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## Challenges and Harmonization Between Islamic Law and Human Rights

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### ABSTRACT

This research analyzes the challenges and harmonization between Islamic law and human rights. The research method used is the normative juridical method using statutory and conceptual approaches. The results showed that Islamic Law and Pancasila are two normative systems that have different characteristics. Still, both play an important role in shaping the framework of harmonization of human rights in Indonesia. Islamic law, as a manifestation of the religious values of Muslims, and Pancasila, as the philosophical basis of the state, have similar goals, namely to realize a just, peaceful, and harmonious society. The role of Islamic law in this context can be seen through efforts to protect individual rights, create social justice, and strengthen tolerance between religious communities. Harmonization between Islamic family law and human rights principles is a challenging but possible process with an inclusive and contextual approach. Differences in interpretation between traditional sharia law and modern human rights standards can be bridged through a dynamic understanding of *maqāṣid al-sharī'ah*, the involvement of women in policy-making, and human rights education in society. Case studies in Indonesia, Tunisia, Egypt, and Saudi Arabia show that successful harmonization depends on the socio-political context, religious legitimacy, and public participation. Through interdisciplinary dialogue and institutional strengthening, this harmonization can create a fair family law system that respects the human rights of every individual.

### KEYWORDS

Islamic Law;  
Human Rights;  
Challenges;  
Harmonization



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## INTRODUCTION

Times are always advancing rapidly, like a wheel rotating continuously. In this cycle, change always occurs as a consequence of the development of human thought to find new ways to improve their welfare. Change towards development (modern), many new problems arise, especially due to the bias of scientific and technological advances.<sup>1</sup> These modern developments gave birth to various forms of change, both structurally and culturally.<sup>2</sup> Sarjono Soekanto in his book *Sociology: An Introduction* states that social changes are a variation of accepted ways of life, caused either by changes caused by geographical conditions, material culture, population composition, ideology, or due to diffusion or discoveries in society.<sup>3</sup>

Human rights are a universal concept that guarantees the fundamental freedoms and rights of every individual, without discrimination based on race, gender, religion, or other backgrounds.<sup>4</sup> The theoretical basis of universal human rights is based on the Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly in 1948, which sets out the basic principles that every individual has equal rights without discrimination.<sup>5</sup> At the regional level, the theoretical basis of human rights is adapted to the local cultural and social context through legal instruments such as the European Convention on Human Rights (1950) by the Council of Europe,<sup>6</sup> African Charter on Human and Peoples' Rights (1981) by the African Union,<sup>7</sup> and the American Convention on Human Rights (1969) by the Organization of American States (OAS). At the local level, the theoretical basis of human rights is applied through national laws, constitutions, and local policies designed to protect human rights according to the specific conditions of a country or community.

In the context of Islamic family law, human rights have significant relevance, given that Islamic family law regulates various aspects of personal and social life, including marriage, divorce, the rights and obligations of husband and wife, and the rights of children.<sup>8</sup> A comprehensive understanding of how human rights are

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<sup>1</sup> Ilham Dwi Rafiqi, "Re-reading Mochtar Kusumaatmadja's Theory of Development Law: Exploring the Philosophical Basis and Considering Relevance" (2025) 1:1 *Iuris Philos J* 11–26, online: <<https://jurnal.jurisprudenceinsights.com/index.php/Iurisphilosophiajournal/article/view/2>>.

<sup>2</sup> Yusron Ashalirrohman, "Deontology and Equality in Corruption Law Enforcement" (2025) 1:1 *Iuris Philos J* 1–10, online: <<https://jurnal.jurisprudenceinsights.com/index.php/Iurisphilosophiajournal>>.

<sup>3</sup> Soerjono Soekanto, *Suatu Tinjauan Sosiologi Hukum terhadap Masalah-Masalah Sosial* (Bandung: Alumni, 1981).

<sup>4</sup> Hanif Maulana Yusuf et al, "Hak Asasi Manusia (HAM)" (2023) 1:5 *Adv Soc Humanit Res*, online: <<https://adshr.org/index.php/vo/article/view/58>>.

<sup>5</sup> Widiada Gunakaya, *Hukum Hak Asasi Manusia* (Yogyakarta: Penerbit Andi, 2019).

<sup>6</sup> Anisatul Hamidah, "Urgensi Prinsip Non-Diskriminasi Dalam Regulasi Untuk Pengarus-Utamaan Kesetaraan Gender" (2021) 51:3 *J Huk dan Pembang* 677–697, online: <<https://scholarhub.ui.ac.id/jhp/vol51/iss3/8/>>.

<sup>7</sup> Grace Christinery Kuhe & Abas Kaluku, "Diskursus Penegakan Hak Asasi Manusia di Asean dan Africa Union Sebagai Organisasi Regional" (2021) 14:1 *J Leg* 53–76, online: <<https://ejurnal.ung.ac.id/index.php/JL/article/view/10206>>.

<sup>8</sup> Muhammad Ridwan, "Transformasi Hukum Keluarga Islam di Era Digital: Analisis Sosiologi Hukum terhadap Regulasi Perkawinan dan Perceraian di Indonesia" (2024) 1:1 *Al-Istinbath J Ilmu Huk Dan Huk Kel Islam* 11–20.



applied in Islamic family law is essential to ensure the protection and well-being of all family members.<sup>9</sup>

Islamic family law, which is based on the Quran, *Hadith*, *ijma'* (consensus of scholars), and *qiyas* (analogy), is often perceived differently by the wider community.<sup>10</sup> On the one hand, there is a view that sees Islamic family law as a fair system that protects the rights of all its members. Figures such as Egyptian Sheikh Muhammad Abduh and Indonesian Prof. Hazairin support this view, arguing that Islamic family law is inherently just and reflects the principles of social justice in Islam. They argue that Islamic law protects all family members, including women and children, through the teachings of the Qur'an and Sunnah.

On the other hand, there is criticism that some provisions in Islamic family law can lead to human rights violations, especially regarding the rights of women and children.<sup>11</sup> Some provisions in Islamic family law that lead to human rights violations, such as Polygamy,<sup>12</sup> *talaq* (unilateral divorce by the man),<sup>13</sup> Inheritance provisions that give a greater share to men,<sup>14</sup> Guardianship (*wilayah*), which requires the consent of a male guardian for a woman's marriage, and a low age of marriage, are often considered as potential violations of human rights.

Of course, such provisions can be criticized for causing discrimination against women, reducing their autonomy, and placing them in an unequal position and vulnerable to violence or injustice. It is therefore important to revisit and interpret these laws so that they are more in line with the values of justice and equality in human rights, without overriding the basic religious principles of Islam. This divergence of views makes it important to conduct an in-depth study of the interaction between human rights and Islamic family law.

Furthermore, the role of the state in implementing Islamic family law is also an aspect that cannot be ignored.<sup>15</sup> In many Muslim-majority countries, there are differences in the application of Islamic family law, influenced by factors such as local interpretations, government policies, and socio-political dynamics. This study will examine the concepts of Islamic law and human rights, the challenges and harmonization between the application of Islamic law and human rights in Indonesia and several Muslim countries, and how these countries balance their commitment to Islamic principles and obligations to international human rights treaties.<sup>16</sup>

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<sup>9</sup> Nur Suci Alawiyah & Faisar Ananda Arfa, "Pembangunan Hukum Nasional dengan Mempertimbangkan dan Memuat Hukum Keluarga Islam dalam Membentuk Peraturan yang Mengatur tentang Keluarga" (2024) 7:3 J Rev Pendidik dan Pengajaran 9256-9260.

<sup>10</sup> Zaki Mubarak, *Islam Faktual: Ajaran, Pemikiran, Pendidikan, Politik Dan Terorisme, Islam Faktual* (Depok: Zakimu, 2019).

<sup>11</sup> Sahrul Mustofa, *Hukum Pencegahan Pernikahan Dini* (Jakarta: Guepedia, 2019).

<sup>12</sup> Umi Salamah, "Polemik Poligami dalam Hukum Islam dan Tinjauan Hak Asasi Manusia" (2019) 1:1 Dimar J Pendidik Islam 131-147.

<sup>13</sup> Moh Afandi, "Hukum Perceraian di Indonesia: Studi Komparatif Antara Fikih Konvensional, UU Kontemporer di Indonesia dan Negara-Negara Muslim Perspektif HAM dan CEDAW" (2014) 7:2 Al Ahwal J Huk Kel Islam 191-201.

<sup>14</sup> Abdul Rahmad, "Hukum Waris Islam dalam Perspektif Hak Asasi Manusia" (2017) 5:10 Lex Soc.

<sup>15</sup> Tedi Sumaelan, "KHI Versus CLD KHI: Studi Kasus pada Implementasi di Indonesia" (2024) 3:1 Sahaja 298-319.

<sup>16</sup> Rahmatullah Susanto, *Prinsip Non Refoulement Dan Relevansinya Dalam Hukum Internasional Dan Kepentingan Nasional* Universitas Hasanudin Makassar, 2015) [unpublished].



Previous studies on the relationship between Islamic law and human rights have generally focused on a normative-theological approach that tends to pit the two systems against each other. For example, some studies focus on contradictions in specific issues such as religious freedom, the right to gender equality, or the application of hudud, without seeking an integrative solution. Others tend to be apologetic, justifying all principles of Islamic law as being in line with human rights, without addressing critical issues that arise in contemporary religious practice and interpretation.

Unlike these approaches, this study offers a more dynamic synthesis approach by combining the *maqāṣid al-sharī'ah* framework (the objectives of the *Shari'ah*) and universal human rights principles as a conceptual meeting point. In addition, this research emphasizes the importance of reinterpreting religious texts contextually by considering modern social, cultural, and legal realities. This provides a new alternative in academic discourse because it does not stop at mere normative comparison, but also formulates an applicable harmonization strategy to bridge the conflict between religious norms and individual rights within the framework of a democratic state of law. Thus, the main differences of this research are the transformative methodological approach, the interdisciplinary framework of analysis (combining fiqh, positive law, and human rights), and the solution orientation that makes this research relevant for the development of legal theory and legislative practice in a pluralistic country like Indonesia.

## METHOD

The research method in this article is arranged systematically to reveal legal rules, legal doctrines, and legal principles related to challenges and harmonization efforts between Islamic law and human rights. This research uses the normative juridical method, which is an approach that relies on the study of applicable legal norms, both written in laws and regulations and unwritten, such as doctrines and legal principles.<sup>17</sup> To support the analysis, two main approaches were used, namely the statutory approach and the conceptual approach. The statutory approach is used to examine in depth various national and international regulations related to the legal issues raised, such as regulations on human rights, Islamic law in Indonesia, and their implementing regulations. Meanwhile, the conceptual approach is used to dissect relevant theoretical and conceptual ideas, including legal theory, the concept of *maqāṣid al-sharī'ah*, and universal human rights principles. The technique of collecting legal materials was conducted through a literature study, which included searching and collecting information from law books, scientific journals, scientific articles, official documents, as well as trusted digital sources such as websites of legal and religious institutions. The collected legal materials were classified into primary, secondary, and tertiary legal materials, according to the relevance and authority of the source. All legal materials that have been collected are then analyzed using a qualitative descriptive analysis method, namely by describing, interpreting, and evaluating the content of legal norms and concepts to produce logical and argumentative conclusions. Through this approach, the research is expected to make

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<sup>17</sup> Amiruddin & H Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).



a strong scientific contribution to the understanding and development of laws that are responsive to religious values and human rights.

## RESULT & DISCUSSION

### I. Concept of Islamic Law

The term Islamic law is not found in Islamic literature, and in principle, Islamic legal experts do not use the word “Islamic law” to translate the legal system derived from Islamic teachings. They prefer to use the terms *Shari'ah*, Jurisprudence, and *Qanun* to refer to laws derived from Islamic teachings.<sup>18</sup> The word Islamic law only appeared when Western orientalisists began to conduct research on Islamic teachings, including its legal system, by using the term Islamic Law, which can be translated in Indonesian as Islamic law.

Islamic law was revealed as a revelation from God, but in the process of transformation, an ‘agent’ is needed to bridge between the sacred source from heaven and human life. In this context, the Prophet Muhammad PBUH is trusted as a Prophet to be a role model who can discuss the teachings of Islam in the language of ordinary people. Thus, the role of the Prophet Muhammad PBUH in Islam is very large. He is not only a messenger of God but also a human role model in carrying out the laws of Allah SWT. In this aspect, the behavior and words of the prophet also become an important part of the Islamic legal system, or what is called the sunnah or hadith. So it is also the second source of law after the Qur'an. From these two sources, Islamic jurists developed a legal system which in Islamic literature is called shari'ah. Taken from the Arabic term, which means road. *Shari'ah* represents the way of life that has been designed by Allah and His Messenger for the lives of Muslims.

Islamic *Shari'ah* in the course of its history has had a very important position. Islamic law does not lose its function in the life of a society that continues to develop by continuing to transform by culture and culture, so that it can automatically meet the needs of Islamic society. The characteristics of Islamic law are very flexible in all aspects and can keep up with the times, even though it is based on the Qur'an, which was made thousands of years ago and cannot be changed. The spread of countries that adhere to the Islamic legal system is mostly found in the countries of the Arabian Peninsula. Not only that, many countries in Asia and East Africa have adopted the Islamic Law system either directly or through a reception process with other legal systems.<sup>19</sup>

The primary and highest source of Islamic law is the Qur'an, the Muslim holy book that comes from God. Next in the hierarchy of sources of Islamic law is the Sunnah, which is a description of the Prophet's words, deeds, and behavior (including his silence on certain questions). The Sunnah is often used as a rule for issues that are not mentioned in the Qur'an. The next source of law is Ijma', which are generally accepted opinions among scholars, especially legal scholars, in interpreting the two main sources of law. In addition, there is also a source of law called Qiyas, which is reasoning with logic, especially regarding contemporary

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<sup>18</sup> Ridwan, *supra* note 8.

<sup>19</sup> Lukman Santoso, “Perbandingan Siste Civil Law dan ukum Islam serta Interakinya dalam Sistem Hukum Indonesia” (2016) 13:2 Istimbath J Huk 202.



issues, to produce regulations for situations that are not directly covered by the basic sources.<sup>20</sup>

Therefore, Islamic law is understood as an institution that is neither rooted nor grafted on sociology. Islamic law is a means of serving God, and not society, although in its technical aspects, it understands the conditions of society. The principle at work here is that it is man who must obey the law and not the law that must be created by human desires. Therefore, Islamic law is designed to be very comprehensive and applicable throughout the ages.<sup>21</sup> This includes issues of relationship with God (*habl min Allāh*), relationship with fellow human beings (*habl min an-nās*), including reflections on human relationships with God.<sup>22</sup> It is this concept that is difficult for most Westerners to grasp.

## II. Islamic Law and Human Rights

Islamic law and human rights are two concepts that are often considered contradictory. However, in Pancasila Law, they can be seen as two things that complement each other and cannot be separated. The relationship between Islamic Law and Human Rights in Pancasila Law has a very important role in maintaining justice and balance in society. Islamic law is a law based on Islamic religious teachings taken from the Qur'an and *Hadith*, while human rights are a set of rights inherent in every human being as a creature of God that must be respected and protected by the state. In Pancasila Law, these two concepts become the main foundation in upholding a just and equitable law for all citizens.

The concept of human rights in Islam is rooted in the teachings of the Qur'an and *Hadith*, which provide clear guidance on the basic rights of every individual. Human rights in the context of Islamic law are not only universal individual rights, but also part of religious teachings that have moral, social, and theological dimensions. In Islam, human rights are considered a mandate from Allah SWT that must be guarded and protected, both by the individual himself and by the state. In principle, Islam places high human values, prioritizes justice, equal rights, and freedom within the limits set by Sharia. The Qur'an, as the main source of Islamic teachings, affirms basic human rights in various verses. Some of the main principles that can be found in the Qur'an related to human rights include:<sup>23</sup>

### 1. Right to Life (*Al-Hayat*):

In Islam, human life is considered a gift and a trust from Allah SWT that must be respected and protected. Allah's word in the Qur'an, Surah *Al-Isra'* verse 33: "And kill not the soul which Allah hath forbidden, except with a just cause." This verse emphasizes that the right to life is the most basic human right that must be protected.

### 2. Freedom of Religion (*Al-I'tiqad*):

Islam provides freedom of religion as a recognized right. However, this freedom of religion is exercised within the confines of respect for the teachings of Islam. In Surah *Al-Baqarah* verse 256, Allah SWT says: "There is no compulsion

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<sup>20</sup> Fathurrahman Djamil, *Filsafat Hukum Islam* (Jakarta: Logos Wacana Ilmu, 1999).

<sup>21</sup> *Ibid.*

<sup>22</sup> Santoso, *supra* note 19.

<sup>23</sup> Muhammad Rafi Widiawan, "Hak Asasi Manusia dalam Prespektif Hukum Islam dan Relevansinya di Indonesia" (2025) 1:1 J *Lentera Ilmu* 100–110.



for a person in (embracing) the religion (Islam)..." which indicates that every individual is free to choose and embrace their religion.

3. The Right to Justice (*Al-'Adalah*):

Justice is one of the main principles in Islam, which is also reflected in the teachings on human rights. Islam emphasizes that every individual is entitled to fair treatment, both before Allah SWT and in social relations between fellow human beings. As stated in Surah *An-Nisa'* verse 58: "Indeed, Allah enjoins you to deliver the mandate to those who are entitled to it, and when you set a law among men, you should set it justly. Indeed, Allah is the best of those who teach you. Indeed, Allah is All-Hearing, All-Seeing."

4. The Right to Freedom of Opinion (*Al-Ra'y*):

In Islam, the freedom to express opinions is also recognized, provided that it does not damage the rights of others or contradict Sharia. This can be seen from the many examples in Islamic history where companions and scholars criticized the policies of leaders to improve the condition of the people.<sup>24</sup>

### III. Challenges in Harmonizing Islamic Family Law with Human Rights Principles

Islamic family law regulates important aspects of personal life such as marriage, divorce, rights and obligations of husband and wife, inheritance, and childcare. In Indonesia, these provisions are regulated in the Compilation of Islamic Law (KHI). Meanwhile, human rights principles, whether derived from international instruments such as the Universal Declaration of Human Rights (UDHR) or the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), emphasize equality, non-discrimination, and individual freedom. The difference in paradigms between the two creates a complex dialectical space and raises various challenges and opportunities for harmonization.

Harmonization between Islamic family law and human rights principles does not only involve legal changes, but also includes a deeper transformation in the aspects of understanding, acceptance, and attitudes of the community towards religious and universal values.<sup>25</sup> This process requires intellectual and social openness to reconstruct old views in a frame that is more adaptive to the times, without abandoning the fundamental values in Islamic teachings. One of the main challenges is the difference in interpretation between traditional sharia law (a body of rules, norms, and practices governing aspects of personal, family, and social life based on the teachings of the Qur'an and *Hadith*) and modern human rights norms. For example, while within the framework of human rights, women have the right to fully determine the direction of their personal lives, in some Islamic family law practices, the role of guardians remains dominant and often limits this freedom. The same is true in the context of divorce, where women's right to sue for divorce (*khulu'*) is often faced with procedural and cultural obstacles that are not comparable to the husband's freedom to divorce.

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<sup>24</sup> *Ibid.*

<sup>25</sup> Cindy Cintya Lauren, "Analisis Adaptasi Masyarakat Lokal terhadap Perubahan Sosial dan Tren Budaya di Indonesia Ditinjau dari Perspektif Hukum Adat" (2023) 2:9 J Huk dan HAM Wara Sains 874-884.



In some countries, family law reforms that are compatible with human rights have been resisted by conservative groups who see them as a threat to Islamic traditions.<sup>26</sup> On the other hand, progressives push for legal reforms that are more inclusive and responsive to social change.<sup>27</sup> The cases of Egypt and Saudi Arabia show how complex this harmonization process can be, where legal reforms are often met with resistance from groups that maintain traditional interpretations of Islamic law. This shows that the reform process requires a careful and sensitive approach to local contexts and religious beliefs.<sup>28</sup>

#### **IV. Opportunities and Strategies in Harmonizing Islamic Family Law with Human Rights Principles**

Despite the challenges outlined above, there are great opportunities to create synergies between Islamic family law and human rights. Harmonization between Islamic law and human rights principles is not impossible, although it is often marked by ideological and interpretative tensions. It is precisely in these tensions that there are great opportunities to develop a more inclusive, adaptive, and contextual understanding of the law. Some of the main opportunities and strategies in encouraging such harmonization can be identified through philosophical, normative, sociological, and institutional approaches.<sup>29</sup>

Public education and awareness of the importance of human rights in the context of the Islamic family can play a key role.<sup>30</sup> In addition, women's role in legislation and decision-making processes is also important to ensure that their voices are heard and their rights recognized. With women's increased participation in the public and political sphere, there is great potential to drive more inclusive and equitable changes in family law.<sup>31</sup>

One conceptual approach that has the potential to bridge the differences between Islamic law and human rights is the *maqāṣid al-sharī'ah* (Sharia objectives) approach. This approach emphasizes the importance of preserving the five essentials of human life: religion (*al-dīn*), soul (*al-nafs*), intellect (*al-'aql*), offspring (*al-nasl*), and property (*al-māl*). In this context, human rights can be seen as a modern instrument that also aims to preserve and protect these aspects. By using *maqāṣid*, Islamic norms can be interpreted more progressively and contextually, by the demands of the times and the development of universal values. Contemporary

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<sup>26</sup> Kurniawan & I Kartika, *Perempuan Dalam Perspektif Hukum Islam Dan Ham* (Jakarta: Publica Indonesia Utama, 2022).

<sup>27</sup> Fikri Ferdiansah, M Fachri Sidiq & Richad, "Keadilan di Persimpangan: Menelusuri Tantangan dan Peluang di Sistem Hukum Modern" (2023) 2:1 Doktrin J Dunia Ilmu Huk dan Polit 40–52.

<sup>28</sup> Tatang M Amirin, "Implementasi Pendekatan Pendidikan Multikultural Kontekstual Berbasis Kearifan Lokal di Indonesia" (2013) 1:1 J Pembang Pendidik Fondasi dan Apl.

<sup>29</sup> Tsuwaibah Abidah et al, "Comparison of the Civil Law System between the Netherlands and Indonesia in the Application of Criminal Law" (2025) 1:1 J Verum Legis Indones 38–44, online: <<https://journal.abhinaya.co.id/index.php/jvli/article/view/41>>.

<sup>30</sup> Muh Zafri Ramadhan, "Failure of Criminal Sanctions in Law Enforcement Environmental Crime in Indonesia" (2025) 1:1 J Verum Legis Indones 28–37, online: <<https://journal.abhinaya.co.id/index.php/jvli/article/view/31>>.

<sup>31</sup> Nurcahaya & Akbarizan, "Perempuan dalam Perdebatan: Memahami Peran dan Tantangan Berpolitik dalam Perspektif Hukum Islam" (2023) 1:3 Jawi J Ahkam Qa Iqtishad 108–116.



scholars such as Jasser Auda (2008) emphasize that *maqāṣid* is not a static concept, but rather dynamic and adaptable to social changes.

International organizations and human rights bodies can also play a role in supporting family law reform in Muslim countries.<sup>32</sup> Cooperation between the government, religious institutions, and civil society organizations can drive faster and more effective change.<sup>33</sup> With an inclusive and dialogue-based approach, harmonization between Islamic family law and human rights principles can be achieved, creating a more just and equitable legal system for all family members.<sup>34</sup> International cooperation can also provide a platform for sharing experiences and best practices, which can help accelerate the reform process and ensure the sustainability of desired changes.<sup>35</sup>

In addition, great opportunities also arise from dialogue across schools of thought, both within Islam and between Islam and modern legal thought. In the history of Islam, plurality of views is commonplace, so that space for discussion and dissent has become part of the Islamic intellectual tradition. Interdisciplinary dialogues between Islamic jurists, human rights practitioners, academics, and religious leaders need to be facilitated regularly to create a common understanding and contextualized legal solutions. In addition, collaboration between the approaches of *fiqh*, positive law, legal sociology, and legal philosophy can produce a rich and solutive synthesis of thought.

The state also has a strategic role in formulating legal policies that can accommodate Islamic values while upholding human rights. National legislation, such as the Marriage Law, child protection, and domestic violence, should be designed with these two dimensions in mind. Indonesia, as the country with the largest Muslim population, has shown some initiatives in this regard, for example, the revision of the minimum age of marriage through Law No. 16 of 2019 as a form of commitment to child protection, which is also by *maqāṣid* values.

The state also needs to strengthen institutions such as the National Human Rights Commission, the Constitutional Court, and fatwa institutions to play a mediative role between the demands of modernity and religious norms. Harmonization will not succeed if it is approached coercively, but must be done with a collaborative and educative approach, through legal mechanisms that are sensitive to the social and cultural context of society.

## V. Harmonization Practices in Some Muslim Countries

Case studies of Muslim-majority countries provide a concrete picture of the dynamics, approaches, and challenges in harmonizing Islamic law with human rights principles. Each country has a different historical, political, and social context, which influences the shape and direction of its legal reforms. In this section, we will discuss the practice of harmonizing Islamic law and human rights in Indonesia,

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<sup>32</sup> Ridwan Saidi Tarigan, *Reformasi Hukum Tata Negara: Menuju Keadilan Dan Keseimbangan* (Ruang Berkarya, 2024).

<sup>33</sup> Muhammad Juni Beddu, "Tantangan Penyuluh Agama Di Era Perubahan: Wujudkan Moderasi Agama Melalui Penguatan Harmoni Sosial" (2023) 18:1 Addayyan 54–66.

<sup>34</sup> Manator Tampubolon, Nelson Simanjuntak & Fernando Silalahi, *Hukum dan Teori Konstitusi* (Jakarta: PT Global Eksekutif Teknologi, 2023).

<sup>35</sup> Ade Risna Sari, *Reformasi Pelayanan Publik* (PT. Indonesia Delapan Kreasi Nusa, 2024).



Tunisia, and two countries that reflect the conservative spectrum, namely Egypt and Saudi Arabia.

1. Indonesia: A Compromising Approach within the Pancasila State Framework

Indonesia is one example of a country that adopts a compromise approach to the relationship between Islamic law and human rights. Although it is not an Islamic state, Indonesia recognizes and accommodates Islamic law in some aspects of the private life of Muslim communities, particularly through legal instruments such as the Compilation of Islamic Law (KHI). In the field of family law, for example, the KHI contains provisions on marriage, divorce, inheritance, and guardianship, which are derived from fiqh but adopted into the national legal system.

However, several provisions in KHI and Marriage Law No. 1/1974 have been criticized for not being fully in line with the principles of gender equality and child protection. In response, Indonesia reformed the law through Law No. 16/2019, which raised the minimum age of marriage from 16 to 19 years old for women, as a measure of harmonization with the principles of child protection under international conventions (CRC). This reflects a clear attempt to balance Islamic values with global human rights demands through legislation and social consensus approaches.

2. Tunisia: A Model of Progressive Reform in Family Law

Tunisia is often cited as a pioneer in family law reform in the Islamic world. Since the enactment of the Code du Statut Personnel (CSP) in 1956, Tunisia has abolished the practice of polygamy, granted women equal rights to divorce, and recognized women's rights in child custody. These reforms took place within the framework of a secular state that still respected Islamic symbols, but with a very modern and pro-Human Rights interpretation.

In 2017, Tunisia again attracted international attention by lifting the ban on Muslim women marrying non-Muslims, a policy that was considered to violate the principle of freedom of choice. This reform is an example of how the state can take a firm position in upholding human rights while still using the progressive Islamic narrative as its political and social legitimacy.

3. Egypt: Tensions between Reform and Religious Authority

Egypt is a country that has historically been a center of Islamic scholarly authority, through institutions such as Al-Azhar, but also exhibits a complex dynamic between the will to reform and religious conservatism. The Egyptian government once passed a law that strengthened women's rights in divorce (such as the right to *khulu'* without the husband's permission), but this reform was met with resistance from conservative clerics.

Egypt shows that while the state has the political will to implement pro-human rights legal reforms, their successful implementation is highly dependent on the legitimacy of religious institutions. In this case, harmonization between Islamic law and human rights requires social and religious consensus, not just the will of the state.

4. Saudi Arabia: Limited Reforms in the Sharia Legal System

Saudi Arabia has traditionally been known to strictly apply sharia law based on the Hanbali school, with a male guardianship system (*wilayah*) that severely restricts women's rights. However, in the past decade, under the leadership of



Crown Prince Muhammad bin Salman, the country has begun to gradually implement social and legal reforms as part of the Vision 2030 program.

Some of the key reforms include the abolition of the requirement for a male companion when traveling, the expansion of women's right to obtain passports and driver's licenses, and the recognition of women's right to work and travel without a guardian's permission. However, these reforms still operate within the framework of an absolutist state and are not fully based on international human rights principles. Harmonization here is more technocratic and top-down than participatory and consensus-based.

## CONCLUSION

Islamic law and Pancasila are two different legal systems, but they have an important role in harmonizing human rights in Indonesia. Islamic law, which is part of the religion of Islam, and Pancasila, which is the foundation of the Indonesian state, both have the same goal of creating a just and harmonious society. The role of Islamic law in the harmonization of human rights in Indonesia can be seen from several aspects, including: guaranteeing individual rights, creating social justice, and maintaining harmony between religious communities.

Harmonization between Islamic family law and human rights principles is a challenging but possible process with an inclusive and contextual approach. Differences in interpretation between traditional sharia law and modern human rights standards can be bridged through a dynamic understanding of *maqāṣid al-sharī'ah*, the involvement of women in policy-making, and human rights education in society. Case studies in Indonesia, Tunisia, Egypt, and Saudi Arabia show that successful harmonization depends on the socio-political context, religious legitimacy, and public participation. Through interdisciplinary dialogue and institutional strengthening, this harmonization can create a fair family law system that respects the human rights of every individual.

## DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

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