

Methods of Taqnīn as Instruments of Legal Reform in Islamic Family Law: A Critical Analysis of the Compilation of Islamic Law in Indonesia

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 <https://doi.org/10.54214/alfawaid.Vol16.Iss1.992>

ABSTRACT

This study critically examines the codification (taqnīn) of Islamic family law in Indonesia, focusing on how classical fiqh principles are reconstructed within modern state legislation. The research aims to analyze the historical trajectory of codification, evaluate its substantive framework, and assess the methodological strategies employed — takhayyur, talfiq, siyāsah shar'iyah, and textual reinterpretation. Using a normative-legal approach with historical orientation, the study draws on statutory instruments, classical fiqh sources, and selected jurisprudence to identify patterns of negotiation between tradition and modernity. The findings reveal that codification in Indonesia is not a mere transcription of fiqh but a dynamic, state-driven process shaped by historical constraints, judicial practice, and constitutional politics. The Compilation of Islamic Law (KHI) of 1991 exemplifies this negotiation, functioning as a standardized reference that integrates diverse fiqh opinions while ensuring legal certainty. Compared to other Muslim-majority countries — such as Egypt, Pakistan, and Tunisia — Indonesia adopts a compromise model that preserves doctrinal legitimacy while adapting to pluralist and constitutional imperatives. This study contributes to scholarly discourse by positioning taqnīn as a methodological framework for state-driven ijtihād in plural societies. It offers practical implications for judges, who benefit from greater consistency in rulings, and for legislators, who must periodically reform codification to address contemporary challenges such as gender equality and child protection. The novelty of this research lies in its critical evaluation of codification strategies as instruments of legal reform, demonstrating how Indonesia's model bridges continuity of fiqh tradition with the evolving demands of modern statehood.

Keywords: Codification, Family Law, Compilation of Islamic Law, Marriage, Classical *Fiqh*

INTRODUCTION

In contemporary legal discourse, the relationship between religious law and state legislation has become an increasingly significant issue, particularly in plural and modern nation-states. The challenge lies in how normative religious doctrines, which are often diverse and interpretative, can be transformed into a unified legal system capable of ensuring certainty, justice, and social order. This issue is especially relevant in the context of Islamic law, where the richness of classical jurisprudence (fiqh) presents both a resource and a challenge for legal standardization in modern governance.

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Website Jurnal : <https://jurnal.stai-ali.ac.id/index.php/Alfawaid>

DOI Jurnal : <https://doi.org/10.54214/alfawaid>

Indonesia's heterogeneity in ethnicity, culture, and religion (Rahayu, 2022) produces diverse social and legal norms, requiring a legal system that accommodates plural interests (Sugiantari, 2015). Within the Muslim community, differences among *fiqh* schools (*mazhab*) often result in inconsistent family law practices and judicial decisions (Sidqiah et al., 2025). These inconsistencies highlight a concrete problem: the absence of a unified framework that ensures legal certainty and equitable protection, particularly for vulnerable groups such as women and children. This condition underscores the urgency of codifying Islamic family law (taqnīn) into legislation that can serve as a common reference for both judges and society. In this context, the central problem of this study lies in examining how the methods of taqnīn operate in reconciling classical *fiqh* doctrines with the demands of modern state legislation in Indonesia.

Accordingly, this study aims to analyse the methods of taqnīn—namely takhayyur, talfiq, siyāsah shar‘iyyah, and textual reinterpretation—as mechanisms of legal reform within the codification of Islamic family law in Indonesia, and to evaluate their role in ensuring legal certainty and social justice.

Earlier scholarship has provided valuable insights into the development of Islamic family law in Indonesia. Fatah Hidayat emphasized the historical urgency of legal unification after the enactment of the Compilation of Islamic Law (KHI) (Hidayat, 2014). Muhammad Daud Ali analysed the role of religious courts within a plural legal system. (Ali, 1997), while Khairuddin Nasution examined the dynamics of reform and its practical implementation within the national legal framework (Nasution, 2007). However, these studies tend to focus on historical narratives and institutional developments, without systematically examining how the methods of taqnīn such as takhayyur, talfiq, siyāsah shar‘iyyah, and textual reinterpretation operate as concrete mechanisms of legal reform.

This gap is significant because the absence of methodological analysis limits our understanding of how Islamic legal norms are selectively constructed, adapted, and legitimized within state legislation. Without such analysis, codification risks being seen merely as a formal or political process, rather than as a structured form of state-driven *ijtihad*. Therefore, this study is important as it seeks to provide a deeper analytical framework for understanding taqnīn as a methodological process, particularly in addressing contemporary legal challenges such as legal certainty, gender justice, and the protection of vulnerable groups.

Theoretically, this research contributes to the development of Islamic legal studies by positioning taqnīn not only as a product of codification but as a dynamic method of legal reasoning

within modern governance. Practically, the findings offer implications for judges in applying the KHI more consistently and contextually, and for policymakers in designing responsive and adaptive legal reforms that align with both fiqh principles and contemporary societal needs.

To situate this analysis within the Indonesian legal framework, it is necessary to briefly outline the structure of Islamic family law as codified in national legislation.

Islamic family law regulates core aspects of family relations — marriage, divorce, maintenance, inheritance, custody, and property management (Nasution, 2007). Rooted in classical Sunni *fiqh*, its diverse interpretations often complicate judicial practice. To address this issue, policymakers have selectively integrated opinions across schools, producing standardized rules that guide judges and ensure consistency. Two instruments are central: Law No. 1 of 1974 on Marriage, applicable to all citizens, and Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI), applicable specifically to Muslims. The Marriage Law functions as *lex generalis*, while the KHI serves as *lex specialis* synthesizing cross-madhab opinions (Bilalu et al., 2022). This dual framework reflects Indonesia's legal pluralism while advancing unification efforts, a dynamic that Emzaed interpret as legal politics absorbing Sharia into national legislation without erasing diversity (Emzaed et al., 2023).

The constitutional foundations of Islamic law in Indonesia are affirmed by Abdul Ghani Abdullah, who identifies philosophical, sociological, and juridical bases. Philosophically, Islamic teachings shape the worldview and legal ideals of the Muslim majority, influencing state norms such as Pancasila. Sociologically, Islamic legal consciousness has sustained relevance across history. Juridically, Articles 24, 25, and 29 of the 1945 Constitution provide a formal basis for applicability (Abdullah, 1994). Contemporary scholarship further demonstrates this integration, as Abdillah shows in the incorporation of Islamic concepts such as criminal responsibility (*al-Mas'ūliyyah al-Jinā'iyyah*) into the New Criminal Code (KUHP) (Abdillah et al., 2024). These developments reinforce the argument that codification is not merely descriptive but a critical site of negotiation between Islamic tradition and modern statehood.

RESEARCH METHOD

This study employs a qualitative normative-legal approach with historical orientation. The choice of this method is based on the focus of the research, which lies in analysing legal texts and tracing the development of Islamic family law codification in Indonesia. The normative approach emphasizes the study of statutory instruments and doctrinal sources, while the historical orientation

situates these texts within the broader trajectory of Indonesia's legal development (Efendi & Ibrahim, 2018).

This research is conducted through several systematic stages. First, the identification and formulation of the research problem focusing on the methods of taqnīn in the codification of Islamic family law. Second, the collection of legal materials, both primary and secondary. Third, the classification and organization of legal sources based on thematic categories, particularly those related to codification methods (*takhayyur*, *talfīq*, *siyāsah shar‘iyyah*, and reinterpretation). Fourth, the analysis of legal materials using a descriptive-analytical and comparative approach. Finally, the interpretation of findings to draw conclusions regarding the role of taqnīn as an instrument of legal reform.

Data sources consist of: (1) Primary materials: Law No. 1 of 1974 on Marriage and Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI), along with selected religious court decisions that illustrate the application of codified rules; (2) Secondary materials: classical *fiqh* literature, scholarly works, and academic journals that discuss the evolution and methodology of family law codification.

Data collection was conducted through library research, focusing on statutory texts, *fiqh* references, and jurisprudence. Religious court decisions were examined selectively to illustrate how codification principles are applied in practice.

In addition, a limited comparative approach is employed to contextualize Indonesia's model of codification within broader Muslim-majority countries, particularly Egypt, Pakistan, and Tunisia. This comparison is conducted by examining secondary literature on their respective family law reforms, focusing on the extent of state intervention, the use of *fiqh* doctrines, and the methods of legal reform applied. The comparative analysis is not intended to provide an exhaustive comparison but to highlight Indonesia's distinctive approach in applying taqnīn.

Data analysis follows a descriptive-analytical technique. Legal materials are first described systematically, then critically examined to identify the methods of *taqnīn* — *takhayyur*, *talfīq*, *siyāsah shar‘iyyah*, and reinterpretation of texts (Laili & Bazikh, 2023). The analysis is carried out through three operational steps: (1) identifying relevant legal provisions within the Marriage Law and the KHI, (2) mapping these provisions to specific taqnīn methods, and (3) evaluating their function in addressing legal certainty, social justice, and contemporary legal issues.

The analysis highlights how these methods function as instruments of legal reform, reconciling classical *fiqh* with modern social and constitutional demands. This approach allows the

study to move beyond description, offering a critical evaluation of codification strategies and their implications for legal certainty and protection of vulnerable groups (Zakyyah & Ridwansyah, 2024).

This study is limited to the analysis of Islamic family law codification in Indonesia, particularly within the framework of Law No. 1 of 1974 and the Compilation of Islamic Law (KHI). It does not examine other areas of Islamic law such as criminal or economic law, nor does it provide an empirical analysis of court practices beyond selected illustrative cases. The comparative discussion is also limited and serves only as a supporting perspective rather than the main focus of analysis.

RESULT AND DISCUSSION

Historical and Political Dynamics of Family Law *Taqnīn* in Indonesia

The trajectory of Islamic family law in Indonesia reveals a recurring tension between recognition and restriction, which ultimately shapes the emergence of *taqnīn* as a method of legal unification. From the early Islamic kingdoms, where *fiqh* functioned as binding law, to the colonial era of *Receptie*, Islamic law was alternately legitimized and subordinated. This historical pattern explains why codification in Indonesia today focuses primarily on family law: colonial restrictions narrowed its scope, while nationalist aspirations sought to reintegrate it into the constitutional framework.

Since the 13th century, Islam began to spread through trade routes, proselytization (*da'wah*), and cultural interaction, gradually integrating with the social life of local communities. The travel notes of Ibn Battutah in 1345 CE about Samudra Pasai constitute one of the historical proofs indicating that Islamic law had functioned as an established legal system. Ibn Battutah expressed admiration for Sultan Malik al-Zahir, who was known for his deep knowledge of *fiqh*, serving not only as a political leader but also as a legal authority consulted even by legal experts from the Sultanate of Malacca. This fact confirms that since the early period of Islam in Indonesia, Islamic law — including family law — had functioned as both a social norm and binding positive law (Ali, 1997).

The practice of Islamic law was not confined to Samudra Pasai and Malacca. Historical data indicates that in other regions of the archipelago, Islamic law had become an agreed-upon legal rule, such as in the kingdoms of Mataram, Cirebon, Priangan, Banjar, South Kalimantan, and other regions (Hidayat, 2014). This phase can be analytically understood as an “integration phase,” where Islamic law functioned as a unified normative system before later fragmentation.

In 1602, the VOC (*Vereenigde Oost Indische Compagnie*) arrived in Indonesia, marking the beginning of Dutch colonization. Due to resistance from the indigenous population, the VOC eventually allowed Muslims to continue practicing their traditional laws (Ali, 1997). During this phase, the theory of *Receptio in Complexu* emerged, proposed by Salomon Keyzer and Lodewijk Willem Christiaan van den Berg (1845–1927), which stated that each inhabitant is subject to their respective religious laws. However, the application of Islamic law at that time was limited to the realm of family law, particularly marriage and inheritance (Amir et al., 2024).

Before the arrival of the Dutch, various Islamic religious court institutions had already been established within Islamic kingdoms or sultanates in the Archipelago (Ridlo, 2021). These institutions functioned to resolve cases related to Islamic law, especially in the fields of marriage and inheritance.

During British rule in Indonesia (1811–1816), the existence of Islamic law continued to be recognized. However, after the territory was returned to the Dutch, the colonial government began implementing laws that gradually narrowed the scope of Islamic law (Abdul Halim, 2000).

This shift in colonial policy reached its peak with the introduction of the *Receptie* theory by Snouck Hurgronje at the end of the 19th century. This theory stated that Islamic law only applies if it has been accepted by customary law (*adat*) (Nurjannah et al., 2023), thereby placing Islamic law as subordinate to customary law. The implications were enormous for religious courts: judges were only permitted to handle cases deemed in accordance with *adat* (Wibowo, 2007). Analytically, this phase represents a “subordination phase,” in which Islamic law lost its autonomous authority, creating fragmentation that later necessitated codification.

In 1919, the *Receptie* theory gained constitutional support from the *Indische Staatsregeling* (IS). Article 134 paragraph (2) stated that civil disputes between Muslims would be resolved by Islamic religious judges only if accepted by their customary law. Consequently, Religious Courts in Java and Madura, which previously could handle inheritance matters, were restricted to marriage matters only (Abdul Halim, 2000).

During the Japanese occupation (1942–1945), there were no significant changes; all previous legal rules were declared still valid as long as they did not contradict Japanese military regulations (Hidayat, 2014).

As independence approached, Muslim nationalist figures strived for Islamic law to regain its original position. In the BPUPKI sessions, an agreement was reached to include “Belief in God with the obligation to carry out Islamic Sharia for its adherents” in the preamble of the 1945 Constitution.

However, these words were later replaced by PPKI with “Belief in the One Supreme God” (*Ketuhanan Yang Maha Esa*) as stated in the first principle of Pancasila (Ali, 1997).

After independence, the influence of the *Receptie* theory persisted until the emergence of Law No. 1 of 1974 on Marriage, which states in Article 2 paragraph (1): “A marriage is valid if it is performed according to the laws of each respective religion and belief.” Thus, Islamic marriage law automatically became applicable without needing reception by customary law (Hidayat, 2014). This period can be understood as a “negotiation phase,” where Islamic law regained recognition but remained fragmented due to reliance on diverse fiqh sources.

The Marriage Law once again opened wide the scope for Islamic family law. Religious court judges used various fiqh books specified in the circular letter of the Religious Justice Bureau in 1958 No. b/I/735. However, a new problem arose: the absence of a single, definitive reference led to different decisions in similar cases. From this phenomenon, the idea of *taqnīn* (codification) of Islamic family law emerged (Hidayat, 2014). This condition directly led to the need for methodological standardization, which became the foundation for the codification (*taqnīn*) process.

To follow up on this idea, the Chief Justice of the Supreme Court and the Minister of Religious Affairs issued a Joint Decree instructing the formation of a team involving fiqh experts and Muslim scholars. In the formulation process, several approaches were taken, including: (a) study of fiqh books, (b) interviews with ulama, (c) jurisprudence of Religious Courts, (d) comparative legal studies with other countries, and (e) workshops and seminars (Abdurrahman, 1992). The result was the Compilation of Islamic Law (KHI), consisting of three books: Book I on Marriage (170 articles), Book II on Inheritance (44 articles), and Book III on Endowments (15 articles). Presidential Instruction No. 1 of 1991 was subsequently issued to disseminate the KHI (Hidayat, 2014). This marks the “codification phase,” where the state systematically applied methods such as *takhayyur*, *talfiq*, and *siyāsah shar‘iyyah* to produce a unified legal framework.

The KHI is not the endpoint of family law development in Indonesia. Renewal and re-examination of its contents can be carried out at any time if necessary, as is the nature of fiqh law which is not based on definitive (*qat‘ī*) proofs and is constantly evolving.

Thus, the historical trajectory demonstrates that *taqnīn* in Indonesia is a response to structural fragmentation, functioning as a state-driven mechanism to reconcile doctrinal diversity with legal certainty.

Table 1. Timeline of the Development of Islamic Family Law in Indonesia

Period	Significant Event	Significance
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13th –14th Century	Arrival of Islam in the Archipelago through trade and da'wah	Islamic law begins to integrate with the social life of the community
1345 AD	Notes of Ibn Battutah about Samudra Pasai; Sultan Malik al-Zahir known as a <i>fiqh</i> expert.	Early evidence of the application of Islamic law, including family law, as a social norm and positive law
15th –16th Century	Islamic kingdoms in the Archipelago (Samudra Pasai, Malacca, Demak, etc.) apply family law based on Shafi'i <i>fiqh</i> .	Islamic family law becomes an established legal system in Islamic kingdoms.
1602 AD	Arrival of the VOC in Indonesia.	VOC allows Muslims to practice their laws; emergence of the <i>Receptio in Complexu</i> theory
1811 – 1816 AD	British rule in Indonesia.	Islamic law remains recognized and applicable in the Muslim community.
Post 1816	Indonesia returns to Dutch hands.	Dutch begin implementing colonial law; the scope of Islamic law is narrowed with a Christianization mission
Late 19th Century	Snouck Hurgronje memperkenalkan teori <i>Receptie</i> .	Hukum Islam hanya berlaku jika diterima oleh adat; peradilan agama dibatasi kewenangannya.
1919 AD	Indische Staatsregeling (IS) Article 134 paragraph 2.	Civil disputes between Muslims are resolved by religious judges only if accepted by <i>adat</i> ; authority of

		religious courts is further restricted (only marriage).
1942 – 1945 AD	Japanese occupation period.	No significant changes; Islamic law remains applicable as long as it does not conflict with Japanese regulations.
1945 AD	BPUPKI and PPKI sessions.	Proposal to include Islamic Sharia in the constitution; ultimately replaced by "Belief in the One Supreme God" in Pancasila.
1945 – 1974 AD	Early independence period.	Receptie theory still influential; religious judges use classical fiqh books as references.
1958 AD	Circular Letter of the Religious Justice number b/I/735.	Religious judges use fiqh books as references; emergence of disparities in decisions.
1974 AD	Enactment of Law No. 1 of 1974 concerning Marriage.	Article 2 paragraph (1) affirms the validity of marriage according to each religion's law; Islamic marriage law becomes officially applicable.
1991 AD	Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI).	Codification of Islamic family law in three books (marriage, inheritance, endowments); becomes the official reference for religious court judges.
Reform Era - Present	Discourse on reforming Islamic family law.	Compilation of Islamic Law is seen as a foundation, but open

to revision according to contemporary needs (gender issues, child protection, marriage age).

1. Analytical Reading of the Timeline

The timeline of Islamic family law development (Table 1) is not merely a chronology but reveals distinct phases:

- a. Integration Phase (13th–16th centuries): Islamic law established as binding norm in kingdoms.
- b. Subordination Phase (VOC–Dutch colonial era): Islamic law recognized but subordinated to *adat* and colonial law.
- c. Negotiation Phase (Independence–1974): Islamic law reasserted but fragmented due to reliance on multiple fiqh sources.
- d. Codification Phase (1991–present): KHI institutionalizes selective fiqh opinions through *takhayyur*, *tafiq*, and *siyāsah shar‘iyyah*.

This analytical reading shows that codification is not a static product but the culmination of historical negotiations between continuity and adaptation. Every phase of legal development reshaped the scope and authority of Islamic family law, culminating in the KHI as a compromise between tradition and modernity.

Substance of Family Law Taqnīn in Indonesia and Its Forms

The substance of family law *taqnīn* in Indonesia includes: marriage, divorce, maintenance (*nafkah*), wills, inheritance, rights and obligations of husband and wife, child custody, and joint property. These are contained in the form of laws applicable to all religious communities in Indonesia and the KHI, which is a Presidential Instruction applicable only to Muslims.

However, the importance of these legal substances lies not merely in their classification, but in how they reflect the operation of taqnīn methods in constructing a standardized legal system.

Table 2. Taqnīn Substances and Their Forms

No	Substance	Form
1	Marriage	Law No. 1 of 1974 Chapter I - Chapter V
		KHI Book I, Chapter I - Chapter XI
		Indonesian Civil Code Chapter IV

2	Divorce	Law No. 1 of 1974 Chapter VIII
		KHI Chapters XVI, XVII
		Indonesian Civil Code Chapter V
3	Joint Property	Law No. 1 of 1974 Chapter VII KHI Chapter XIII
4	Rights and Obligations of Husband and Wife	Law No. 1 of 1974 Chapter VI KHI Chapter XII
5	Status of Children and Their Care	Law No. 1 of 1974 Chapter IX KHI Chapter XIV
6	Rights and Obligations between Parents and Children	Law No. 1 of 1974 Chapter X
7	Guardianship	Law No. 1 of 1974 Chapter XI KHI Chapter XV
8	Reconciliation (Rujuk)	KHI Chapter XVIII
9	Inheritance (Waris)	KHI Book II Chapters I - IV
10	Wills (Wasiat)	KHI Book II Chapter V

From an analytical perspective, each category of family law reveals the application of specific *taqnīn* methods. For example, marriage provisions in the KHI largely reflect Shafi'i doctrines (*takhayyur*), while inheritance rules show elements of *talfīq* through the combination of multiple *fiqh* opinions adapted to Indonesian contexts. Similarly, regulations such as marriage registration illustrate *siyāsah shar'īyyah*, where the state introduces administrative requirements to ensure legal protection and social order.

This demonstrates that the codified legal substance is not a direct adoption of classical *fiqh*, but a reconstructed system shaped through methodological selection, adaptation, and reinterpretation.

Therefore, the analysis of legal substance must be linked to its underlying methodology, as the true function of *taqnīn* lies in transforming doctrinal diversity into enforceable and standardized legal norms.

Objectives of Family Law *Taqnīn* in Indonesia

As outlined in the history of family law *taqnīn* in Indonesia, the social reality of this nation is characterized by highly complex diversity of religions, ethnicities, and cultures. Indonesia, as a country with a Muslim majority population, also has significant communities of other religions, thus

requiring legal rules that can be universally accepted by all citizens without causing discrimination or injustice. The presence of an inclusive legal system binding on all groups becomes an urgent necessity to maintain social stability and guarantee legal certainty.

Within Indonesian Muslim society itself, there is a diversity of *fiqh* schools that give rise to differing views on family law issues. Religious court judges in the early independence period referred to classical *fiqh* books rich in opinion variations. This condition often led to disparities in decisions, where the same case could result in different rulings depending on the *fiqh* reference used. This phenomenon posed a serious problem in judicial practice. Therefore, the need arose for a single, standardized, systematic legal reference used uniformly by all religious court judges.

In the context of family law in Indonesia, two main instruments serve as normative foundations. First, Law No. 1 of 1974 on Marriage, designed as a form of national law unification applicable to all citizens regardless of religion. This law affirms that a marriage is valid if performed according to the respective religious laws, providing constitutional legitimacy for Islamic marriage law. Thus, the Marriage Law functions as an instrument for unifying family law within the framework of the nation-state, reflecting the philosophy of Pancasila.

Second, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI), serving as a special guideline for Muslims and the official reference for religious court judges. The KHI was compiled through a long process involving study of classical *fiqh* books, interviews with ulama, comparative legal studies, workshops and seminars. Its main objective is to unify Islamic law by integrating opinions from different schools of *fiqh*, then selecting views considered stronger and more relevant to Indonesian Muslim society.

The combination of the Marriage Law and the KHI demonstrates both duality and synergy in the Indonesian family law system. Both reflect a characteristic approach of legal pluralism, where national law and religious law coexist within the framework of a modern rule-of-law state. The KHI affirms the state's commitment to provide space for Islamic law as an integral part of the national legal system, creating a balance between legal certainty, justice, and social relevance.

Table 3. Comparison of the Functions of the Marriage Law and the KHI

Aspect	Law No. 1 of 1974	KHI (Presidential Instruction No. 1 Tahun 1991)
Nature	General rule, applicable to all Indonesian citizens regardless of religion	Special rule, applicable to Muslims and serves as a

		guideline for religious court judges
Main Objective	Unification of national family law within the framework of the nation-state.	Unification of Islamic law by integrating opinions from different schools of <i>fiqh</i> (cross-mazhab).
Legitimacy	Constitutionally valid, reflects the philosophy of Pancasila.	Administratively valid through a Presidential Instruction, functions as <i>fiqh</i> codification.
Scope	Marriage (general), applies to all religions.	Marriage, inheritance, and endowments (specifically for Muslims).
Legal Certainty	Provides a uniform national legal basis.	Marriage, inheritance, and endowments (specifically for muslims)
Character	Pluralistic, inclusive, and national.	Normative, fiqh-oriented, and contextual according to the conditions of Indonesian Muslim society

Muhammad Daud Ali stated: “The implementation of the KHI is expected to fulfill three main points: 1. Fulfilling the principle of balanced benefit and justice contained in Islamic law. 2. Overcoming various problematic issues (*khilāfiyyah*) to guarantee legal certainty. 3. Being able to serve as raw material and play an active role in the development of National law” (Ali, 1997).

Beyond these main objectives, family law *taqnīn* also aims to provide justice and adequate legal protection, especially for vulnerable groups such as children and women. With codification, every family member can know with certainty their rights and obligations, and the existence of written and standardized legal rules plays a role in building public legal awareness, forming a healthy and just legal culture in family life.

Methods of Family Law Taqnīn in Indonesia

The methods of family law *taqnīn* applied in Indonesia are based on four main approaches:

1. **Takhayyur**

The *takhayyur* method means choosing one opinion from a school of law or *fiqh* scholar, whether from the four main schools (Hanafi, Maliki, Shafi'i, and Hanbali) or from outside these schools, including less popular opinions among *fuqahā'* (Nasution, 2007). Substantially, *takhayyur* can be equated with *tarjīh*, namely selecting the opinion considered stronger and more relevant.

An example can be found in KHI Book I Chapter IV on the Pillars and Conditions of Marriage, Article 14, which states that the conditions for marriage validity include: (a) the prospective husband, (b) the prospective wife, (c) the marriage guardian (*wali nikah*), (d) two witnesses, and (e) the marriage contract (*ijab kabul*). This provision clearly refers to the Shafi'i school opinion (Al-Nawawī, 1991).

2. **Talfiq**

The *talfiq* method means combining *fiqh* opinions from various schools to establish a ruling on a particular issue. This approach produces a new legal construction that has never been fully articulated by classical scholars (Firnanda et al., 2024).

An example can be seen in KHI Book II Chapter II on Heirs, Article 173, which states that a person is barred from becoming an heir if found guilty of: (a) killing or attempting to kill the testator, (b) severely assaulting the testator, or (c) slandering the testator with an accusation of a crime punishable by five years imprisonment or more. Compared to classical *fiqh*, the barriers to inheritance only include three things: difference of religion, killing, and slavery. The KHI does not include slavery because the Indonesian social context does not recognize this practice, but adds severe slander as a barrier — a legal innovation demonstrating the character of *talfiq*.

3. **Siyāsah Shar'īyyah**

The *siyāsah shar'īyyah* method refers to the policy of the ruler in establishing legal rules while observing Sharia principles and considering aspects of benefit (*maṣlaḥah*) and harm (*mafsadah*) (Segara et al., 2024). An example is the obligation to register marriages with official government institutions. In classical *fiqh*, a marriage contract is considered valid if it fulfills its pillars and conditions, even without administrative recording. However, the Indonesian government stipulates registration as a condition for validity, with the consideration that official registration protects the rights of women and children.

4. Reinterpretation of the Source Texts of Islamic Law

This method, known as *Extra Doctrinal Reform* (Nasution, 2007), no longer relies on opinions in classical *fiqh* books but directly refers to the Qur'an and Hadith through in-depth re-examination. One concrete example is the determination of the minimum age for marriage, set at 19 years for both men and women. This provision is not found in classical *fiqh* literature; in fact, some scholars cite consensus (*ijmā'*) regarding the validity of marriage for those who have not reached puberty (Al-Qurtubi, 2010). However, many Muslim countries, including Indonesia, set a minimum age as a form of protection for children and women. Although the Qur'anic and Hadith texts do not explicitly mention a minimum age, there are normative indications, as stated in Surah an-Nisā' verse 6:

وَابْتَلُوا الَّذِينَ يَتِمُّونَ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ

“And test the orphans [in their abilities] until they reach marriageable age” (an-Nisā': 6)

This phrase implies a certain age limit before a person can marry.

Another example is the establishment of the concept of joint property in marriage. In classical *fiqh*, joint property does not exist; upon divorce, property is returned to its respective owners. However, Indonesian ulama reinterpreted Sharia texts by considering social realities. Teungku Muhammad Hasbi Ash-Shiddieqy argued that a wife is *shirkatu al-rajuli fi al-hayāti* (a partner of the husband in navigating life), so that when a marriage is declared valid, a *sharikat abdan* (unlimited partnership) is automatically formed (Asy-Syaddiqie, 1952).

These examples show that the *Extra Doctrinal Reform* method plays an important role in bridging normative Islamic texts with modern social needs, allowing Islamic family law in Indonesia to develop dynamically.

Comparative Perspective

Situating Indonesia within broader Muslim-majority contexts clarifies its unique path:

1. **Egypt:** Codification since the early 20th century relied heavily on Hanafi *fiqh*, later revised to accommodate social reforms (e.g., divorce regulations).
2. **Pakistan:** The Muslim Family Laws Ordinance (1961) introduced reforms such as restrictions on polygamy and regulation of divorce, reflecting strong state intervention.
3. **Tunisia:** The Code of Personal Status (1956) went further, banning polygamy outright, representing a radical departure from classical *fiqh*.

Compared to these models, Indonesia's KHI adopts a middle path. It does not abolish fiqh principles but selectively synthesizes them across madhhab traditions. This demonstrates Indonesia's distinctive approach: codification as compromise, balancing doctrinal legitimacy with social and constitutional imperatives.

Critical Implications

The discussion reveals several key analytical points:

1. Historical continuity and disruption: colonial subordination explains the narrowed scope of Islamic law, while independence restored its authority but exposed practical inconsistencies.
2. Codification as negotiation: the KHI embodies state-driven *ijtihād jamā'ī*, integrating *fiqh* selectively to ensure legal certainty.
3. Comparative uniqueness: unlike Tunisia's radical reform or Pakistan's strong state intervention, Indonesia's model reflects compromise and pluralism.
4. Open-ended reform: the KHI remains dynamic, open to revision in response to contemporary issues such as gender equality, child protection, and marriage age.

By critically connecting historical patterns, practical judicial problems, and comparative perspectives, this research demonstrates that *taqnīn* in Indonesia is not merely descriptive codification but a dynamic, state-driven reconstruction of Islamic family law. It bridges classical *fiqh* with modern legislation while maintaining adaptability to evolving social needs.

CONCLUSIONS

This study finds that the codification (*taqnīn*) of Islamic family law in Indonesia operates through specific methodological mechanisms—namely *takhayyur*, *tafīq*, *siyāsah shar'īyyah*, and textual reinterpretation—that function as instruments for reconciling classical fiqh doctrines with the demands of a modern pluralist legal system. Rather than merely formalizing legal rules, these methods enable the selective adaptation, combination, and transformation of diverse fiqh opinions into a coherent and enforceable legal framework, as reflected in Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) of 1991.

The findings demonstrate that *taqnīn* in Indonesia should be understood as a form of state-driven *ijtihād*, in which legal authority actively reconstructs Islamic law to ensure legal certainty while maintaining doctrinal legitimacy. This confirms that codification is not a static product of legal development, but a dynamic methodological process shaped by historical negotiation, institutional needs, and contemporary social challenges.

The novelty of this study lies in its analytical focus on taqnīn as a methodological framework, rather than merely a legislative outcome. By systematically mapping legal provisions to specific methods of taqnīn, this research provides a clearer explanation of how codification functions in practice as an instrument of legal reform, particularly in transforming doctrinal plurality into standardized norms within the state legal system.

In practical terms, these findings highlight the importance of methodological awareness in the application and development of Islamic family law. For judges, the use of KHI as a codified reference should be understood not only as binding law but as a product of methodological choices that require contextual interpretation. For policymakers, the study underscores the need to maintain a balanced approach that integrates classical fiqh selectively while responding to contemporary issues such as legal certainty, gender justice, and the protection of vulnerable groups.

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Diterbitkan oleh STAI Ali bin Abi Thalib Surabaya

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DOI Jurnal : <https://doi.org/10.54214/alfawaaid>