



Different Protection Techniques: Women's Moral and Material Rights between Indonesia's Presumptive Model and Saudi Condition-Based Model in the Perspective of Maqāsid Al-Syarī'ah

Article	Abstract
<p>Author Abdul Ilah</p> <p>^{1*}Universitas Islam Negeri Sunan Kalijaga Yogyakarta</p> <p>Corresponding Author: abdulilah940@gmail.com</p> <p>Data: Submitted: 07-04-2026; Revision: 04-08-2026; Accepted : 07-08-2026; Published: 13-08-2026</p> <p>DOI: https://doi.org/10.56593/khuluqiyya.v8i2.253</p> <p>Keywords: Women's Rights; Moral and Material Rights; Indonesian Islamic Family Law; Maqasid al-Syari'ah.</p>	<p>Scholarship on women's rights within Islamic family law has tended to stay inside one legal system at a time, so that a direct comparison of Saudi Arabia's newest codification with Indonesia reaching both the material and the moral sides of a wife's entitlements remains largely unexplored. Addressing that gap, this article sets the Saudi Personal Status Law of 1447 H, together with its Regulation on the Division of Joint Property, alongside Indonesian Islamic family law as codified in Law No. 1 of 1974, Law No. 16 of 2019, the Compilation of Islamic Law (KHI), and Government Regulation No. 9 of 1975, reading both through al-Syātibi's maqāsid al-syarī'ah. The inquiry is normative and library-based, drawing on statutory, comparative, and philosophical approaches at once. Working from the official wording of each code, the study shows that the two regimes agree over a wider field than is commonly supposed: their overlap takes in not merely dower (Saudi Art. 38), maintenance, and residence, but also a woman's remedy against an obstructive guardian (wali adal), for which Saudi Art. 20 and KHI Art. 23 each secure recourse to the court. Where the techniques diverge in a patterned way is above all in property gained during the marriage Indonesian law splitting joint property in half by automatic presumption and requiring no proof of contribution (KHI Art. 97), while the Saudi Regulation on the Division of Joint Property fixes the status of shared property on a cause-based ground (contract, inheritance, or some other cause) with no such presumption. The contrast grows finer on custody and the right to exit: both codes open from a maternal presumption (Saudi Art. 127; KHI Arts. 105, 156) and both admit darar as a basis for judicial dissolution (Saudi Art. 108), parting company only over how much discretion the judge retains. Assessed against hifz al-māl and hifz al-nafs, neither technique proves superior outright: the presumptive model spares the weaker spouse the burden of proof, whereas the cause-based model safeguards the certainty and independence of the wife's own estate. Protection of women's rights is, on this reading, dimensional rather than absolute, and what separates the two systems is a difference of protective technique in specific domains, not the presence or absence of protection as such.</p>

Introduction

Rights and obligations are inherent in every person, and women are no exception to that principle. Islam affirms women's honor and guarantees their rights the right to property included by placing them as independent owners in the eyes of the law. One of the principles that underpins the position of a woman's property in sharia is the independence of property dependents (*istiqlāl al-dhimmah al-māliyyah*): the wife's property is fully his, and marriage does not originally give rise to a mixing of property between husband and wife.¹ Nevertheless, the incorporation of this principle into positive law does not run uniformly among Muslim countries; and it is in the matter of marital property that the most striking difference comes to the surface.

The two jurisdictions present an illuminating contrast. Saudi Arabia, which for many years took care of family matters through uncoded jurisprudence and relied on the *ijtihād* of judges, finally passed the Law of Ahwal Syakhsiyyah (*Nizām al-Ahwāl al-Syakhsiyyah*) through Royal Decree No. M/73, which was later supplemented by an appendix to the Regulation on the Distribution of Common Property (*Lā'ihat Qismat al-Amwāl al-Musytarakah*).² Indonesia, on the other hand, has long organized the life of Muslim families through Law No. 1 of 1974 on Marriage which was amended by Law No. 16 of 2019 and, within the religious courts, through the Compilation of Islamic Law (KHI) in 1991.

A framing note should be placed first. It is not uncommon to say that Saudi Arabia is the only country that fully implements sharia. Assumptions like this are still debated normatively and difficult to enforce empirically, so this study does not adhere to them. Here both regimes are treated as two equally valid codifications of Islamic family norms, and each is weighed according to the way it protects women's property rights not according to a predetermined ranking.

The issues raised are both comparative and evaluative. The existing literature tends to explain Saudi law from its internal side, or juxtapose classical jurisprudence with Indonesian law, without ever putting the latest codification of Saudi law and Indonesian law within the same framework of analysis. What remains unanswered is not *what* each code provides, but *which sharia purpose* each code puts forward when the two clash and what are the consequences for women's protection. Starting from this, the research asks three questions: (1) On which rights of wives material and moral do the two codifications meet, and in what ways do they differ fundamentally? (2) Are there consistent protection techniques that distinguish the two systems along the two domains? (3) Reading through *maqāsid al-syarī'ah al-Syātibī*, how is the point of difference assessed from the point of view of protecting women's rights?

The thesis put forward is that both regimes equally protect women's rights both material and moral with a wide area of agreement, while the technical differences focus on specific domains:

¹ The principle of independence of the wife's property dependents (*istiqlāl al-dhimmah al-māliyyah*) is an established principle in the jurisprudence of *munākahāt* and is reflected in the Compilation of Islamic Law Article 86 which affirms the absence of mixing of property between husband and wife due to marriage. Compare Zaky Hanifah, *Qismat al-Māl al-Musytarak bayna al-Zawjayn (Dirāsah Muqāranah bayna al-Fiqh al-Islāmī wa al-Qānūn al-Indūnīsī)* (S1 Thesis, Dirasat Islamiyah Imam Shafi'i Jember High School, 2022), Chapter II.

² *Nizām al-Ahwāl al-Syakhsiyyah*, Government Decree No. M/73; accompanied by *Lā'ihat Qismat al-Amwāl al-Musytarakah* (Decree of the Minister of Justice No. 1610, 19/5/1439 H). A manuscript compiled in 1447 AH was published by al-Jam'iyyah al-'Ilmiyyah al-Qadā'iyyah al-Sa'ūdiyyah (Qadā'), complete with *lā'ihah tanfidziyyah* and *fahāris*.

especially property acquired during marriage, where Indonesia relies on automatic presumption and Saudi Arabia on a cause-based approach; Then, to a more subtle extent, on the flexibility of the determination of *hadānah* and the formulation of the right to leave marriage. As a result, the advantages of protection are dimensional and not absolute, and what distinguishes the two is the technique on certain axes, not the presence or absence of protection.

The literature on women's property rights in both systems moves in three major streams, and it is right in between these three that this study places itself. The first stream presents an internal reading of the Saudi *Ahwal Shakhshiyyah* law. A number of recent studies the majority of which are in English highlight the protections that Saudi codification provides for women, often from a critical point of view feminist, human rights, and Vision 2030.³ This kind of literature is valuable for reconstructing the intentions behind Saudi provisions, but because they are written from a single system without comparison, the peculiarities of Saudi choices tend to remain hidden.

The second stream includes Indonesia's doctrinal analysis of the KHI and the Marriage Law, including a discussion of joint property (*gono-gini*) and how to divide it when divorce occurs.⁴ This current is rich in explaining the mechanics of the Indonesian regime, but it often stands alone; even if there is a comparison, it is usually classical jurisprudence, not the foreign codification of today. Interestingly, some decision-based studies have even shown that Indonesia's judicial practice is not entirely presumptuous-automatic not a few judges weigh contributions on a case-by-case basis a finding that sharpens the relevance of this study while also reminding us not to formulate the dichotomy rashly.

The third stream consists of the study of classical *fiqh* which relates the property of husband and wife into the chapters of *shirkah* and *khultah*. A comparative study at the undergraduate level, for example, puts the issue of joint property under the chapter of *shirkah* and emphasizes that *sharia* adheres to the principle of independence of the wife's property; A new property has the status of *al-māl al-musyarak* when both spouses work and contribute, while the division when divorced is taken through peace (*sulh*), URF, and then justice.⁵ Studies like this illuminate the roots of the *fiqh* of the problem, but stop at the comparison of classical *fiqh* with Indonesia and have not touched on the latest Saudi codification.

The red thread seemed bright. The three currents allude to women's property rights, but none of them unites the Saudi *Ahwal Syakhshiyyah* Law 1447 H and Indonesian law in a single frame that is explicitly measured with *maqāsid al-syarī'ah*, while crossing the material and moral realms. It is on this structural gap that this study rests: the legal texts of the two systems

³ Eran Giladi, "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?" *Islamic Law and Society* (2025); Muhammad Mas'odi dkk., "The Personal Status Law (PSL) and Patriarchy in Saudi Arabia: A Critical Examination," *Syura: Journal of Law* (2025); Ahmad S. A. Alhoraie dkk., "Women's Right to Choose a Spouse in Saudi Family Law Compared to Shari'a and International Conventions," *International Journal of Religion* (2024).

⁴ See e.g. Asep Bahri, "Analysis of the Position of Joint Property in Islamic Law and the Compilation of Islamic Law," *Al-Risalah: Journal of Islamic Family Law* (2022); Ayu Widiyastuti et al., "The Distribution of Gono Gini Property Due to Divorce from the Perspective of Islamic Law," *Usratuna: Islamic Family Law Journal* (2025); Muhammad Khaidir Salami et al., "Analogy of the Law of Joint Property in Islamic Marriage with the Concept of Islamic Economics (*Syirkah*)," *Riau Law Journal* (2025).

⁵ Zaky Hanifah, *Qismat al-Māl al-Musyarak bayna al-Zawjayn* (S1 Thesis, STDI Imam Syafi'i Jember, 2022), Chapter III. [Note: non-peer-reviewed undergraduate thesis; referred to as secondary sources, the core claims are still based on the text of the legislation and primary jurisprudence.]

become the material, and the maqāsid al-Syatibī becomes the scale that measures the meeting and separation points.⁶

Methods

This research is classified as normative legal research carried out through library research. Three approaches are used simultaneously: the legislative approach, which treats both codes as authoritative legal texts; a comparative approach, which aligns equal provisions to separate the points of real differences; and a philosophical approach, which places maqāsid al-syarī'ah al-Syātibī as a framework for assessment. The object of the study is the legal construction of the rights of wives in both codifications, not the empirical behavior of married couples or the court. Its primary legal material is the two codifications themselves: on the Saudi side, the Law of Ahwal Syakhsiyyah together with Lā'ihat Qismat al-Amwāl al-Musytarakah; on the Indonesian side, Law No. 1 of 1974 which was amended by Law No. 16 of 2019 and KHI of 1991. Its secondary legal material includes classical munākahāt jurisprudence (especially the chapter of shirkah and khultah), contemporary maqāsid al-shari'ah literature, as well as relevant scholarly articles and works. To illustrate the practical side, two decisions of the Religious Court regarding the distribution of common property are also referenced. All of these materials are examined descriptive-analytically by relying on marital property as a constitutive point of difference, while dowry, alimony, and residence are placed as the setting for meetings. On the property axis, the analysis goes through three stages: rearranging the provisions of each code from its text; consider whether the differences are merely editorial or touch on principles; Then measure the difference against the relevant sharia goals, especially Hifz al-Māl. Similar patterns were then tested on some moral rights to see if the protection techniques that distinguish the two systems were really repeated.

Result and Discussion

Maqāsid al-Syarī'ah as a Comparative Measure

Maqāsid al-shari'ah refers to the universal goals that the sharia wants to realize, namely the benefit of human beings in this world and the hereafter. In al-Muwāfaqāt, al-Syātibī arranges these goals into three levels darūriyyāt (primary), hājiyyāt (secondary), and tahsīniyyāt (tertiary) and details five primary interests (al-darūriyyāt al-khams): the preservation of religion (dīn), the soul (nafs), reason ('aql), posterity (nasl), and property (māl).⁷ In the realm of marriage, hifz al-māl oversees the rights of the wife's property, while hifz al-nafs and hifz al-nasl are related to physical protection as well as relational.

Jamaluddin Athiyah stretches maqāsid to the family realm (maqāsid al-usrah), one of which places the arrangement of the financial aspects of the family as a functional goal that stands alone.⁸ It is this expansion that makes maqāsid function as a comparative measure: it paves the way for

⁶ East Jakarta Religious Court Decision No. 0175/Pdt.G/2021/PA. JT; Pekalongan Religious Court Decision No. 403/Pdt.G/2020/PA.Pkl.

⁷ Abu Ishāq Ibrahim ibn Musa al-Syatibi, *al-Muwāfaqat fī Usul al-Syarī'ah*, tahqiq Abu 'Ubaydah Masyhūr ibn hasan Āl Salman (Dar Ibn Affan, 1997), jld. II. 17-20.

⁸ Jamāl al-Dīn 'Atiyyah, *Nahwa Taf'īl Maqāsid al-Syarī'ah* (Damascus: Dar al-Fikr, 2003), 17.

the matrimonial property regime to be judged not only as a set of technical rules of ownership, but as a means of enforcing or otherwise thwarting the recognized goals of sharia. With such use, *maqāsid* is not an ornamental frame that is affixed at the end of the analysis, but a benchmark that measures which model is more serving the interests of women's property.⁹

In order for the two models to be judged fairly, it is first necessary to explain the classical way of jurisprudence to treat the property of husband and wife, because that is where the principle that separates the two lies. The basic principle in sharia is the independence of ownership: the husband's property belongs to the husband and the wife's property belongs to the wife, and the marriage itself does not give rise to a mixture of ownership. Therefore, classical jurisprudence does not treat 'joint property of husband and wife' as a separate category; The previous scholars did not record it in a special chapter, precisely because according to the shari'i the property of each couple is separate and completely controlled by the owner.¹⁰

Some contemporary scholars especially in the Malay-Nusantara environment, where this problem often arises then *ijtihad* to find the most appropriate shari'i footing, and it leads to the placement of common property under the chapter of *shirkah* (sharing) or *khultah* (mixing). The relevance lies here: while the husband and wife both strive to produce wealth and each contributes to its acquisition and development, the wealth born from the work of both of them becomes joint property (*musytarak al-tamlīk*). At that point, contribution becomes decisive.

Etymologically, *shirkah* means the mixing of the property of two parties in such a way that the part of one of them can no longer be sorted. *Fiqh* divides *shirkah* into two main types: *shirkah al-amlāk* and *shirkah al-'uqūd*.¹¹ This division determines the location of the issue of marital property.

Syirkah al-amlāk is the joint ownership of an object by two or more people without preceded by an agreement; The harmony is sufficient by the gathering of two parts, either by compulsion (*jabr*) or by choice (*ikhtiyār*). This type is divided into two: *shirkah ikhtiyār* property becomes joint as a result of the voluntary acts of both parties, such as buying, receiving grants, or receiving wills jointly; and *shirkah jabr* wealth becomes joint without the interference of both, like two people who inherit one property. The main characteristic: *shirkah al-amlāk* does not require the existence of *ijab-kabul* (*sīghah*).¹²

In contrast, *shirkah al-'uqūd* is a partnership born from an agreement between two parties and is invalid without *sighah* that is, the expression *ijab* and *kabul* which signifies willingness. *Fiqh* knows its five types, which need to be explained at a glance because some of them are used as an analogy for the property of husband and wife.¹³

⁹ Untuk landasan metodologis penggunaan al-Syātībī sebagai ukuran komparatif lih. Muhammad Abu Bakar dkk., "Maqasid al-Shariah Theory: A Comparative Analysis Between the Thoughts of al-Shatibi and 'Izz al-Din ibn 'Abd al-Salam," *International Journal of Academic Research in Business and Social Sciences* (2021); Zainul Al Amin, "The Method of Determining Maqoshid al-Syariah According to al-Imam al-Shatibi and al-Imam al-Thahir Ibn Ashur," *Ijtihad* (2025).

¹⁰ Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu* (Damascus: Dar al-Fikr), vol. IX. 6855.

¹¹ al-Kasani, *Badā'i' al-Sana'i fi Tartīb al-Syarā'i* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1406 H), 6/56; Ibn Manzūr, *Lisān al'Arab* (Beirut: Dar Sadir, 1414 AH), 10/448; Sayyid Ssabi, *Fiqh al-Sunnah* (Beirut: Dar al-Kitāb al'Arabi, 1397 AH), 3/355.

¹² Ibn 'Uthsaymīn, *al-Syarh al-Mumtī 'alā Zād al-Mustaqni'* (Dammam: Dar Ibn al-Jawzī, 1428 H), 9/398-399.

¹³ al-Kasani, *Badā'i' al-Sana'i*, 6/56-58; al-Zuhaylī, *al-Fiqh al-Islami*, 5/3877; Sayyid Ssabi, *Fiqh al-Sunnah*, 3/357.

First, shirkah 'inān: two people unite property to be traded and the profits are divided between them; There is no demand for equality of capital, management, or profit, while losses are borne according to the amount of capital, and the scholars agree to allow it. Second, shirkah mudārabah: one party deposits capital and the other party contributes work, with profits divided according to agreement. Third, shirkah wujūh: a partnership that relies on the reputation of buying goods bold and then selling them, without capital in the form of wealth. Fourth, shirkah abdān (a'māl): the sharing of energy or expertise without property capital, where the partners accept the work and then divide it permissible by Hanafiyyah and nullified by Shafi'iyyah. Fifth, shirkah mufāwadah: a comprehensive partnership that makes each party the representative and guarantor of the other for all profits and losses valid according to Hanafiyyah and null and void according to Shafi'iyyah.¹⁴

A number of Indonesian jurists have attributed joint property to shirkah mufāwadah and shirkah abdān, on the pretext that husband and wife share in the business and each acts as a representative and guarantor for their spouse. However, as some scholars have pointed out, the analogy to the two types of shirkah 'uqūd clashes with a fundamental objection: shirkah 'uqūd requires sīghah, when in reality husband and wife never bind a shared contract. Therefore, the more appropriate placement is precisely in the shirkah al-amlāk which does not require sīghah, either in the form of ikhtiyār or jabr.¹⁵

There are two important consequences of this fiqh framework. First, in shirkah, the property is divided according to the proportion of shares (hissah) of each share, and cannot be pegged in a fixed amount for either party; Setting a shareholder as 'so many dirhams' actually cancels the shirkah itself. Second, according to the jumhur, shirkah is a contract that is jā'iz (non-binding), so that at any time it can be fasakh and become null and void with the death of one of the partners which means that the part of the deceased party turns into shirkah for his heirs.¹⁶ From this framework, it can be seen that classical jurisprudence does recognize women's property rights for what they contribute, but through the logic of contributions and proportions of shares, not through the presumption of partition. This is the conceptual root that, as will be shown later, is in harmony with the structure of the Saudi regime as well as different from the Indonesian model.

The Second Historical Context of Codification

The difference in the model of marital property in the two systems cannot be separated from the history of its formation. In Saudi Arabia, family problems for decades have been resolved directly on the basis of fiqh especially the Hanbalī style through the ijtihad of judges without binding written codification. The Ahwal Syakhsiyyah Law established through Royal Decree No. M/73 became the first comprehensive codification in this realm, which poured the norms of fiqh into written articles. Because it grew out of a long tradition of fiqh, it is not surprising that the conceptual framework including property affairs still adheres to the classical fiqh framework,

¹⁴ al-Kasani, *Badā'i al-Sana'i'i*, 6/58; Sayyid Ssabiḡ, *Fiqh al-Sunnah*, 3/357.

¹⁵ An analogy to shirkah mufāwadah/abdān is based on M. Yahya Harahap, *Position, Authority, and Proceedings of Religious Justice Law No. 7 of 1989* (Jakarta: Sinar Grafika, 2009), 270–271; objection to it cf. Liky Faizal, "Joint Property in Marriage," *Ijtima'iyya* 8, no. 2 (2015): 90. Compare Salami et al., "Analogy of the Law of Common Property."

¹⁶ Ibn Qudāmah, *al-Mughnī* (Riyadh: Dar 'Ālam al-Kutub, 1417 AH), 7/131 and 7/145.

with the principle of property independence as a foothold and shirkah as the entrance to common ownership.¹⁷

In Indonesia, the institution of shared property was born from the encounter between customary law and fiqh. Long before it was codified, many people in the archipelago were familiar with the idea of property collected together during marriage with various local names as joint property of husband and wife. When the state drafted Law No. 1 of 1974 and later KHI, this customary concept was raised as a positive norm and given a foothold in fiqh through the chapter of shirkah by contemporary scholars. Thus, the presumptive-automatic pattern in Indonesian law reflects its customary origins, while the contribution-based pattern in classical fiqh and in the Saudi regime reflects the principle of property independence in the fiqh tradition. In other words, the two models are the fruit of two different historical paths, not just two coincidental technical choices.

Convergence Background: Dowry, Aliance, and Residence

Before moving on to the point of difference, it is necessary to first emphasize how far the two codes are actually in line, because the agreement itself is a finding: it indicates that the difference in marital property is a deliberate structural choice, not a coincidence at the editorial level. In the matter of dowry, both codes place it as the full property of the wife. Saudi law affirms that dowry is the property of a woman completely, no one has the right to force her to surrender, and becomes obligatory in full after intercourse, legal khalwat, or the death of one of the partners. In substance, Indonesian law is similar: KHI requires the prospective husband to pay the agreed dowry (Article 30) and states that the dowry is handed over directly to the future wife and becomes his personal right from then on (Article 32).¹⁸ The two almost entirely meet: the dowry belongs to the wife, is direct, and can be demanded.

On alimony and housing, the meeting between the two is equally close. Indonesian law requires husbands to protect their wives and provide for domestic needs according to their ability (Law No. 1/1974 Article 34 paragraph 1; KHI Article 80 paragraph (2), while KHI details the elements of maintenance food, clothing, place of residence, household expenses, maintenance, and treatment (Article 80 paragraph 4) and requires the husband to provide a decent and safe residence (Article 81). Saudi law is a three-pronged one: alimony is a wife's right that can be sued, including food, clothing, and board according to urf. On this kind of rights, no code gives women much more than others; Both carry out the same classic maintenance obligations.

Main Axis: Two Models of Marital Property

The difference that really determines is nested in the regime of property acquired during marriage. It is at this point that the two systems differ at the model level, not just in the formulation.

¹⁷ Untuk latar penetapan Nizām al-Ahwāl al-Syakhsiyyah lih. muqaddimah naskah al-Jam'iyyah al-'Ilmiyyah al-Qada'iyyah al-Sa'ūdiyyah (1447 H); bandingkan Joseph A. Kéchichian, "Challenges to Legal Reforms in Saudi Arabia," *Contemporary Review of the Middle East* (2025).

¹⁸ Compilation of Islamic Law, Articles 30–32; *Nizam al-Ahwāl al-Syakhsiyyah* (Saudi 1447 AH), Article 36 (definition of dowry), Article 38 ("al-mahr milk li al-mar'ah, lā tujbar 'alā ayyi tasarruf fih"—the dowry belongs to a woman, she is not forced to give it up), and Article 40 (the dowry must be full of dukhūl, legal khalwat, or the death of one of the spouses).

Indonesian law is based on the presumption of automatic joint ownership. Article 35 paragraph (1) of Law No. 1/1974 states that property acquired during marriage becomes joint property, and Article 36 paragraph (1) affirms that the husband or wife acts with the consent of both parties, while inherited property, gifts, and inheritances remain separate (Article 35 paragraph 2). KHI emphasizes this through Article 97: widows or widowers who are divorced are each entitled to one half of the joint property as long as it is not otherwise specified in the marriage agreement.¹⁹ The main feature of this model lies in its automatic nature and the disappearance of the burden of proof: once the property is acquired during the period of marriage, it immediately becomes joint property, and when divorce comes, the property is divided in two without the need to prove who produced or donated it.

However, it should be noted that Indonesian law actually also contains the principle of separation of property only limited to one layer. KHI Article 86 emphasizes that basically there is no mixing between the husband's property and the wife's property as a result of marriage, and the wife's property remains her right which is fully controlled by her (as well as the husband's property). At this layer, Indonesia and Saudi are indistinguishable. What Indonesian law adds is the second layer on top of it, namely the category of common property. The Indonesian regime is therefore dualistic: separating what is brought or received personally, while uniting ownership of what is produced during marriage.

The Saudi regime took a different path. The appendix of *Lā'ihat Qismat al-Amwāl al-Musyarakah*, in Article 1 paragraph (1), interprets *al-māl al-musyarak* as property owned by two or more people in *shayū'* based on *akad*, inheritance, or other reasons (*bimūjab 'aqd aw irth aw ghayrihimā*); Article 3 allows the *shari'a* to divide according to the way they agree (*qismat al-tarādi*); Meanwhile, the articles after that are procedural arranging the division lawsuit, the role of the liquidator (*al-musaffi*), the authority of the court, asset valuation, and dispute resolution. Read in its entirety, this structure is a cause-based model: the appendix regulates *how to divide* property that has assumed the status of *musyarak* a status born from a contract, inheritance, or other cause and throughout the text there is not a single article that gives rise to the presumption of automatic joint ownership of all acquisitions during marriage as KHI Article 97 does.²⁰

This kind of reading is in harmony with the classical *fiqh*. In *fiqh*, a new property has the status of *musyarak* if there is a reason that makes it so especially the real contribution of both parties in the business or acquisition and its distribution follows the proportion of the shares, not automatically pegged in half. When separation occurs while the respective parts have not been separated, *fiqh* takes a gradual settlement: peace (*sulh*) as the first step, followed by the applicable *urf*, and finally justice (*qada'*) if the two paths have not been completed.²¹ The resulting

¹⁹ Law No. 1 of 1974, Articles 35–37; Compilation of Islamic Law, Articles 85–87 and Article 97.

²⁰ *Lā'ihat Qismat al-Amwāl al-Musyarakah*, Article 1 verse 1: *al-māl al-musyarak* is property owned by two or more people by *syuyū'* "*bimūjab 'aqd aw irth aw ghayrihimā*" (based on *akad*, inheritance, or other reasons); Article 3 allows the *shari'ah* to divide according to the way they agree (*qismat al-tarādi*); The following articles are procedural (*dakwā qismah*, *musaffi*, *dā'irah* authority). The *lā'ihah* text does not contain an article that creates the presumption of automatic joint ownership of all acquisitions during marriage as KHI Article 97 requires; The conclusion "contract-based/contribution-based" is drawn from this cause-based definition structure.

²¹ al-Bahūtī, *Kasysyāfal-Qanā' 'an al-Iqnā'* (Riyadh: Wizārat al-'Adl), vol. VIII (chapter *sulh*); al-Jurjānī, *al-Ta'rifāt*, 149 ('urf'). The sequence of *sulh*–'urf–*qada'* structures the reading of *fiqh* on the case of separation.

ratio also depends on agreement or proof it can be half-and-half, it can be 60:40 or some other ratio and is not pre-determined.

Conceptual Comparison: Classical Fiqh and Indonesian Law as Two Poles

Before weighing its *maqāsid*, it is worth clearly mapping the meeting point and the separation point between the concept of common property in fiqh and in Indonesian law, because the Saudi regime, as argued, stands more closely to the poles of fiqh, while Indonesia represents the opposite poles. In terms of similarities, the two are linked at a number of points. First, the naming is both rooted in the word *isytirāk* (togetherness of belonging). Second, the action on joint property is equally binding on the consent of both parties: fiqh links it to the *wilāyat al-tasarruf* in the *shirkah* contract, while Law No. 1/1974 Article 36 requires the consent of husband and wife. Third, the conditions agreed upon by both spouses are still respected as long as they do not legalize what is haram or prohibit what is halal, in line with the rules of '*al-muslimūn 'alā syurūṭihim*' and reflected in KHI Article 87. Fourth, in both systems, the togetherness of property ends with the death of one of the parties. Fifth, both allow for the confiscation (*hajr/confiscation*) of the party who damages the common property KHI Article 95 opens the way for confiscation applications to the court without having to sue for divorce first.²²

In terms of differences, the contrast is even more decisive. First, fiqh does not treat marital property as a separate category (it must be included in the chapter of *shirkah*), while Indonesian law regulates it independently and in detail (Law 1/1974 Articles 35–37; Civil Code Articles 119–128; KHI Articles 85–97). Second, *shirkah 'uqūd* requires *sighah*, while in Indonesia property becomes joint without *sighah* it is enough to rely on the fact of acquisition during marriage. Third, and this is the most important, fiqh divides according to the proportion of shares and prohibits setting a certain amount, while Indonesia divides *munāsafah* (half) without questioning who produces it (Civil Code Article 128; KHI Articles 96–97).²³

The formulation of Indonesian articles emphasizes this presumptive and automatic pattern. Civil Code Article 119 states that since the marriage took place, for the sake of the law, a comprehensive joint property between husband and wife is formed as long as there is no other agreement; Article 122 continues that all income and profits including losses during marriage become part of the common property; while KHI Article 97 affirms the right of a spouse or widower who is divorced alive, and Article 96 gives half of the joint property to a spouse who lives longer in the case of divorce death. None of these provisions require proof of contribution as a condition of obtaining a share.²⁴

Two decisions of the Religious Court show how this pattern is applied. In the East Jakarta PA Decision No. 0175/Pdt.G/2021/PA. JT, the court declared several assets including a vehicle unit and an account balance as joint property and stipulated that each party was entitled to one-half, accompanied by an order that if it could not be divided materially, the assets were sold and the proceeds were halved. In the Pekalongan PA Decision No. 403/Pdt.G/2020/PA. Pkl, two

²² Compilation of Islamic Law, Articles 87, 92, 93, 95; Law No. 1 of 1974, Article 36. For the fiqh side. *al-Kāsānī* and *Ibn Qudāmah* as referred to above.

²³ Civil Code, Articles 119, 122, 126, 128; Compilation of Islamic Law, Articles 85, 86, 91, 96, 97; Law No. 1 of 1974, Articles 35–37.

²⁴ Civil Code (BW), Articles 119, 122, 128; Compilation of Islamic Law, Articles 96 and 97.

plots of land and a number of batik production machines were declared as joint property and one half of them were determined as the plaintiff's right. In both cases, the split was imposed without the court requiring the plaintiff to prove the amount of his contribution. Nevertheless, it should be emphasized that this image of 'pure presumptive' does not fully survive at the level of practice: a number of other decisions have shifted towards assessment of contributions, so that this dichotomous claim is strongest at the level of codified texts and narrows down to the level of judicial practice.²⁵

From Material to Moral: Testing Patterns on Non-Property Rights

The above analysis is still limited to material rights. In fact, the protection of women in family law does not stop at property matters; It also summarizes moral rights, rights related to the position, honor, and autonomy of the wife in the marital relationship. The decisive question for this thesis is: to what extent do the techniques that distinguish the two systems in the realm of property presumption or automatic default versus the cause-based approach also make their mark in the moral realm, and on which moral rights do the two actually meet? This test is important so that the dimensional thesis does not slip into a dichotomy that is imposed on each right. This section examines four selected moral rights: custody of children, the right to confront reluctant guardians, the right to exit an abusive marriage, and the right to consent and good association and, as will be seen, the results are mixed: some show a gradation of technique, others show full convergence.

Child Custody (Hadānah): Mother's Presumption versus Maslahat Valuation

In custody, the same pattern with property matters is very clear. Indonesian law imposes a strict default presumption: in the event of divorce, the maintenance of a child who is not yet mumayyiz or has not even reached the age of twelve becomes the right of the mother (KHI Article 105 letter a), and the child who is not mumayyiz has the right to obtain hadānah from his mother (KHI Article 156 letter a). The mother holds custody by default, without being required to prove that she is more qualified; The burden is actually borne by the party who wants to transfer the right, who must prove that the holder of the hadānah is unable to guarantee the physical and spiritual safety of the child (KHI Article 156 letter c). Once the child is mumayyiz, the right to vote is handed over to the child (Article 105 letter b), while all financing is still charged to the father (Article 105 letter c, 156 letter d).²⁶

The Saudi regime took a path that, after examining the official text, turned out to be not completely the opposite. Article 127 paragraph (1) of Nizām al-Ahwāl al-Syakhsiyyah stipulates

²⁵ East Jakarta PA Decision No. 0175/Pdt.G/2021/PA. JT; Pekalongan PA Decision No. 403/Pdt.G/2020/PA.Pkl. Some judicial practices have deviated from rigid munāsafah towards contribution assessment; cf. Hanif Muhammad, "Juridical Analysis of the Distribution of Gono Gini Property Based on the Contribution of Husband and Wife During Marriage," *Journal of Legal Restoration* (2022); Enni Yani et al., "Post-Divorce Division of Marital Assets from the Perspective of the Maslahah Mursalah Theory," *Historical* (2025).

²⁶ Compilation of Islamic Law, Articles 105 and 156. For the shift from maternal presumption to benefit assessment, cf. Faridatun Nazah et al., "Gender Justice in Child Custody Disputes: The Maqāsid al-Sharī'ah Approach in Contemporary Judicial Practice," *MILRev: Metro Islamic Law Review* (2025); Umar Multazam, "The Concept of Child Custody (hadānah) After Divorce in the Perspective of Islamic Law," *Indonesian Journal of Islamic Law* (2024).

that when a husband and wife separate, the *hadanah* first becomes the mother's right, then switches to following the standard order (father, followed by the mother's mother, then the mother's father), before finally the court decides according to the *maslahat mahdūn*. This means that the Saudis also depart from the mother's presumption just like Indonesia. The difference lies in two things: first, Article 127 paragraph (2) gives the judge explicit authority to deviate from that order for the benefit of the child; second, the age limit is different Indonesia sets the *mumayyiz* at twelve, while the Saudis set the age of *takhyīr* (the right of the child to choose) at fifteen years and the end of *hadanah* at eighteen (Article 135).²⁷

This comparison demands a more careful formulation than a crude dichotomy. In *hadanah*, both systems both depart from the mother's presumption that eases her burden in proof; What distinguishes is not the absolute 'presumption versus judgment', but how flexible the space is opened for judges to deviate for the benefit of the child which in the Saudi formulation is more clearly affirmed as discretionary authority (Article 127 paragraph 2). Interestingly, the presumption of motherhood in Indonesia itself, in recent judicial practice, has shifted towards substantive benefit assessments as seen in a number of rulings studies so that the distance between the two models at the practice level has narrowed again. Judging from *Hifz al-Nasl* and *Hifz al-Nafs* Children, both aim at the same goal the welfare of the child by placing the mother as the primary holder and the child's benefit as the ultimate criterion; the Indonesian text emphasizes the certainty side, while the Saudi text emphasizes more judgment space for judges.

Wali Adal: Two Equivalent Structural Guarantees

The right of women to face guardians who are reluctant to marry them (*wali adal*) shows a convergence that originally thought to be a point of separation turns out to affirm the structural equality of the two systems. Indonesian law offers a clear solution: if the guardian is reluctant or refuses (*adal*), his authority passes to the guardian, but the guardian judge can only act after the decision of the Religious Court regarding the guardian's reluctance (KHI Article 23). Women are not allowed to depend on the will of the guardian who gets in the way; There is a judicial mechanism that guarantees her right to marry.²⁸

A review of the official text of the Saudi *Ahwal Syakhsiyyah* straightens out the suspicion that this regime lacks a special channel for the issue of *adal*. Article 20 states it unequivocally: if the guardian – even the father – prevents a woman under his guardianship from marrying a candidate for *sekufu* whom he has agreed to (*al-mar'ah al-ma'dūlah*), then the court takes over to marry her, at the request of the woman herself or the interested party, and the court may transfer the guardianship to another guardian for the sake of *maslahat* or authorise the licensed

²⁷ *Nizam al-Ahwāl al-Syakhsiyyah* (Saudi 1447 AH), Article 127 paragraph 1: if the husband and wife separate, the *hadanah* becomes the right of the mother, then the more entitled according to the order (father, mother's mother, mother's father), then the court determines according to the *maslahat mahdūn*; verse 2 gives the judge the authority to deviate from that order based on the son's benefit. Article 135 sets the age of *takhyīr* at 15 years and the end of *hadānah* at 18 years. Compare Bandar Alsafwani, "The Child's Right in Custody and Foster Care in Saudi Arabia," *Community: Journal of Research and Community Service Results* (2024).

²⁸ Compilation of Islamic Law, Articles 19–23; the provision of guardian judges is complemented by the Regulation of the Minister of Religion No. 30 of 2024 concerning Marriage Registration. Compare Iwan Brilliant et al., "Islamic Legal Communication in the Determination of Wali Adhal: A Comparative Study of Indonesia and Morocco," *INJECT* (2025).

headmaster. This provision is confirmed by Article 17 paragraph (3) which emphasizes that the guardian – even the father – cannot marry without the woman’s consent.²⁹

Thus, both systems provide functionally equivalent structural guarantees: each transfers authority from the obstructing guardian through court intervention, and each links the transfer to the will of women as its axis. This point is important for the sake of the honesty of the analysis: it shows that the dimensional thesis should not be forced to be a contrast on every right. In the guardian, what is seen is not ‘one more protective than the other’, but convergence in protecting women’s marriage rights a finding that reinforces, not erodes, the conclusion that the difference between the two systems lies in the techniques in a particular domain, not in the existence or absence of comprehensive protection.

The Right to Leave a Detrimental Marriage: Fasakh and Reasons for Divorce

A woman’s right to end a marriage that endangers her is one of the most important moral protections. Indonesian law regulates it through two channels. First, the annulment of marriage (fasakh) due to contract defects: the marriage is null and void or can be annulled by reasons such as the absence of a legal guardian, the absence of witnesses, coercion, or fraud concerning the spouse (KHI Articles 70-72), and the application can be submitted by both husband and wife (Article 73). Second, the reasons for divorce that overshadow the wife: Government Regulation No. 9 of 1975 Article 19 and KHI Article 116 compile a list of reasons that open the way for divorce, including severe persecution, being abandoned for two consecutive years without a valid reason, couples who are imprisoned for five years or more, and prolonged disputes that no longer leave any hope of harmony.³⁰

What is striking about the Indonesian list is its enumerative as well as objective nature: the reasons are formulated as closed categories that, once proven, directly give birth to the right of divorce a ‘rule’ approach. The Saudi regime guarantees the wife’s right to leave a detrimental marriage through a formulation that, according to its official text, is no less concrete: Article 108 stipulates that the court dissolves the marriage contract at the request of the wife because the husband’s relationship with her makes it impossible for a good relationship to continue, as long as it is proven; Article 107 regulates fasakh because the husband does not provide for it; and Article 109 regulates syiqāq and the mechanism of tahkīm. Therefore, the difference is more subtle than the dichotomy of the ‘list of opponents of discretion’: Indonesia condenses the causes of exit into an objective closed list, while the Saudis formulate a general rule containing the concept of darar whose application depends on the proof and judgment of the judge in each case. Both protect the

²⁹ *Nizām al-Ahwāl al-Syakhsiyyah* (Saudi 1447 AH), Article 20: when the wali—even the father—prevents a woman under his guardianship from marrying a prospective sekufu whom he has pleased (al-mar’ah al-ma’dūlah), the court takes over to marry her at her request or at the request of the interested parties, and may transfer the guardianship to another wali or authorize the authorized headmaster. Article 17 paragraph 3 emphasizes that the guardian cannot marry without the pleasure of the woman. Compare Iwan Brilliant et al., “Islamic Legal Communication in the Determination of Wali Adhal: A Comparative Study of Indonesia and Morocco,” *INJECT* (2025).

³⁰ Compilation of Islamic Law, Articles 70–76 and 116; Government Regulation No. 9 of 1975, Article 19. For the power of maqāsid on the wife’s right to leave cf. Hamdan Umar Harahap et al., “Legal Status of a Wife Leaving Her Husband and Vice Again in Contextual Fiqh Studies,” *Mizani Scientific Journal* (2025).

wife's right to go out; Indonesia promises certainty through enumeration, Saudi offers breadth through codified darar rules.³¹

Consent and Good Fellowship (Mu'āsyarah bil Ma'rūf)

The last two moral rights show a strong convergence, and are useful as a backdrop. In the matter of the approval of the prospective bride, Indonesian law affirms that marriage is based on the consent of both candidates (Law No. 1/1974 Article 6 paragraph 1; KHI Article 16 paragraph 1), in the form of the consent of the bride-to-be which can be in the form of a firm or silent statement as long as there is no firm rejection (KHI Article 16 paragraph 2). The Saudi regime also requires the consent of the husband and wife as a condition for the validity of the contract. In the aspect of good association, KHI Article 77 obliges husband and wife to love, respect, be loyal, and provide outward-mind assistance, in line with the principle of mu'āsyarah bil ma'rūf which is also an obligation in Saudi provisions.³²

The convergence of these two rights is important because it indicates that the technical differences between the two systems are not comprehensive: in the norms that come directly from the shari'a text the obligation of ridha and mu'āsyarah bil ma'rūf they stand on an equal footing, just as they are also on an equal footing in dealing with the guardians of the doctrine that have been discussed. The most emphatic technical differences are centered on one area of ijthadi: the division of property acquired during marriage where Indonesia takes an automatic presumption and Saudis take a cause-based approach while in hadānah and the right of exit, the difference narrows down to how flexible the judge's authority is. This map became the basis for the next synthesis.

Maqāsid Evaluation: The Case of a Wife with No Income

The significance of this difference for women becomes evident in the paradigmatic case: the wife contributes to the household through domestic work without wages, while the husband earns a living and registers assets in his own name. In Indonesia's automatic presumption model, property accumulated during marriage is classified as joint property, and the wife is entitled to one half of it without the need to prove a contribution no matter whose name the asset is recorded in (KHI Article 97). Judging from hifz al-māl, this model actually provides protection for the most economically vulnerable wives, namely those whose contributions are non-financial and difficult to prove. The burden of proof is not placed on his shoulders.

³¹ *Nizām al-Ahwāl al-Syakhsiyyah* (Saudi 1447 AH), Article 108: the court fasakh the marriage contract at the request of the wife because of the husband's darar against her which makes it impossible to continue good association, if it is proven that there is a darar; Article 107 regulates fasakh because the husband does not provide for it; Article 109 regulates syiqāq and tahkīm. Compare the maqasidī approach to darar in Nur Izzati Syazwani Md. Hanizad et al., "A Maqasid al-Shariah Approach to Divorce Due to a Spouse's Mental Illness," *International Journal of Research and Innovation in Social Science* (2025).

³² Compilation of Islamic Law, Articles 16 and 77; Law No. 1 of 1974, Article 6; *Nizām al-Ahwāl al-Syakhsiyyah* (Saudi 1447 AH), Article 42 which stipulates the reciprocal obligations of husband and wife: husn al-mu'āsyarah bi al-ma'rūf, tabādul al-ihtirām which ushers in mawaddah wa rahmah, and the prohibition of idār of one party towards the other materially and morally; the necessity of pleasure is reflected in Article 16 (the condition of ijab-kabul) and Article 17 paragraph 3.

In the Saudi contribution/contract-based model, the status of a property needs to be based on an underlying cause, so the wife who claims the top part of the property recorded in the husband's name must basically show the basis of joint ownership or contribution. As a result, the burden of proof tends to fall on economically weaker parties. But on the other hand, this model has its own *maslahah*: it adheres to the principle of *istiqlāl al-dhimmah al-māliyyah* the wife's property and income during marriage should not be disturbed by the husband and closes the door to taking property without rights. An honest counterargument to the Indonesian model is that the division of halves can automatically be seen as handing over half of the husband's property to twith the prohibition of eating someone else's property illegally.

Thus, the crux of the problehe wife who factually does not contribute to her acquisition, which from a certain angle intersects

m is not that one model serves the *maqāsid* while the other ignores it, but that both optimize different *maqāsid*s: the Indonesian model prioritizes the wife's share over the collective wealth of the marriage while easing her burden of proof, while the Saudi model prioritizes independence and certainty of individual rights and a cautious attitude towards the unfounded transfer of property.

Weighted through the *maqāsid al-usrah* of Athiyah, which places the structuring of the financial aspects of the family as one of the functional goals of the family, both models are equally valid because they both arrange the financial dimension only differing in their emphasis. Indonesia's automatic presumption highlights the economic solidarity of the couple as a unit; The Saudi model of contribution highlights the clarity of individual rights within the unit.³³ Both are two ways of managing the financial aspects of the family, not the attitude of accepting or denying it.

The consideration of *ma'ālāt al-af'āl* (the consequences of deeds) puts one more layer. In certain cases, the automatic presumption model risks handing over half of the assets to a party that does not contribute at all which could invite a strategic lawsuit; Meanwhile, the evidence-based model risks making it difficult for wives whose contributions are real but undocumented, so that the rights that should be attached to them are lost due to the failure of proof. From the point of view of *dar' al-mafāsid*, each model closes one door of *mafsadah* while opening another; Nothing is free of cost. An honest assessment of *maqāsidī* therefore stops at the recognition that choosing between the two means choosing which *mafsadah* is more tolerable in a given social context, rather than choosing between the Islamic and the not.

Synthesis: Protection that is Dimensional, Not Absolute

Stringing together all of the above analyses, which are now based on the official text, the two codifications give birth to a more layered picture than the initial dichotomy. On rights that are directly sourced from the *sharih* dowry (Article 38 of the Saudis; KHI Articles 30–32), maintenance and residence, the necessity of *ridha* (Article 17 paragraph 3 Saudi; KHI Article 16), *mu'āsyarah bil ma'rūf* (Article 42 of Saudi Arabia; KHI Article 77) both codes are functionally

³³ Suprihatin dkk., "Toward an Islamic Functional Theory of Marital Assets: Bridging Classical Fiqh and Modern Legal Needs," *Al-Qadha* (2025); bandingkan pembacaan enforcement dalam Vina Sylvana Putri dkk., "The Best Interest of the Child in Islamic Family Law: Declarative and Enforceable Custody Protection in Indonesia and Malaysia," *International Journal of Nusantara Islam* (2026).

equivalent. Similarly, in the case of guardians, a review of the text reveals a structural convergence: Article 20 of the Saudi Constitution and Article 23 of the KHI both open up court intervention that guarantees women's right to marry. The consistent technical differences focus on two axes: the division of property acquired during marriage, and to a more subtle extent the flexibility of the determination of *hadānah* and the formulation of the right to exit marriage.

On the axis of property, the pattern is most sharp: Indonesia relies on the presumption of automatic joint ownership with the division of *munāsafah* without proof of contribution (KHI Article 97), while *Lā'ihat Qismat al-Amwāl al-Musytarakah* Saudi interprets *al-māl al-musytarak* on the basis of causes (*akad*, inheritance, or other reasons Article 1) without automatic presumption of the acquisition of marriage. On *hadānah* and the right to exit, the difference shifts from 'presumption versus judgment' to difference in degree: both systems both presuppose motherhood and both accept *darar* as a reason for exit, but Saudi formulate the judge's authority to deviate for the sake of *maslahat* (Article 127 paragraph 2) and the rule of *darar* (Article 108) more openly, while Indonesia more standardizes it through age limits and a closed list of reasons. It should also be emphasized that the term 'condition-based' in the Saudi regime is more appropriately understood as a codified judgment rather than the discretion of independent judges given that some studies show that Saudi codification is intended to standardize judgments and narrow the space for discretion.³⁴

Therefore, the question of 'which system protects women more' does not have a single answer, and an honest analysis of *maqāsid* refuses to force a single answer. The direction of its superiority depends on the axis of women's rights and profiles: on the assets accumulated during marriage, Indonesia's automatic presumption is more relieved of wives whose contributions are non-financial and difficult to prove; Meanwhile, in maintaining the independence of the wife's property and income during marriage, clarity based on the Saudi jurisprudence and regime is more resilient. At the dowry, *wali adal*, *ridha*, and *mu'āsyarah*, both meet. In other words, the protection is dimensional: each codification advances the goals of the sharia on its chosen axis, and none of them is inherently in conflict with the sharia.

Implications for the Protection of Women's Rights

This dimensional analysis has practical implications on three levels. At the evidentiary level, the Indonesian model puts women in a more protected position because it does not burden them to prove their contribution a real advantage for wives working in the domestic sphere. However, this advantage is bound by one condition: the presumption of joint property can be waived by a marriage agreement (KHI Article 97; Law No. 1/1974 opens up the space for agreement). This means that automatic protection is not absolute and can be released through an agreement, so women's legal literacy on the consequences of the marriage agreement is important.

At the level of certainty, the contribution/contract-based model that is the pattern of *fiqh* and the Saudi regime promises clarity that the wife's property and income during the marriage are fully his/her and should not be tampered with; This protects the earning woman from her husband's

³⁴ Giladi, "Saudi Arabia's Gendered-Judicial Reform." The claim that the PSL standardizes judgments and reduces judicial discretion challenges the image of "purely chastised Saudi"; the Saudi model is more accurately read as a codified condition-based assessment, rather than an independent judge's discretion. Compare the content, "Challenges to Legal Reforms."

claim to her property. The weakness is especially evident in the low-income women, whose share of the wealth accumulated depends on whether or not they can prove their contribution. It is at this point that the mechanism of gradual settlement of *sulh*, *urf*, and then *qada'* serves as a safety valve: a local *urf* that acknowledges domestic contributions, for example, can form the basis of the section even without documentary evidence.

At the institutional level, both systems provide protection against the destruction of property by one party through *hajjr* in *fiqh* and marital confiscation (KHI Article 95) in Indonesian law which allows the aggrieved party to seek court protection without having to go through a divorce. This indicates that in the aspect of preventive protection, the two systems actually meet. Thus, an honest recommendation is not to swap one model for another, but to recognize that each model best protects different profiles of women, and that instruments such as marriage agreements, recognition of domestic labor, and access to confiscation mechanisms, determine how effectively those protections work in the field.

Conclusion

This study juxtaposes the protection of women's material and moral rights in the Saudi *Ahwal Syakhsiyyah* Law 1447 H and Indonesian Islamic family law, then considers the point of difference through *maqāsid al-syarī'ah al-Syātībī*. The findings, first, are that the scope of the convergence of the two is much wider than generally assumed: not only on the rights derived from the *shariḥ mahar* (Article 38 of the Saudis), *alimony*, residence, the necessity of *ridha* (Article 17 paragraph 3), *mu'āsyarah bil ma'rūf* (Article 42) but also in the handling of guardians, when Article 20 of Saudi and KHI Article 23 both guarantee court intervention for the right to marry women. Second, the systematic technical differences mainly focus on the division of property acquired during marriage: Indonesia takes automatic presumption with the division of *munāsafah* without proof of contribution (KHI Article 97), while the Saudis use the limitation of cause-based *al-māl al-musyarak* (Article 1 *Lā'ihah*) without automatic presumption. On *hadanah* and the right to leave marriage, the difference is more subtle, both presuming motherhood (Article 127 of the Saudis; KHI Articles 105, 156) and recognize *darar* as a cause of departure (Saudi Article 108; PP 9/1975 Article 19) and in the form of a difference in the degree of flexibility of judges, not the existence or absence of presumptions. Weighted through *maqāsid*, this difference does not produce a categorical winner. Indonesia's presumptive technique further eases the burden of proving weaker parties while providing certainty; Saudi cause-based techniques are more likely to maintain the independence of individual rights and certainty over the wife's property. The direction of its superiority depends on the axis of women's rights and profiles. Therefore, the protection of women's rights in both systems is most appropriately called dimensional and not absolute and what distinguishes the two is the protection technique in a certain domain, not the presence or absence of protection. The contribution of this research is methodological as well as substantive: it shows that *maqāsid al-syarī'ah* can function not merely as an internal critique in a single jurisdiction, but as a common benchmark for juxtaposing two codifications of Islamic family law across domains without falling into apologetic rankings.

References

- "Please, Lily. "Joint Property in Marriage." *Ijtima'iyya* 8, no. 2 (2015).
- Abu Bakar, Muhammad, dkk. "Maqasid al-Shariah Theory: A Comparative Analysis Between the Thoughts of al-Shatibi and 'Izz al-Din ibn 'Abd al-Salam." *International Journal of Academic Research in Business and Social Sciences* (2021).
- Al Amin, Zainul. "The Method of Determining Maqoshid al-Syariah According to al-Imam al-Shatibi and al-Imam al-Thahir Ibn Ashur: A Comparative Study." *Ijtihad* (2025).
- al-Bah'ud, Mansūr ibn Yunus. 'Kasysyāf al-Qinā' 'an al-Iqnā'. Riyadh: Wizārat al-'Adl.
- Alboraie, Ahmad S. A., dkk. "Women's Right to Choose a Spouse in Saudi Family Law Compared to Shari'a and International Conventions." *International Journal of Religion* (2024).
- Alhejaili, Mohammad. "From Law to Social Change: Examining the Behavioural Effects of Legal Reforms in Saudi Arabia." *Humanities and Social Sciences Communications* (2025).
- al-Jurjānī, 'Alī ibn Muhammad. al-Ta'rīfāt. Beirut: Dar al-Kutub al-'Ilmiyyah, 1403 H.
- al-Qasānī, 'Alā' al-Din Abu Bakr ibn Mas'ud. Badā'i al-sanā'i fi Tartīb al-Syarā'i. Beirut: Dar al-Kutub al-'Ilmiyyah, 1406 AH.
- Alsafwani, Bandar. "The Child's Right in Custody and Foster Care in Saudi Arabia." *Community: Journal of Research and Community Service Results* (2024).
- al-Syatibi, Abu Ishaq Ibrahim ibn Mūsa. al-Muwāfaqāt fi Usul al-Syari'ah. Tahqiq Abu 'Ubaydah Masyhūr ibn Hasan Āl Salman. Dar Ibn Affan, 1997.
- al-Zuhaylī, Wahbah ibn Mustafā. al-Fiqh al-Islāmī wa Adillatuhu. Damaskus: Dar al-Fikr, 1985.
- Ash Shiddieqy, Ash, dkk. "Integration of Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Muslim Societies." *Legitima: Jurnal Hukum Keluarga Islam* (2025).
- 'Atiyyah, Jamāl al-Dīn. Nahwa Taf'īl Maqāsid al-Syari'ah. Damascus: Dar al-Fikr, 2003.
- Atthallah, Kevin, dkk. "Analysis of Fiqh Review of Child Custody Rights After Divorce (hadanah) in Religious Court Decisions." *SYARIAT* (2024).
- Bahri, Asep. "Analysis of the Position of Common Property in Islamic Law and Compilation of Islamic Law." *Al-Risalah: Journal of Islamic Family Law* (2022).
- Brilliant, Iwan, dkk. "Islamic Legal Communication in the Determination of Wali Adhal: A Comparative Study of Indonesia and Morocco." *INJECT* (2025).
- East Jakarta Religious Court Decision No. 0175/Pdt.G/2021/PA. JT.
- Farid, Muhammad, dkk. "Legal Reconstruction of Hadhanah Rights Due to Divorce in Indonesia from a Maqashid Syari'ah Perspective." *Jurnal Akta* (2025).
- Fithoroini, Dzikrina. "Reform of Islamic Family Law in Muslim-Majority Countries: Between Classical Fiqh and Modern Legal Systems." *International Journal of Multidisciplinary Approach Research and Science* (2026).
- Giladi, Eran. "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?" *Islamic Law and Society* (2025).

- Hadaiyatullah, Syahrul Sidiq, et al. "Recontextualization of Family Fiqh in the Modern Era: A Comparative Study of Indonesia, Tunisia, and Turkey." *Moderation: Journal of Islamic Studies* (2024).
- Hak, Nora Abdul. "Right of Women to Obtain Divorce Under Shariah and Islamic Family Law of Malaysia: Some Emerging Issues." (2012).
- Hanif Muhammad. "Juridical Analysis of the Distribution of Gono Gini Property Based on the Contribution of Husband and Wife During Marriage." *Journal of Legal Restoration* (2022).
- Hanifah, Zaky. *Qismat al-Māl al-Musytarak bayna al-Zawjayn (Dirāsah Muqāranah bayna al-Fiqh al-Islāmī wa al-Qānūn al-Indūnīsī)*. S1 Thesis, Sekolah Dirasat Islamiyah Imam Syafi'i Jember, 2022.
- Hanizad, Nur Izzati Syazwani Md., dkk. "A Maqasid al-Shariah Approach to Divorce Due to a Spouse's Mental Illness." *International Journal of Research and Innovation in Social Science* (2025).
- Harahap, Hamdan Umar, dkk. "Legal Status of a Wife Leaving Her Husband and Vice Versa in Contextual Fiqh Studies: A Pre-Divorce Analysis." *Jurnal Ilmiah Mizani* (2025).
- Harahap, M. Yahya. *Position, Authority, and Proceedings of Religious Justice Law No. 7 of 1989*. Jakarta: Sinar Grafika, 2009.
- Hussain, Mudrasa, dkk. "Recent Debates on Wife's Right to Judicial Separation: An Analysis of the Traditional and Modern Interpretations of Muslim Family Laws in Pakistan." *Contemporary Islam* (2024).
- Ibn Manzur, Muhammad ibn Mukarram. *Lisān al-'Arab*. Beirut: Dar sādīr, 1414 H.
- Ibn Qudāmah, Muwaffaq al-Dīn 'Abd Allāh ibn Ahmad. *al-Mughnī*. Riyadh: Dar 'Ālam al-Kutub, 1417 H.
- Ibn 'Uthaymīn, Muhammad ibn Salih al-Syarh al-Mumtī 'alā Zād al-Mustaqni'. Dammam: Dar Ibn al-Jawzī, 1428 H.
- Jamilah, Ade. "The Contribution of Islamic Law to the Protection of Women's Rights in the Modern Era." *Musyarokah: Journal of Islamic Law and Economics* (2024).
- Kadarisman, Ahmad, dkk. "Best Interest of the Child in Islamic Family Law: Integrating Maqāsid al-Sharī'ah and Double Movement Theory in hadaānah Cases." *Jurnal Al-Dustur* (2025).
- Kéchichian, Joseph A. "Challenges to Legal Reforms in Saudi Arabia." *Contemporary Review of the Middle East* (2025).
- Khoirun, Umi, dkk. "The Position of Women and Women's Rights in Islamic Family Reform: A Comparison in Indonesia and Tunisia." *Medina-Te: Jurnal Studi Islam* (2024).
- Mas'odi, Muhammad, dkk. "The Personal Status Law (PSL) and Patriarchy in Saudi Arabia: A Critical Examination." *Syura: Journal of Law* (2025).
- Maylissabet, dkk. "Analysis of Legal Functions and Maqashid Sharia on Islamic Marriage Law in Indonesia." *As-Shahifah* (2022).
- Multazam, Umar. "The Concept of Child Custody (Hadhanah) After Divorce in the Perspective of Islamic Law." *Indonesian Journal of Islamic Law* (2024).
- Muniarti, Dwi, et al. "Analysis of Supreme Court Circular Letter No. 3 of 2018 concerning Iddah Alimony Rights for Divorced Wives." *Usratuna* (2024).

- Nazah, Faridatun, dkk. "Gender Justice in Child Custody Disputes: The Maqāsid al-Sharī'ah Approach in Contemporary Judicial Practice." *MILRev: Metro Islamic Law Review* (2025).
- Nizām al-Ahwāl al-Syakhsiyyah (Saudi Ahwal Syakhsiyyah Law). Royal Decree No. M/73, accompanied by Lā'ihat Qismat al-Amwāl al-Musytarakah, Decree of the Minister of Justice No. 1610 dated 19/5/1439 H. Assembly version 1447 H. Riyadh: al-Jam'iyyah al-'Ilmiyyah al-Qadā'iyyah al-Sa'ūdiyyah.
- Pekalongan Religious Court Decision No. 403/Pdt.G/2020/PA.Pkl.
- Putri, Vina Sylvana, dkk. "The Best Interest of the Child in Islamic Family Law: Declarative and Enforceable Custody Protection in Indonesia and Malaysia." *International Journal of Nusantara Islam* (2026).
- Republic of Indonesia. Civil Code (Burgerlijk Wetboek).
- Republic of Indonesia. Compilation of Islamic Law (Presidential Instruction No. 1 of 1991).
- Republic of Indonesia. Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974.
- Republic of Indonesia. Law No. 1 of 1974 concerning Marriage.
- Republic of Indonesia. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974.
- Republic of Indonesia. Regulation of the Minister of Religion No. 30 of 2024 concerning Marriage Registration.
- Sābiq, Sayyid. *Fiqh al-Sunnah*. Beirut: Dar al-Kitāb al-'Arabī, 1397 H.
- Salami, Muhammad Khaidir, et al. "Analogy of the Law of Joint Property in Islamic Marriage with the Concept of Islamic Economics (Syirkah)." *Riau Law Journal* (2025).
- Salma, Siti, dkk. "The Dilemma of Joint Property (Gono-gini) in Multi-Ethnic Marriage Communities in North Sulawesi." *Al-Istinbath: Jurnal Hukum Islam* (2025).
- Suprihatin, dkk. "Toward an Islamic Functional Theory of Marital Assets: Bridging Classical Fiqh and Modern Legal Needs." *Al-Qadha* (2025).
- Wandi, Siti Nur Aisyah, dkk. "Triple Talaq in a Single Pronouncement: A Comparative Fatwa Analysis within a Maqasid al-Shariah Framework and Its Implications for Women's Rights." *International Journal of Research and Innovation in Social Science* (2025).
- Widiyastuti, Ayu, et al. "The Distribution of Gono Gini Property Due to Divorce from an Islamic Law Perspective." *Usratuna: Journal of Islamic Family Law* (2025).
- Yani, Enni, dkk. "Post-Divorce Division of Marital Assets from the Perspective of the Maslahah Mursalah Theory." *Riwayat: Educational Journal of History and Humanities* (2025).

