle East." In *Origin and Development of Islamic Law*, edited by Majid Khadduri and Herbert J. Liebesny, xix–395. Washington, D.C.: Middle East Institute, 1955.
- Cuno, Kenneth. *Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt*. Syracuse: Syracuse University Press, 2015.
- Dupret, Baudouin. "What Is Islamic Law?: A Praxiological Answer and an Egyptian Case Study." *Theory, Culture & Society* 24, no. 2 (2007).
- . *What Is the Sharia?* London: Hurst, 2018.

- Ellis, Mark. *Law, Culture and Ritual: Disputing Systems in Cross-Cultural Context*. Vancouver: University of British Columbia Press, 2001.
- Esmaeili, Hossein. "The Nature and Development of Law in Iran: Toward a New Definition of Islamic Law." *University of Queensland Law Journal* 27, no. 2 (2008).
- Farhi, Farideh. "Iran's Islamic Penal Code: Legalising Violence." In *Gender and Equality in Muslim Family Law*, edited by Ziba Mir-Hosseini, 135–153. London: I.B. Tauris, 2013.
- Faruqi, Shad Saleem. *Document of Destiny: The Constitution of the Federation of Malaysia*. Kuala Lumpur: Star Publications, 2008.
- Hallaq, Wael. B. *An Introduction to Islamic Law*. Cambridge: Cambridge University Press, 2009.
- Hallaq, Wael B. *Shari'a: Theory, Practice, Transformations*. Cambridge: Cambridge University Press, 2009.
- . *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. New York: Columbia University Press, 2013.
- . *The Origins and Evolution of Islamic Law*. Cambridge, MA: Cambridge University Press, 2005.
- Halpérin, Jean-Louis. "The French Civil Code." In *The Oxford Handbook of European Legal History*, edited by Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey, Oxford: Oxford University Press, 2018.
- Hooker, M.B. *Indonesian Syariah: Defining a National School of Islamic Law*. Singapore: ISEAS, 2008.
- Ibrahim, Ahmed Fekry. *Pragmatism in Islamic Law: Legal Flexibility and Judicial Reasoning in Egypt*. Syracuse: Syracuse University Press, 2015.
- Jamal, Arif A. "Islamic Legal Hybridities and the Modern State: Methodological and Theoretical Reflections." In *The Law Applied: Contextualizing the Islamic Shari'a*, edited by Peri Bearman, Wolfhart Heinrichs, and Bernard G. Weiss, London: I.B. Tauris, 2008.
- Johansen, Baber. "The Ottoman Majalla and the Nature of Islamic Law." In *Law and Empire in the Middle East*, edited by Chibli Mallat, 128–141. London: I.B. Tauris, 1990.
- Joseph, Suad, and Afsaneh Najmabadi, eds. *Encyclopedia of Women & Islamic Cultures*. Leiden: Brill, 2003.
- Kahn-Freund, Otto. "On Uses And Misuses Of Comparative Law." *The Modern Law Review* 37, no. 1 (1974).
- Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. Cambridge: Islamic Texts Society, 2003.
- . *Shari'ah Law: An Introduction*. Oxford: Oneworld, 2008.
- Kumorotomo, Wahyudi. "Law Reform and Islamic Family Law in Indonesia." *Journal of Indonesian Islam* 3, no. 1 (2009).
- Lindsey, Tim. "Syariah and National Law in Indonesia." In *Shari'a Incorporated*,

- edited by Jan Michiel Otto, 235–236. Leiden: Leiden University Press, 2010.
- Lombardi, Clark B. *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari‘a into Egyptian Constitutional Law*. Leiden: Brill, 2006.
- Lukito, Ratno. *Legal Pluralism in Indonesia: Bridging the Unbridgeable*. London and New York: Routledge, 2013.
- . “Legal Transplants in Indonesia: Bridging Tradition and Modernity.” *Social Sciences* 14, no. 2 (2025).
- Masud, Muhammad Khalid. *Shariah Law and Modern Muslim Ethics*. Leiden: Brill, 2015.
- Mehdi, Rubya. *The Islamization of the Law in Pakistan*. Richmond: Curzon Press, 1994.
- Mehrez, Samia. *Egypt’s Culture Wars: Politics and Practice*. London: Routledge, 2013.
- Merry, Sally Engle. “Legal Pluralism.” *Journal of Law and Society Review* 22, no. 5 (1988): 869.
- Merryman, John Henry, and Rogelio Pérez-Perdomo. *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford: Stanford University Press, 2007.
- Mir-Hosseini, Ziba. “Between Scripture and Politics: Interpretive Politics and the Construction of Gender Justice in Islam.” *Human Rights Quarterly* 30, no. 1 (2008).
- . “Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Contexts.” *SUR International Journal on Human Rights* 8, no. 15 (2011).
- . *Islam and Gender: The Religious Debate in Contemporary Iran*. Princeton: Princeton University Press, 1999.
- . “Islam and Gender Justice.” *Social Research* 67, no. 2 (2000): 351–378.
- . “The Politics of Codifying Muslim Family Law: Gender, Legal Pluralism and the Moroccan Reforms.” *International Journal of Law in Context* 9, no. 3 (2013).
- Moghadam, Valentine M. *Modernizing Women: Gender and Social Change in the Middle East*. Boulder, CO: Lynne Rienner Publishers, 2003.
- Moghissi, Haideh. *Women and Islam: Critical Concepts in Sociology*. London: Routledge, 2005.
- Mohamad, Maznah. “Legal Pluralism and Islam in Malaysia.” *Islamic Studies* 46, no. 3 (2007).
- Moors, Annelies. *Women, Property, and Islam: Palestinian Experiences 1920–1990*. Cambridge: Cambridge University Press, 2007.
- Nasution, Adnan Buyung. *The Aspiration for Constitutional Government in*

- Indonesia*. Jakarta: Pustaka Sinar Harapan, 1992.
- Örücü, Esin. "Law as Transposition." *International and Comparative Law Quarterly* 2, no. 51 (2002).
- Othman, Norani. "Muslim Women and the Challenge of Islamic Fundamentalism/Extremism: An Overview of Southeast Asian Muslim Women's Struggle for Human Rights and Gender Equality." *Women's Studies International Forum* 29, no. 4 (2006).
- Othman, Zaitoon D. *Muslim Family Law in Malaysia: A Study of the Federal Territories Islamic Family Law Act 1984*. Kuala Lumpur: Malayan Law Journal, 1994.
- Quraishi-landes, Asifa. "Islamic Constitutionalism: Not Secular. Not Theocratic. Not Impossible." *Rutgers Journal of Law & Religion* 16 (2015).
- Reimann, Mathias, and Reinhard Zimmermann. *The Oxford Handbook of Comparative Law*. Oxford: Oxford University Press, 2006.
- Salim, Arskal. *Challenging the Secular State: The Islamisation of Law in Modern Indonesia*. Honolulu: University of Hawai'i Press, 2008.
- Salim, Arskal, and Azyumardi Azra. "Shari'a and Politics in Modern Indonesia." In *Islam in Southeast Asia*, edited by D.R. Sardesai, 175–195. New York: Routledge, 2011.
- Schacht, Joseph. *An Introduction to Islamic Law*. Oxford: Oxford University Press, 1964.
- Shah, Nik Noraini Nik Badli. "Islamic Family Law in Malaysia: New Challenges in Harmonization." *Journal of Islamic Law* 15 (2021): 203–218.
- Shalhoub-Kevorkian, Nadera. *Military Occupation and Gendered Violence: Palestinian Women's Bodies as a Battlefield*. Tucson: University of Arizona Press, 2010.
- Shamsy, Ahmed El. *The Canonization of Islamic Law: A Social and Intellectual History*. Cambridge: Cambridge University Press, 2013.
- Sumardi, Dedy, Ratno Lukito, and Moch Nur Ichwan. "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia." *Samarah* 5, no. 1 (2021).
- Syarif, Nurrohman. "Religious Courts and Legal Pluralism in Indonesia." In *Law and Religion in Indonesia*, edited by Melissa Crouch, 141–156. London: Routledge, 2014.
- Tremblay, Manon. "Women's Rights in the Middle East and North Africa: Citizenship and Justice." In *Women and Citizenship*, edited by Marilyn Friedman, 116–120. New York: Palgrave Macmillan, 2010.
- Vogel, Frank E. *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden: Brill, 2000.
- Watson, Alan. *Legal Transplants: An Approach to Comparative Law*. Athens: University of Georgia Press, 1993.
- Weaver, David H. *Islamic Law and Legal Pluralism in Indonesia*. New York:

- Southeast Asia Program Publications, Cornell University, 2005.
- Welchman, Lynn. *Women and Muslim Family Laws in Arab States*. Amsterdam: Amsterdam University Press, 2007.
- Wilson, Scott. *Legal Pluralism and the Colonial Legacy in Indonesia*. Leiden: Brill, 2012.
- Zimmermann, Reinhard. *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Durham: Carolina Academic Press, 1996.
- Zubaida, Sami. *Law and Power in the Islamic World*. London: I.B. Tauris, 2003.
- Zweigert, Konrad, and Hein Kötz. *An Introduction to Comparative Law*, Trans. Tony Weir. Oxford: Clarendon Press, 1998.