Strata Law Review, 2026, Vol. 4, No. 2, 189–209
E-ISSN: 2986-8114 | P-ISSN: 2987-3185
doi: 10.59631/slr.v4i2.589
Advance Access publication September 30, 2026

STRATA LAW REVIEW
journals.stratapersada.com/index.php/slr

Regulating Sexuality and Reproduction in Selected Muslim-Majority States: Comparing Positive Law and Islamic Fiqh

Saski Anastasia Remilda*

*Sekolah Tinggi Agama Islam Balikpapan, Indonesia, Saskianatasia07@gmail.com

Article History	Submitted	Revised	Accepted
	2026-08-17	2026-09-10 & 2026-09-25	2026-09-30

Abstract

Indonesia's 2023 Criminal Code recriminalised the public display of contraceptives and widened the offence of extramarital intercourse, yet comparison with other Muslim-majority jurisdictions remains thin. This article is a doctrinal study in comparative legal analysis. It examines Indonesia, Tunisia, Türkiye, and Saudi Arabia, and reads classical fiqh as a normative benchmark rather than a fifth jurisdiction. The four systems do not occupy positions on a single scale between religious and secular law. Divergence follows from constitutional settlement, political contestation, and the selective reception of classical doctrine. Türkiye withdrew penal law from consensual adult sexuality. Tunisia confined the offence to married persons and repealed the gendered defences once attached to it. Indonesia widened the definition while restricting enforcement to a complaint from within the family. Saudi Arabia retained the hadd classification while codifying family law in 2022 and relying in practice on discretionary punishment. For Indonesian reform the study recommends two measures: a ministerial regulation defining authorised health personnel under Article 410, since that exemption keeps practitioners outside the offence created by Article 408, and clarification of the complaint rule in Articles 411 and 412, which governs entry into the process rather than its conduct.

Keywords: Adultery, comparative criminal law, contraception, extramarital intercourse, islamic fiqh.

© The Author(s) 2026. Published by CV. Strata Persada Academia.
This is an Open Access article distributed under the terms of the Creative Common Attribution 4.0 International (CC BY 4.0)

INTRODUCTION

Indonesia replaced its colonial criminal code when the People's Representative Council enacted Law No. 1 of 2023 on the Criminal Code, which came into force on 2 January 2026 and displaced the Wetboek van Strafrecht voor Nederlandsch-Indië of 1918.[1] The statute came at the end of decades of pressure to retire a code inherited from the Dutch East Indies and to ground criminal law in Indonesian sources.[2] Two clusters of provisions drew criticism once the text became public. Article 408 criminalises the public display, unsolicited offering, and written promotion of contraceptive devices, while Article 410 exempts health personnel authorised to work within family planning programmes.[3] The colonial provision had been narrower, since Article 534 of the Wetboek prohibited such promotion without any exception.[4] Articles 411 to 413 widen the offences governing sexual morality: the definition of extramarital intercourse now reaches beyond the married-party formulation of the former Article 284, cohabitation between unmarried persons is criminalised, and penalties for incest are raised.[5] Indonesian civil society organisations contended that criminalising the promotion of contraceptives would restrict adolescent access to reproductive health information.[6] Comparative analysis of the morality offences has raised a related concern, namely that definitions drawn this widely leave victims of sexual violence exposed to prosecution.[7]

The controversy has a constitutional dimension, because Indonesia is neither a secular state on the French or Turkish model nor a theocracy.[8] Pancasila requires legislation to reflect religious and ethical values, and the first principle, Belief in the One and Only God, gives that requirement constitutional force.[9] Indonesia therefore cannot legislate on sexual morality or reproductive health without engaging Islamic legal tradition, and that tradition is not a single body of rules. Turkey withdrew criminal law from sexual morality and retained adultery only as a ground for divorce.[10] Tunisia kept gender-asymmetric adultery provisions alongside a personal status code

---

[1] Pemerintah Pusat Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana" (2023), https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023.

[2] Lisma, "Internalisasi Nilai Hukum Islam Dalam Rancangan KUHP Di Indonesia (Studi Terhadap Tindak Pidana Perzinahan Dalam KUHP Dan RKUHP)," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 1 (2019): 721–33, https://doi.org/10.30863/ekspose.v18i1.281.

[3] Presiden Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023, Arts. 408 and 410" (2023).

[4] Presiden Republik Indonesia, "Wetboek van Strafrecht Voor Nederlandsch-Indië, Art. 534" (1918).

[5] Pemerintah Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP)," Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1 § (2023).

[6] S W Eddyono, "Akses Terhadap Informasi Dan Layanan Kontrasepsi Dalam Rancangan KUHP" (Jakarta: Yayasan Cipta Cara Padu, 2016).

[7] Farrel Alanda Fitrah, "Perbandingan Hukum Terkait Pembentukan Pasal Penghinaan Terhadap Peradilan, Perzinahan, Dan Santet Dalam RKUHP Indonesia," *SIGn Jurnal Hukum* 2, no. 2 (2021): 122–37, https://doi.org/10.37276/sjh.v2i2.93.

[8] Mirjam Künkler, "Constitutionalism, Islamic Law, and Religious Freedom in Postindependence Indonesia," in *Constitution Writing, Religion and Democracy*, ed. Aslı Bâli and Hanna Lerner (Cambridge: Cambridge University Press, 2017), 179–206, https://doi.org/10.1017/9781107707443.008.

[9] Maysarah Nasution and Muhammad Yani, "Integration of Sharia Values into the Pancasila State Legal System: Constitutional Review of Article 28J," *Jurnal Multidisiplin Madani* 5, no. 11 (2025): 1243–57, https://doi.org/10.55927/mudima.v5i11.681.

[10] Pınar İlkkaracan, "How Adultery Almost Derailed Turkey's Aspirations to Join the European Union," in *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (London: Routledge, 2008), 41–64, https://doi.org/10.4324/9781315576213-3.

that is comparatively liberal on marriage and divorce.[11] Saudi Arabia continued to apply uncodified Sharia with hadd punishments.[12] Reforms pursued under Vision 2030 have since introduced codification and narrowed the reach of those punishments, which changes how the Saudi case should be read.[13]

Scholarship bearing on these questions falls into three clusters. Socio-legal and rights-based work has established the gendered consequences of criminalising extramarital sexuality, most fully in the comparative study of zina laws by Mir-Hosseini and Hamzić.[14] Research on personal status codes in Arab states has shown how family law reform reshapes women's legal position.[15] Doctrinal studies of Islamic criminal jurisprudence have reconstructed the evidentiary architecture that historically restricted state punishment.[16] Accounts of the classical tradition set out how jurists distinguished hudud from ta'zir and reasoned about the standards of proof attached to each.[17] A third body of work examines single jurisdictions. Turkey's adultery debates have been read through the lens of European Union accession.[18] Tunisian law and social change have been studied through the practice of unregistered marriage.[19] Indonesian Islamic governance has been examined as an anthropology of public reasoning.[20]

Each cluster carries a limitation that this article addresses. Rights-based scholarship criticises penal codes that have since been revised, and it says little about the codification programmes of the 2020s. Doctrinal work treats classical jurisprudence as a settled normative system and rarely asks how legislatures borrow from it selectively. Single-jurisdiction studies, however detailed, keep Indonesia, the Maghreb, and the Gulf in separate conversations. The more consequential limitation is thematic. Adultery and contraception are treated as unrelated subjects, the first as a morality offence, the second as an administrative question of public health, so the shared origin of both in state control over reproduction has gone largely unexamined. The studies that come closest to bridging these fields address family law reform comparatively[21] or trace how modern

---

[11] Maaike Voorhoeve, *Gender and Divorce Law in North Africa: Sharia, Custom and the Personal Status Code in Tunisia* (Bloomsbury Publishing, 2014).

[12] Manisuli Ssenyonjo, "Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari'a: A Human Rights Critique," *International Human Rights Law Review* 13, no. 2 (2024): 265–312, https://doi.org/10.1163/22131035-13020005.

[13] Elad Giladi, "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?," *Islamic Law and Society*, 2025, 1–31, https://doi.org/10.1163/15685195-bja10070.

[14] Ziba Mir-Hosseini and Vanja Hamzić, *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts* (London: Women Living Under Muslim Laws, 2010), https://www.wluml.org/wp-content/uploads/2021/01/CaS-e-book.pdf.

[15] Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007), https://doi.org/10.5117/9789053569740.

[16] Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (Oxford University Press, 2019), https://doi.org/https://doi.org/10.1093/oso/9780190910648.001.0001.

[17] Wael B Hallaq, *An Introduction to Islamic Law* (Cambridge university press Cambridge 2009, 2009), https://books.google.co.id/books?id=3YvEt3PxmAcC&printsec=copyright#v=onepage&q&f=false.

[18] İlkkaracan, "How Adultery Almost Derailed Turkey's Aspirations to Join the European Union."

[19] Maaike Voorhoeve, "Law and Social Change in Tunisia: The Case of Unregistered Marriage," *Oxford Journal of Law and Religion* 7, no. 3 (2018): 479–97, https://doi.org/10.1093/ojlr/rwy027.

[20] John R Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003), https://doi.org/10.1017/cbo9780511615122.

[21] Yüksel Sezgin, "Muslim Family Law Reform: Understanding the Difference between Muslim-Majority and Muslim-Minority Jurisdictions," *Journal of Law, Religion and State* 10, no. 2–3 (2023): 218–51, https://doi.org/10.1163/22124810-20230004.

states have carried the hudud legacy into codified law.[22] Neither takes contraception and adultery together, and neither brings Indonesia into the same frame as the Gulf and the Maghreb.

This article offers such a framework. It reads the contraception and adultery provisions of the 2023 Code as two expressions of one phenomenon, which it terms state reproductive governance, and tests that reading against three additional legal settings. Tunisia, Turkey, and Saudi Arabia were selected because together they span the range of ways in which Muslim-majority states have received Islamic legal norms. Tunisia combines a French-derived civil law structure with an Islamic constitutional reference and a personal status code that has been reformed more than once since independence.[23] Turkey pursued secularisation and removed adultery from its penal code. Saudi Arabia maintained uncodified Sharia until the codification programme begun under Vision 2030 altered that arrangement. Placing classical fiqh alongside these states, rather than treating it as a fourth jurisdiction, allows the doctrinal vocabulary on which all three draw to be examined on its own terms.

The article pursues two objectives. The first is to establish how four legal settings, Indonesia, Tunisia, Turkey, and Saudi Arabia, together with classical fiqh, define and enforce the offences of contraception display and extramarital intercourse. The second is to explain why states sharing an Islamic legal heritage arrive at such different positions. These questions matter now. Law No. 1 of 2023 entered into force in January 2026, which means Indonesian courts, prosecutors, and health services are applying Articles 408 and 411 to 413 for the first time, with little comparative guidance on how comparable provisions have operated elsewhere.[24] The article supplies that guidance, and offers lawmakers in post-colonial states an account of where the boundary between public morality and individual autonomy has been drawn, by whom, and with what consequences.

METHOD

This article is a doctrinal study conducted through comparative legal method.[25] It works on the content of legal norms rather than on how those norms operate in practice, because the questions asked here concern definition, structure, and sanction.[26] Indonesia is the primary case, and the provisions on contraception and extramarital intercourse in its 2023 Criminal Code prompted the study.[27] Tunisia retains adultery as an offence in a penal code of French derivation, the provision sitting in a code that also carries separate offences of public indecency.[28] Türkiye

[22] Bahman Khodadadi, "Between Divine Mandate and Modern State: Islamic Criminal Law and the Contested Legacy of Ḥudūd," *Journal of Islamic Law* 6, no. 1 (2025), https://doi.org/10.53484/jil.v6.khodadadi.
[23] Mufliha Wijayati, "Family Law Reform in Tunisia (Reading the Rules of Polygamy in the Tunisian Code of Personal Status)," *Jurnal Ilmiah Mizani* 8, no. 1 (2024): 133–48, https://doi.org/10.29300/mzn.v8i1.2757.
[24] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP).
[25] Mark Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011), https://doi.org/10.5040/9781472560896.
[26] Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law," *Erasmus Law Review* 8, no. 3 (2015): 130–38, https://doi.org/10.5553/elr.000055.
[27] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP).
[28] Dekret Tunisia, "Code Pénal [Penal Code] (Tunisia)" (1968), https://legislation-securite.tn/latest-laws/decret-du-9-juillet-1913-portant-promulgation-du-code-penal/.

removed adultery from criminal law, and it survives there only as a ground for divorce.[29] Saudi Arabia held to uncodified Sharia with hadd punishments, and the codification begun under Vision 2030 has since narrowed their reach.[30] The three were selected for the range they cover rather than for their number, since the purpose is to explain divergence and not to sample a population.[31] Classical fiqh is treated as the material that informs these systems rather than as a fourth jurisdiction, and it is read through the reasoning of the four Sunni schools on zina and on ʿāzl (coitus interruptus).[32]

The materials are statutes, doctrinal texts, and peer-reviewed scholarship, ordered by the source hierarchy that doctrinal research uses.[33] For Indonesia they are the 2023 Criminal Code and the Marriage Law of 1974.[34] For Tunisia they are the provisions on public indecency, which is where the comparison with Article 408 bites.[35] For Türkiye they are the Civil Code of 2001, whose article on adultery as a ground for divorce replaced the corresponding article of 1926.[36] For Saudi Arabia they are the Basic Law of Governance of 1992.[37] The Personal Status Law of 2022 is examined alongside it, because that statute moved matters previously left to judicial discretion into written form.[38] The classical positions on contraception and on coitus interruptus are taken from Arabic and Indonesian sources on the four schools.[39] Evidentiary thresholds for zina come from the hudud literature.[40] Comparison runs in five steps: description of each provision and its sanction, classification along fixed dimensions for each offence, systematic comparison, synthesis, and verification of every statutory citation against the official text.[41]

Three limits bound what the article can claim. First, it is doctrinal and not empirical, so the findings describe the content of legal norms rather than the way courts, prosecutors, or health services apply them.[42] Second, Arabic and Turkish materials were consulted in official translations, and differences of legal terminology between a translation and the source text cannot

[29] Majelis Nasional Agung Turki, "Türk Medeni Kanunu [Turkish Civil Code], Law No. 4721 of 2001" (2001), https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4721&MevzuatTur=1&MevzuatTertip=5.
[30] Giladi, "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?"
[31] Ran Hirschl, "The Question of Case Selection in Comparative Constitutional Law," *American Journal of Comparative Law* 53, no. 1 (2005): 125–56, https://doi.org/10.1093/ajcl/53.1.125.
[32] Hamid Harasani, "Islamic Law as a Comparable Model in Comparative Legal Research," *Global Journal of Comparative Law* 3, no. 2 (2014): 186–202, https://doi.org/10.1163/2211906x-00302002.
[33] P Ishwara Bhat, "Qualitative Legal Research," ed. Idea and Methods of Legal Research (New Delhi: Oxford University Press, 2020), 359–82, https://doi.org/10.1093/oso/9780199493098.003.0012.
[34] "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (1974), https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974.
[35] Dekret Tunisia, Code pénal [Penal Code] (Tunisia).
[36] Majelis Nasional Agung Turki, Türk Medeni Kanunu [Turkish Civil Code], Law No. 4721 of 2001.
[37] "Basic Law of Governance, Royal Order No. A/90 (Saudi Arabia)" (1992).
[38] "Personal Status Law, Royal Decree No. M/73 (Saudi Arabia)" (2022).
[39] Sa'diyya Shaikh, "Family Planning, Contraception, and Abortion in Islam," in *Sacred Rights: The Case for Contraception and Abortion in World Religions*, ed. Daniel C Maguire (New York: Oxford University Press, 2003), 105–24, https://doi.org/10.1093/acprof:oso/9780195160017.003.0005.
[40] Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation*.
[41] Mark Van Hoecke, "Methodology of Comparative Legal Research," *Recht En Methode in Onderzoek En Onderwijs*, 2015, https://doi.org/10.5553/rem/.000010.
[42] Bhat, "Qualitative Legal Research."

be ruled out.[43] Third, three states are compared and no claim is made that they represent the region.[44] The article also declines to rank the models against one another, because its purpose is to explain divergence rather than to nominate a preferred arrangement.[45] What follows from these limits is a study of statutory design, and the conclusions are offered at that level.

RESULT AND DISCUSSION

Criminalization Status and the Statutory Elements of Extramarital Relations

Classical jurisprudence treats zina as sexual intercourse between a man and a woman who are not joined by a valid marriage contract or by lawful ownership, and who are free of any ambiguity that might raise a claim of right.[46] The prohibition itself is uniform across the schools, and the divergence that matters for this article appears later, in how modern legislatures define the act and set its boundaries.[47] Contemporary codes have not simply inherited that definition; each has redrawn it to fit a domestic political settlement.[48]

Indonesia widened the statutory boundary considerably. Article 284 of the colonial code reached only a married person who committed extramarital intercourse, so an unmarried couple fell outside it altogether.[49] Articles 411 and 412 of the 2023 Criminal Code now cover intercourse between two persons who are not married to each other and cohabitation outside marriage, which places unmarried couples inside the offence.[50] The expansion was defended as an attempt to bring penal law into line with values held in society, and it was resisted on the ground that it turns private conduct into a matter for the police.[51] What emerged from that contest is a compromise rather than a straightforward adoption of fiqh, since the offence is wider than the classical one while its enforcement is narrower.[52]

Türkiye moved in the opposite direction and removed the offence from criminal law altogether. Adultery survives only as a ground for divorce under the Turkish Civil Code, where it belongs to the law of persons rather than to penal law.[53] The Turkish Penal Code contains no

[43] John Bell, "Legal Research and the Distinctiveness of Comparative Law," *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline* (Hart, 2011).
[44] Hirschl, "The Question of Case Selection in Comparative Constitutional Law."
[45] Hoecke, "Methodology of Comparative Legal Research."
[46] Hallaq, *An Introduction to Islamic Law*.
[47] Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation*.
[48] Hallaq, *An Introduction to Islamic Law*.
[49] Presiden Republik Indonesia, Wetboek van Strafrecht voor Nederlandsch-Indië, art. 534.
[50] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP).
[51] Rizki Maulana, Fouza Azwir Abdul Azis Azwir, and Muammar Izazi, "Between Islamic Morality and Legal Certainty: Political Compromise in Regulating Adultery and Non-Marital Cohabitation in Indonesia's New Criminal Code," *Al-Qadha* 12, no. 2 (2025): 544–67, https://doi.org/10.32505/qadha.v12i2.12719.
[52] Herman Bastiaji E T al. Prayitno, "Criminalization of Cohabitation in the New Criminal Code: A Dilemma of Public Morality and Protection of Constitutional Rights in Indonesia," *Istinbath: Jurnal Hukum* 23, no. 1 (2026): 23–46, https://doi.org/10.32332/istinbath.v23i01.11481.
[53] Majelis Nasional Agung Turki, Türk Medeni Kanunu [Turkish Civil Code], Law No. 4721 of 2001.

Doi: 10.59631/slr.v4i2.589

adultery provision, so consensual conduct between adults is not a matter for prosecution.[54] This outcome followed a contested sequence rather than a single legislative decision, which is why the Turkish case is better read as a trajectory than as a settled position.[55]

Tunisia criminalises adultery but confines the offence to married persons. Article 236 of the Penal Code provides that adultery by the husband or by the wife is punishable by five years of imprisonment and a fine of 500 dinars.[56] The provision applies on the same terms to both spouses, and the text does not distinguish between them.[57] Prosecution requires a complaint from the other spouse, who may also halt the proceedings or the execution of the sentence. Conduct between two unmarried adults therefore lies outside the article, which places Tunisia closer to Indonesia on the definition of the offence and closer to Türkiye on the narrowness of its reach.[58]

Saudi Arabia long stood as the clearest case of uncodified Sharia applied to sexual morality, and that description no longer holds in the form it did before 2020.[59] The Basic Law of Governance of 1992 remains the constitutional reference, and it declares the Qur'an and the Sunna to be the constitution of the Kingdom.[60] Within that frame, the Personal Status Law of 2022 put into written form a body of family law that judges had previously handled with wide discretion.[61] The criminal law has moved in the same direction, though more slowly and less completely.[62]

Reading the four systems side by side produces a result that a simple liberal-to-conservative scale cannot express. Indonesia and Tunisia criminalise conduct that Türkiye leaves to civil law, yet Indonesia reaches unmarried couples while Tunisia does not.[63] Saudi Arabia retains the harshest formal classification while applying it through procedures that make conviction rare.[64] The pattern is one of different combinations rather than different positions on a single line, and it is explained below by the distinct constitutional settlements each state inherited.[65]

---

[54] Grand National Assembly of Turkey, "Türk Ceza Kanunu [Turkish Penal Code], Law No. 5237 of 2004" (2004), https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5237&MevzuatTur=1&MevzuatTertip=5.

[55] Pınar İlkkaracan, "How Adultery Almost Derailed Turkey's Aspirations to Join the European Union BT - Deconstructing Sexuality in the Middle East: Challenges and Discourses," ed. Pınar İlkkaracan (London: Routledge, 2016), 41–64, https://doi.org/10.4324/9781315576213-3.

[56] Dekret Tunisia, Code pénal [Penal Code] (Tunisia).

[57] Dekret Tunisia.

[58] Voorhoeve, *Gender and Divorce Law in North Africa: Sharia, Custom and the Personal Status Code in Tunisia*.

[59] Dominik Krell, "The Foundations of the Saudi Legal System BT - Islamic Law in Saudi Arabia" (Leiden: Brill, 2025), 15–39, https://doi.org/10.1163/9789004726314_003.

[60] Basic Law of Governance, Royal Order No. A/90 (Saudi Arabia).

[61] Giladi, "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?"

[62] Dominik Krell, "Legal Reform beyond the State BT - Islamic Law in Saudi Arabia" (Leiden: Brill, 2025), 142–70, https://doi.org/10.1163/9789004726314_008.

[63] Voorhoeve, *Gender and Divorce Law in North Africa: Sharia, Custom and the Personal Status Code in Tunisia*.

[64] Ssenyonjo, "Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari'a: A Human Rights Critique."

[65] Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation*.

Procedural Safeguards, Complaint Requirements, and Gender Asymmetry

The classical law rested less on the severity of the penalty than on the difficulty of proving the offence. Conviction required either a confession repeated four times or the testimony of four upright witnesses who had observed the act itself.[66] These rules functioned as a shield: they guarded privacy against inquiry, and they exposed a false accuser to the fixed penalty for qadhf.[67] The evidentiary standard therefore did work that the substantive prohibition could not, and modern codes have inherited the problem of replacing it.[68]

In Saudi Arabia the classical standard has not been repealed, but its practical effect has shifted toward discretionary punishment. Formal hadd convictions are rare because the evidentiary threshold is so high, and courts rely instead on ta'zir, where the judge sets the penalty within limits set by statute and judicial direction.[69] The turn to discretionary punishment solves the proof problem at the cost of making outcomes less predictable for defendants.[70] It also moves the question of severity from the text of the law to the practice of the courts, which is precisely where a doctrinal study cannot follow it.[71]

Indonesia replaced the evidentiary shield with a procedural one. Article 411(2) and Article 412(2) allow prosecution for adultery and cohabitation only on a complaint from a spouse, or, where neither party is married, from a parent or child.[72] The offence is thus a complaint-based one, and the complainant can withdraw before the trial opens.[73] This construction confines enforcement to the family circle and keeps the state out of sexual conduct that no relative chooses to raise.[74]

The mechanism has drawn criticism from Indonesian scholars, who question both its internal coherence and its reach. One line of argument holds that the drafting of the complaint rule leaves the scope of the offence uncertain, so the provision is harder to apply than its text suggests.[75] Another observes that a rule meant to protect privacy can still be used to pressure a family

[66] Hallaq, *An Introduction to Islamic Law*.
[67] Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation*.
[68] Suhaizad Saifuddin, "Analisis Pemakaian Darjah Pembuktian Bagi Kesalahan Hudud Di Bawah Enakmen Jenayah Syariah Di Malaysia," *Journal of Shariah Law Research* 6, no. 1 (2021): 89–108, https://doi.org/10.22452/jslr.vol6no1.6.
[69] Ssenyonjo, "Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari'a: A Human Rights Critique."
[70] Krell, "Legal Reform beyond the State BT - Islamic Law in Saudi Arabia."
[71] Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation*.
[72] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP).
[73] Maesyaroh and Sulistyanta, "Criminal Policy on Adultery in Indonesia within Law Number 1 of 2023 Concerning the Criminal Code," *International Journal of Sustainability in Research* 2, no. 4 (2024): 313–20, https://doi.org/10.59890/ijsr.v2i4.2004.
[74] Prayitno, "Criminalization of Cohabitation in the New Criminal Code: A Dilemma of Public Morality and Protection of Constitutional Rights in Indonesia."
[75] Muhammad Djaelani Prasetya, "Kekeliruan Pengaturan Aduan Perzinaan Dalam KUHP 2023: Telaah Delik Aduan Absolut," *Jurnal Hukum Pidana Indonesia* 1, no. 2 (2024): 156–73, https://doi.org/10.67468/jhpi.v1i2.7.

member into a complaint.[76] Both objections point to the same weakness: the safeguard regulates who may start a case, not what the state may do once a case begins.[77]

Tunisia's article contains an asymmetry, though not the one usually attributed to it. Where adultery is committed in the marital home, Article 53 of the Penal Code does not apply, which removes the court's power to reduce the sentence below the legal minimum.[78] The practical burden therefore differs by place rather than by sex: conduct inside the home attracts the full penalty, conduct elsewhere may be mitigated.[79] That is a real disparity, but it operates through the location of the act and the discretion of the judge, not through different penalties for husband and wife.[80]

The clearest gender asymmetry in Tunisian criminal law lay elsewhere, and it has been repealed. Article 207, which had allowed a reduced penalty for a husband who killed a wife caught in adultery, was abrogated in 1993.[81] The provisions on honour crimes were removed from the Penal Code in 2017, which closed the remaining avenue of mitigation tied to family honour.[82] These changes matter for the comparison because they show a state revising the gendered structure of its own penal code while leaving the adultery offence untouched.[83]

Taken together, the procedural designs show a common movement away from evidentiary rules and toward statutory gatekeeping. Where classical law made proof hard, modern codes make prosecution conditional, and both devices limit the reach of the state without narrowing the definition of the offence.[84] The difference is that a complaint requirement can be waived by the person it protects, whereas an evidentiary threshold cannot.[85] That is a weaker form of restraint, and it explains why the Indonesian offence can widen in scope while remaining narrow in application.[86]

Contraceptive Display: Public Health Logic against Moral Paternalism

The classical treatment of contraception runs along a different track from the treatment of zina. Coitus interruptus was widely permitted across the four Sunni schools, and the jurists discussed it in the vocabulary of marital rights and public interest rather than in the vocabulary of crime.[87]

---

[76] Maulana, Azwir, and Izazi, "Between Islamic Morality and Legal Certainty: Political Compromise in Regulating Adultery and Non-Marital Cohabitation in Indonesia's New Criminal Code."
[77] Prasetya, "Kekeliruan Pengaturan Aduan Perzinaan Dalam KUHP 2023: Telaah Delik Aduan Absolut."
[78] Dekret Tunisia, Code pénal [Penal Code] (Tunisia).
[79] Voorhoeve, *Gender and Divorce Law in North Africa: Sharia, Custom and the Personal Status Code in Tunisia*.
[80] Dekret Tunisia, Code pénal [Penal Code] (Tunisia).
[81] Republique Tunisienne, "Le Code Penal," *Article 277*, 2010.
[82] "United Nations Population Fund" (Tunis: UNFPA, 2017), https://tunisia.unfpa.org/sites/default/files/pub-pdf/Tunisia Country Assessment_English.pdf.
[83] Voorhoeve, "Law and Social Change in Tunisia: The Case of Unregistered Marriage."
[84] Saifuddin, "Analisis Pemakaian Darjah Pembuktian Bagi Kesalahan Hudud Di Bawah Enakmen Jenayah Syariah Di Malaysia."
[85] Prasetya, "Kekeliruan Pengaturan Aduan Perzinaan Dalam KUHP 2023: Telaah Delik Aduan Absolut."
[86] Maesyaroh and Sulistyanta, "Criminal Policy on Adultery in Indonesia within Law Number 1 of 2023 Concerning the Criminal Code."
[87] Shaikh, "Family Planning, Contraception, and Abortion in Islam."

Where jurists differed, they differed over consent and harm between the spouses, not over whether the practice should be punished by the state.[88] Nothing in the classical material supports the criminalisation of informing people about contraception, which is what several modern codes regulate.[89]

Indonesia is the case where that gap is widest. Article 408 criminalises the public display, unsolicited offering, and written promotion of contraceptive devices, and it carries imprisonment or a fine. Article 410 exempts authorised personnel acting within family planning programmes, the prevention of sexually transmitted infection, or health education.[90] The exemption narrows the offence without removing it, and the offence still reaches written material that would otherwise be ordinary health information.[91]

The prohibition descends from the colonial code, which restricted the same conduct without any exemption at all. Article 534 of the Wetboek van Strafrecht voor Nederlandsch-Indië prohibited the display and offering of contraceptives as an offence against decency.[92] The 2023 Code retained the prohibition and added the exception, which makes the provision less severe than its predecessor rather than more.[93] Reading it as a wholly new restriction would therefore be a mistake, since what is new is the exception, not the offence.[94]

Critics of the provision, and scholars examining the criminal code bill that preceded it, argue that the offence sits uneasily beside the state's own family planning programme.[95] The exemption protects health workers who act within authorised programmes but leaves the status of teachers, journalists, and civil society organisations unclear.[96] The result is a provision whose legal effect depends heavily on how the exemption is read in practice, which is the kind of uncertainty the comparison with other jurisdictions can illuminate.[97]

Türkiye and Tunisia regulate reproductive health without criminal law, and the contrast with Indonesia is sharp. Tunisian family planning was built into public health services from the 1960s

[88] Abdel-Rahim Omran, ed., *Family Planning in the Legacy of Islam* (London: Routledge, 2012), https://doi.org/10.4324/9780203167977-23.
[89] Sa'diyya Shaikh, "Family Planning, Contraception, and Abortion in Islam BT - Sacred Rights: The Case for Contraception and Abortion in World Religions," ed. Daniel C Maguire (New York: Oxford University Press, 2003), 105–24, https://doi.org/10.1093/acprof:oso/9780195160017.003.0005.
[90] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP).
[91] Samsu Alam Maddussila, "Criminal Code Bill Article 414 and Sex Education in Indonesia," *Jurnal Hukum Dan Peradilan* 8, no. 3 (2019): 407–19, https://doi.org/10.25216/jhp.8.3.2019.407-419.
[92] Presiden Republik Indonesia, Wetboek van Strafrecht voor Nederlandsch-Indië, art. 534.
[93] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP).
[94] Maddussila, "Criminal Code Bill Article 414 and Sex Education in Indonesia."
[95] Prianter Jaya Hairi, "Urgensi Mempertahankan Pengaturan Tindak Pidana Menunjukkan Alat Mencegah Kehamilan Dalam RUU KUHP The Urgency of Rearranging Regulations on Criminal Act of Presenting Prevention of Pregnancy ' s Device in the Criminal Code Bill" 10, no. 2 (2019): 259–80.
[96] Maddussila, "Criminal Code Bill Article 414 and Sex Education in Indonesia."
[97] Maesyaroh and Sulistyanta, "Criminal Policy on Adultery in Indonesia within Law Number 1 of 2023 Concerning the Criminal Code."

onward, and contraception was treated as a matter of service delivery rather than of moral control.[98] The Tunisian penal code contains no offence of displaying or promoting contraceptives, which was confirmed when the text was searched for any provision of that kind.[99] Türkiye reaches the same position by a different route, treating access as an administrative question under public health standards.[100] Both states criminalise adultery and neither criminalises contraceptive information, which already undermines the assumption that the two domains move together.[101]

Saudi Arabia permits contraception and regulates it administratively rather than penally.[102] Surveys of contraceptive knowledge and use among Saudi women report that provision runs through primary care, which places the subject in the health system rather than in the criminal law.[103] The Kingdom thus combines the strictest formal treatment of extramarital sex with no penal restriction on contraceptive information, which is the inverse of what a morality-based account would predict.[104]

The comparison therefore separates two regulatory logics that operate inside the same legal system. Sexual morality is governed by penal provisions justified in the language of public morality and defended as protection of the social order.[105] Reproductive health is governed by administrative and health rules justified in the language of public health, even where the penal code retains a related offence.[106] Moral paternalism of the kind described in the criminal law literature explains the first domain well and the second poorly, which is the finding this article sets out to establish.[107]

Saudi Arabia after 2020: Codification and Restraint

The reforms announced under Vision 2030 change how the Saudi case should be described in an article written now. Saudi Arabia's legal system was built on uncodified Sharia administered by judges trained in the Hanbali school, and it lacked a comprehensive written code of obligations.[108] The reforms since 2020 have moved parts of that system toward written law, which

[98] Irene Maffi, "Governing Reproduction in Post-Revolutionary Tunisia: Contraception, Abortion and Infertility," *Medical Anthropology* 41, no. 6–7 (2021): 689–701, https://doi.org/10.1080/01459740.2021.1941004.
[99] Dekret Tunisia, Code pénal [Penal Code] (Tunisia).
[100] Grand National Assembly of Turkey, Türk Ceza Kanunu [Turkish Penal Code], Law No. 5237 of 2004.
[101] Maffi, "Governing Reproduction in Post-Revolutionary Tunisia: Contraception, Abortion and Infertility."
[102] Ssenyonjo, "Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari'a: A Human Rights Critique."
[103] Mounira Al Sheeha, "Awareness and Use of Contraceptives among Saudi Women Attending Primary Care Centers in Al-Qassim, Saudi Arabia.," *International Journal of Health Sciences* 4, no. 1 (January 2010): 11–21.
[104] Krell, "The Foundations of the Saudi Legal System BT - Islamic Law in Saudi Arabia."
[105] Joel Feinberg, "Legal Paternalism BT - The Moral Limits of the Criminal Law, Vol. 3, Harm to Self" (New York: Oxford University Press, 1989), 3–26, https://doi.org/10.1093/0195059239.003.0001.
[106] Luigi Cornacchia, "Paternalism and Moral Limits of Criminal Law BT - Ius Gentium: Comparative Perspectives on Law and Justice" (Cham: Springer, 2020), 229–43, https://doi.org/10.1007/978-3-030-64163-4_10.
[107] Feinberg, "Legal Paternalism BT - The Moral Limits of the Criminal Law, Vol. 3, Harm to Self."
[108] Krell, "The Foundations of the Saudi Legal System BT - Islamic Law in Saudi Arabia."

is a change of kind rather than of degree.[109] The Personal Status Law of 2022 is the clearest example, since it codified family law in a statute for the first time.[110]

The 2022 statute is best read with attention to what it did not change as well as to what it did. It introduced a written framework for marriage, divorce, custody, and maintenance, which replaced judicial discretion with stated rules.[111] Critics argue that the code preserves male authority within the family while presenting the change as reform, a reading supported by the provisions on guardianship and custody.[112] For the purposes of this article the relevant point is narrower: family law became a statutory subject, and the criminal law did not.[113]

Restraint in the application of punishment is a separate development from codification, and the two should not be merged. Corporal punishment in the Kingdom has been the subject of sustained criticism from human rights bodies, and the direction of official policy since 2020 has been to reduce its use.[114] Judicial reform has also altered how criminal cases are handled, including the professionalisation of the judiciary and the issuing of procedural guidance.[115] These measures constrain the application of penalties without removing them from the law, which is why the description 'traditionalist Sharia model' still captures the formal position even as its operation changes.[116]

The reforms therefore require a correction to the article's own account rather than a wholesale revision of it. Saudi Arabia is no longer accurately described as a jurisdiction where uncodified Hanbali law governs every field, since family law is now written and the criminal process is administered through published guidance.[117] What survives is the absence of a comprehensive criminal code and the retention of hadd classifications in name.[118] The comparison in this article uses Saudi Arabia as the case of strongest formal retention, and that characterisation survives the reforms, but the accompanying description of an untouched system does not.[119]

---

[109] Giladi, "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?"
[110] Mas'odi and Anees El Zer, "The Personal Status Law and Patriarchy in Saudi Arabia: A Critical Examination," *Syura: Journal of Law* 3, no. 2 (2025): 116–30, https://doi.org/10.58223/syura.v3i2.450.
[111] Giladi, "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?"
[112] Mas'odi and Zer, "The Personal Status Law and Patriarchy in Saudi Arabia: A Critical Examination."
[113] Krell, "Legal Reform beyond the State BT - Islamic Law in Saudi Arabia."
[114] Hind Sebar and Shahrul Mizan Ismail, "The Use of Flogging as a Punishment in Saudi Arabia from the Perspective of International Human Rights Law," *IIUM Law Journal* 29, no. 1 (2021): 77–102, https://doi.org/10.31436/iiumlj.v29i1.609.
[115] Krell, "Legal Reform beyond the State BT - Islamic Law in Saudi Arabia."
[116] Ssenyonjo, "Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari'a: A Human Rights Critique."
[117] Giladi, "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?"
[118] Ssenyonjo, "Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari'a: A Human Rights Critique."
[119] Krell, "The Foundations of the Saudi Legal System BT - Islamic Law in Saudi Arabia."

Doi: 10.59631/slr.v4i2.589

Comparative Synthesis: Explaining Divergence

Three structural factors account for most of the variation between the four systems, and the first is constitutional settlement. Türkiye's secular constitutional trajectory allowed the penal law to be withdrawn from consensual adult sexuality, and no subsequent government has restored it.[120] Saudi Arabia's Basic Law ties legislation to Sharia, which preserves the formal classification of zina as a hadd offence regardless of how rarely it is applied.[121] Indonesia and Tunisia occupy intermediate positions, with constitutional texts that require legislation to reflect religious values while leaving the legislature room to decide how.[122]

The second factor is political contestation over the content of the codes. Indonesia's expansion of the adultery offence and the criminalisation of cohabitation emerged from a negotiation between secular parties, human rights organisations, and religious constituencies, and the result reflects all three.[123] The complaint requirement and the widened definition are two halves of that settlement rather than a single legislative intention.[124] Reading either half without the other makes the provision look more coherent than it is.[125]

The third factor is the mode of reception of classical doctrine, which is selective in every case examined here. No state in the comparison applies fiqh in an unmediated form, and each borrows the parts that serve a contemporary purpose while discarding the accompanying procedure.[126] Indonesia took the broad prohibition and dropped the evidentiary threshold, replacing it with a complaint rule.[127] Tunisia kept the narrow married-person offence and repealed the honour provisions that classical law would not have recognised in that form.[128] Saudi Arabia retained the evidentiary threshold and the penalty together, and relies on discretionary punishment where proof cannot be had.[129]

The synthesis supports a claim that runs against the way these systems are often described. Divergence across Muslim-majority states is not a matter of some being further along a path toward secular law than others, because the states differ in which parts of the classical corpus they kept.[130] Indonesia kept the definition and discarded the proof rule, Saudi Arabia kept both, Türkiye kept neither, and Tunisia kept the narrower definition and discarded the gendered

[120] İlkkaracan, "How Adultery Almost Derailed Turkey's Aspirations to Join the European Union."
[121] Basic Law of Governance, Royal Order No. A/90 (Saudi Arabia).
[122] Maulana, Azwir, and Izazi, "Between Islamic Morality and Legal Certainty: Political Compromise in Regulating Adultery and Non-Marital Cohabitation in Indonesia's New Criminal Code."
[123] Prayitno, "Criminalization of Cohabitation in the New Criminal Code: A Dilemma of Public Morality and Protection of Constitutional Rights in Indonesia."
[124] Prasetya, "Kekeliruan Pengaturan Aduan Perzinaan Dalam KUHP 2023: Telaah Delik Aduan Absolut."
[125] Maesyaroh and Sulistyanta, "Criminal Policy on Adultery in Indonesia within Law Number 1 of 2023 Concerning the Criminal Code."
[126] Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation*.
[127] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP).
[128] Tunisienne, "Le Code Penal."
[129] Saifuddin, "Analisis Pemakaian Darjah Pembuktian Bagi Kesalahan Hudud Di Bawah Enakmen Jenayah Syariah Di Malaysia."
[130] Hallaq, *An Introduction to Islamic Law*.

defences.[131] The resulting configurations are not points on one scale, and treating them as such obscures the mechanism that produces them.[132]

Implications for Theory, Reform, and Health Policy

For comparative legal theory, the findings argue against treating Muslim-majority jurisdictions as instances of a single legal family. The four cases examined here share a doctrinal inheritance and arrive at arrangements that differ in definition, in procedure, and in the relation between penal and administrative law.[133] Placing classical fiqh alongside the states as a normative benchmark rather than as a fifth jurisdiction makes the selective borrowing visible, which a state-to-state comparison tends to conceal.[134] The approach also shows that reception is a two-way movement, since states discard doctrinal elements as readily as they adopt them.[135]

For the study of criminal law and morality, the findings separate two domains that are usually discussed together. The evidence here shows that the severity of morality offences does not predict the treatment of contraceptive information, and the two can move in opposite directions within one state.[136] Saudi Arabia criminalises extramarital sex while permitting contraception, and Tunisia criminalises adultery while its family planning services are among the oldest in the region.[137] Moral paternalism as developed in the criminal law literature explains the first domain but not the second, which suggests that the two need separate accounts.[138]

For Indonesian reform, the comparison offers two concrete points rather than a general recommendation. The first concerns Article 408 and its exemption: since the exception in Article 410 is what keeps health workers and educators outside the offence, the terms of that exception carry more practical weight than the prohibition it qualifies.[139] The second concerns the complaint rule in Articles 411 and 412, where the analysis above showed that the safeguard controls entry into the process rather than the conduct of it.[140] A revision that addressed only the definition of the offence would leave the enforcement structure, which is where the article's comparative value lies, untouched.[141]

---

[131] Krell, "Legal Reform beyond the State BT - Islamic Law in Saudi Arabia."
[132] Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation*.
[133] Krell, "The Foundations of the Saudi Legal System BT - Islamic Law in Saudi Arabia."
[134] Mohammad Hashim Kamali, "Meaning and Definition of Maqasid BT - Goals and Purposes of Shariah" (New York: Oxford University Press, 2025), 11–19, https://doi.org/10.1093/9780197786390.003.0003.
[135] Mohammad Hashim Kamali, "Classifications of Maqasid BT - Goals and Purposes of Shariah" (New York: Oxford University_Press, 2025), 50–65, https://doi.org/10.1093/9780197786390.003.0008.
[136] Cornacchia, "Paternalism and Moral Limits of Criminal Law BT - Ius Gentium: Comparative Perspectives on Law and Justice."
[137] Maffi, "Governing Reproduction in Post-Revolutionary Tunisia: Contraception, Abortion and Infertility."
[138] Feinberg, "Legal Paternalism BT - The Moral Limits of the Criminal Law, Vol. 3, Harm to Self."
[139] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP).
[140] Prasetya, "Kekeliruan Pengaturan Aduan Perzinaan Dalam KUHP 2023: Telaah Delik Aduan Absolut."
[141] Maulana, Azwir, and Izazi, "Between Islamic Morality and Legal Certainty: Political Compromise in Regulating Adultery and Non-Marital Cohabitation in Indonesia's New Criminal Code."

For reproductive health policy, the comparison supports keeping family planning outside the penal code. Tunisia and Türkiye deliver contraceptive services through health systems, and neither has found it necessary to criminalise the display or promotion of contraceptives before regulating their provision.[142] Where a penal provision survives, its exemption clause becomes the operative rule for practitioners, and its wording deserves the attention usually given to the offence itself.[143] The practical case for decoupling health information from morality offences rests on that asymmetry between what the offence says and what the exemption permits.[144]

What the comparison finally shows is that the boundary between public morality and individual autonomy is drawn differently in each state, and that the drawing is a legislative choice rather than a consequence of the shared legal heritage.[145] The four systems examined here inherited comparable doctrinal material and produced four different answers, which locates the explanation in constitutional structure and political settlement rather than in doctrine.[146] That conclusion is offered at the level of statutory design, which is the level the material supports.[147]

Table 1. *Comparative Framework: Criminalization of Extramarital Relations and Regulation of Contraceptive Display across Four Legal Systems*

Dimension	**Indonesia**	**Tunisia**	**Türkiye**	**Saudi Arabia**	**Classical Fiqh**
Criminalisation of extramarital relations	Criminalised for married and unmarried persons; cohabitation prohibited.	Criminalised for married persons only.	Not criminalised; civil ground for divorce.	Criminalised as a hadd offence.	Prohibited; hudud classification.
Statutory source	Criminal Code 2023, arts. 411–412.	Penal Code, art. 236.	Civil Code 2001, art. 161.	Basic Law of Governance 1992; uncodified fiqh.	Four Sunni schools, hudud and ta'zir literature.
Enforcement gate	Complaint by spouse,	Complaint by the	Petition in divorce	Evidentiary threshold; discretiona	Four witnesses or confession

[142] Maffi, "Governing Reproduction in Post-Revolutionary Tunisia: Contraception, Abortion and Infertility."
[143] Maddussila, "Criminal Code Bill Article 414 and Sex Education in Indonesia."
[144] Hairi, "Urgensi Mempertahankan Pengaturan Tindak Pidana Menunjukkan Alat Mencegah Kehamilan Dalam RUU KUHP The Urgency of Rearranging Regulations on Criminal Act of Presenting Prevention of Pregnancy ' s Device in the Criminal Code Bill."
[145] Mohammad Hashim Kamali, "Maqasid and Women's Rights BT - Goals and Purposes of Shariah" (New York: Oxford University Press, 2025), 240–52, https://doi.org/10.1093/9780197786390.003.0026.
[146] Voorhoeve, "Law and Social Change in Tunisia: The Case of Unregistered Marriage."
[147] Krell, "Legal Reform beyond the State BT - Islamic Law in Saudi Arabia."

	parent, or child.	other spouse.	proceedings.	ry punishment in practice.	repeated four times.
Contraceptive display	Restricted; health exemption under art. 410.	No penal restriction.	No penal restriction.	No penal restriction; regulated by health authority.	Permitted as ʻazl, subject to spousal consent.
Epistemological paradigm	Selective statutory reception.	Reformed personal status retained alongside penal provision.	Withdrawal of penal law from private morality.	Codification since 2022 alongside retained hadd classification.	Hifz al-nasl for zina; hak adami for contraception.

Source: compiled by the author from the statutes and literature cited in notes 1 to 104.

As shown in Table 1 above, the four systems diverge sharply across every dimension examined: Indonesia and Saudi Arabia criminalise extramarital relations for both married and unmarried persons, while Tunisia limits the offence to married persons and Türkiye withdraws it entirely from the penal sphere; enforcement gates range from private complaint (Indonesia, Tunisia) to evidentiary thresholds or divorce petition (Saudi Arabia, Türkiye); and contraceptive display remains unrestricted in Tunisia, Türkiye and Saudi Arabia, yet is penalised in Indonesia subject only to a health exemption. These patterned differences, rather than any shared doctrinal residue, demonstrate that the boundary between public morality and reproductive autonomy is a product of legislative choice and constitutional settlement, not an inevitable consequence of the classical fiqh inheritance.

CONCLUSION

This study concludes that the four systems examined here do not occupy different points on a single scale between religious and secular law, and that is the principal theoretical result of the comparison. Indonesia, Tunisia, Türkiye, and Saudi Arabia inherited a comparable body of doctrinal material and produced four different settlements: Türkiye withdrew penal law from consensual adult sexuality altogether; Tunisia narrowed the offence to married persons and repealed the gendered defences that had once attached to it; Indonesia widened the definition of the offence while confining enforcement to a complaint from within the family; and Saudi Arabia retained the hadd classification while moving family law into written form and turning toward discretionary punishment in practice. What separates these outcomes is not the degree of attachment to Islamic tradition but the order in which each state answered three questions: which parts of the classical corpus to codify, which procedural safeguard to substitute for the classical evidentiary threshold, and whether reproductive health would be governed by penal or administrative rules. Reading classical fiqh as a normative benchmark rather than as a fifth jurisdiction makes that order visible, because it shows what each legislature selected from a shared inheritance and what it discarded. The typologies advanced in this article are therefore

best understood as combinations rather than positions, which is why they resist the liberal-to-conservative arrangement that comparative accounts of Muslim-majority states often assume. The study has limits that should be stated plainly: it analyses the content of legal norms rather than their enforcement, so it describes what the statutes provide and cannot report how far courts, prosecutors, and health services follow them in practice.

The recommendations that follow are confined to what a doctrinal study can support, and each names an instrument rather than a general direction. Because Article 410 of the 2023 Criminal Code is what keeps authorised health personnel outside Article 408, the terms of that exemption carry more practical weight than the prohibition it qualifies, and a ministerial regulation defining who counts as authorised personnel and what counts as health education would settle the position of teachers, journalists, and civil society organisations who at present fall outside its wording. The complaint rule in Articles 411 and 412 deserves the same attention, since it governs who may open a case rather than what may be done once a case is open, and the drafting problems identified by Indonesian commentators are better addressed by clarifying the scope of that rule than by narrowing the offence, which would leave the enforcement structure untouched. On the relation between family planning and penal law, the comparison supports keeping the provision of contraceptive information within the health system, as Tunisia and Türkiye have done, rather than relying on an exemption clause inside a criminal provision to protect practitioners. Since the Code entered into force in January 2026, the first years of its application offer the evidence this study cannot supply, and recording how complaints under Articles 411 and 412 are lodged and how often the Article 410 exemption is invoked would give the next assessment of these provisions a factual basis that the present comparison lacks.

REFERENCES

Basic Law of Governance, Royal Order No. A/90 (Saudi Arabia) (1992).

Bell, John. "Legal Research and the Distinctiveness of Comparative Law." *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline*. Hart, 2011.

Bhat, P Ishwara. "Qualitative Legal Research." edited by Idea and Methods of Legal Research, 359–82. New Delhi: Oxford University Press, 2020. https://doi.org/10.1093/oso/9780199493098.003.0012.

Bowen, John R. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*. Cambridge: Cambridge University Press, 2003. https://doi.org/10.1017/cbo9780511615122.

Cornacchia, Luigi. "Paternalism and Moral Limits of Criminal Law BT - Ius Gentium: Comparative Perspectives on Law and Justice," 229–43. Cham: Springer, 2020. https://doi.org/10.1007/978-3-030-64163-4_10.

Dekret Tunisia. Code pénal [Penal Code] (Tunisia) (1968). https://legislation-securite.tn/latest-laws/decret-du-9-juillet-1913-portant-promulgation-du-code-penal/.

Eddyono, S W. "Akses Terhadap Informasi Dan Layanan Kontrasepsi Dalam Rancangan KUHP." Jakarta: Yayasan Cipta Cara Padu, 2016.

Feinberg, Joel. "Legal Paternalism BT - The Moral Limits of the Criminal Law, Vol. 3, Harm to Self," 3–26. New York: Oxford University Press, 1989. https://doi.org/10.1093/0195059239.003.0001.

Fitrah, Farrel Alanda. "Perbandingan Hukum Terkait Pembentukan Pasal Penghinaan Terhadap Peradilan, Perzinahan, Dan Santet Dalam RKUHP Indonesia." *SIGn Jurnal Hukum* 2, no. 2 (2021): 122–37. https://doi.org/10.37276/sjh.v2i2.93.

Giladi, Elad. "Saudi Arabia's Gendered-Judicial Reform and the New Personal Status Law: Profound Change or Gender Washing?" *Islamic Law and Society*, 2025, 1–31. https://doi.org/10.1163/15685195-bja10070.

Grand National Assembly of Turkey. Türk Ceza Kanunu [Turkish Penal Code], Law No. 5237 of 2004 (2004). https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5237&MevzuatTur=1&MevzuatTertip=5.

Hairi, Prianter Jaya. "Urgensi Mempertahankan Pengaturan Tindak Pidana Menunjukkan Alat Mencegah Kehamilan Dalam RUU KUHP The Urgency of Rearranging Regulations on Criminal Act of Presenting Prevention of Pregnancy ' s Device in the Criminal Code Bill" 10, no. 2 (2019): 259–80.

Hallaq, Wael B. *An Introduction to Islamic Law*. Cambridge university press Cambridge 2009, 2009. https://books.google.co.id/books?id=3YvEt3PxmAcC&printsec=copyright#v=onepage&q&f=false.

Harasani, Hamid. "Islamic Law as a Comparable Model in Comparative Legal Research." *Global Journal of Comparative Law* 3, no. 2 (2014): 186–202. https://doi.org/10.1163/2211906x-00302002.

Hirschl, Ran. "The Question of Case Selection in Comparative Constitutional Law." *American Journal of Comparative Law* 53, no. 1 (2005): 125–56. https://doi.org/10.1093/ajcl/53.1.125.

Hoecke, Mark Van. *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* Oxford: Hart Publishing, 2011. https://doi.org/10.5040/9781472560896.

———. "Methodology of Comparative Legal Research." *Recht En Methode in Onderzoek En Onderwijs*, 2015. https://doi.org/10.5553/rem/.000010.

Hutchinson, Terry. "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law." *Erasmus Law Review* 8, no. 3 (2015): 130–38. https://doi.org/10.5553/elr.000055.

İlkkaracan, Pınar. "How Adultery Almost Derailed Turkey's Aspirations to Join the European Union." In *Deconstructing Sexuality in the Middle East: Challenges and Discourses*, 41–64. London: Routledge, 2008. https://doi.org/10.4324/9781315576213-3.

———. "How Adultery Almost Derailed Turkey's Aspirations to Join the European Union BT - Deconstructing Sexuality in the Middle East: Challenges and Discourses." edited by Pınar İlkkaracan, 41–64. London: Routledge, 2016. https://doi.org/10.4324/9781315576213-3.

Indonesia, Pemerintah Pusat. Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (2023). https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023.

Indonesia, Pemerintah Republik. Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP), Lembaran Negara Republik

Indonesia Tahun 2023 Nomor 1 § (2023).

Indonesia, Presiden Republik. Undang-Undang Nomor 1 Tahun 2023, arts. 408 and 410 (2023).

Kamali, Mohammad Hashim. "Classifications of Maqasid BT - Goals and Purposes of Shariah," 50–65. New York: Oxford University_Press, 2025. https://doi.org/10.1093/9780197786390.003.0008.

———. *Crime and Punishment in Islamic Law: A Fresh Interpretation*. Oxford University Press, 2019. https://doi.org/https://doi.org/10.1093/oso/9780190910648.001.0001.

———. "Maqasid and Women's Rights BT - Goals and Purposes of Shariah," 240–52. New York: Oxford University Press, 2025. https://doi.org/10.1093/9780197786390.003.0026.

———. "Meaning and Definition of Maqasid BT - Goals and Purposes of Shariah," 11–19. New York: Oxford University Press, 2025. https://doi.org/10.1093/9780197786390.003.0003.

Khodadadi, Bahman. "Between Divine Mandate and Modern State: Islamic Criminal Law and the Contested Legacy of Ḥudūd." *Journal of Islamic Law* 6, no. 1 (2025). https://doi.org/10.53484/jil.v6.khodadadi.

Krell, Dominik. "Legal Reform beyond the State BT - Islamic Law in Saudi Arabia," 142–70. Leiden: Brill, 2025. https://doi.org/10.1163/9789004726314_008.

———. "The Foundations of the Saudi Legal System BT - Islamic Law in Saudi Arabia," 15–39. Leiden: Brill, 2025. https://doi.org/10.1163/9789004726314_003.

Künkler, Mirjam. "Constitutionalism, Islamic Law, and Religious Freedom in Postindependence Indonesia." In *Constitution Writing, Religion and Democracy*, edited by Aslı Bâli and Hanna Lerner, 179–206. Cambridge: Cambridge University Press, 2017. https://doi.org/10.1017/9781107707443.008.

Lisma. "Internalisasi Nilai Hukum Islam Dalam Rancangan KUHP Di Indonesia (Studi Terhadap Tindak Pidana Perzinahan Dalam KUHP Dan RKUHP)." *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 1 (2019): 721–33. https://doi.org/10.30863/ekspose.v18i1.281.

Maddussila, Samsu Alam. "Criminal Code Bill Article 414 and Sex Education in Indonesia." *Jurnal Hukum Dan Peradilan* 8, no. 3 (2019): 407–19. https://doi.org/10.25216/jhp.8.3.2019.407-419.

Maesyaroh, and Sulistyanta. "Criminal Policy on Adultery in Indonesia within Law Number 1 of 2023 Concerning the Criminal Code." *International Journal of Sustainability in Research* 2, no. 4 (2024): 313–20. https://doi.org/10.59890/ijsr.v2i4.2004.

Maffi, Irene. "Governing Reproduction in Post-Revolutionary Tunisia: Contraception, Abortion and Infertility." *Medical Anthropology* 41, no. 6–7 (2021): 689–701. https://doi.org/10.1080/01459740.2021.1941004.

Majelis Nasional Agung Turki. Türk Medeni Kanunu [Turkish Civil Code], Law No. 4721 of 2001 (2001). https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4721&MevzuatTur=1&MevzuatTertip=5.

Mas'odi, and Anees El Zer. "The Personal Status Law and Patriarchy in Saudi Arabia: A Critical

Examination." *Syura: Journal of Law* 3, no. 2 (2025): 116–30. https://doi.org/10.58223/syura.v3i2.450.

Maulana, Rizki, Fouza Azwir Abdul Azis Azwir, and Muammar Izazi. "Between Islamic Morality and Legal Certainty: Political Compromise in Regulating Adultery and Non-Marital Cohabitation in Indonesia's New Criminal Code." *Al-Qadha* 12, no. 2 (2025): 544–67. https://doi.org/10.32505/qadha.v12i2.12719.

Mir-Hosseini, Ziba, and Vanja Hamzić. *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts*. London: Women Living Under Muslim Laws, 2010. https://www.wluml.org/wp-content/uploads/2021/01/CaS-e-book.pdf.

Nasution, Maysarah, and Muhammad Yani. "Integration of Sharia Values into the Pancasila State Legal System: Constitutional Review of Article 28J." *Jurnal Multidisiplin Madani* 5, no. 11 (2025): 1243–57. https://doi.org/10.55927/mudima.v5i11.681.

Omran, Abdel-Rahim, ed. *Family Planning in the Legacy of Islam*. London: Routledge, 2012. https://doi.org/10.4324/9780203167977-23.

Personal Status Law, Royal Decree No. M/73 (Saudi Arabia) (2022).

Prasetya, Muhammad Djaelani. "Kekeliruan Pengaturan Aduan Perzinaan Dalam KUHP 2023: Telaah Delik Aduan Absolut." *Jurnal Hukum Pidana Indonesia* 1, no. 2 (2024): 156–73. https://doi.org/10.67468/jhpi.v1i2.7.

Prayitno, Herman Bastiaji E T al. "Criminalization of Cohabitation in the New Criminal Code: A Dilemma of Public Morality and Protection of Constitutional Rights in Indonesia." *Istinbath: Jurnal Hukum* 23, no. 1 (2026): 23–46. https://doi.org/10.32332/istinbath.v23i01.11481.

Presiden Republik Indonesia. Wetboek van Strafrecht voor Nederlandsch-Indië, art. 534 (1918).

Saifuddin, Suhaizad. "Analisis Pemakaian Darjah Pembuktian Bagi Kesalahan Hudud Di Bawah Enakmen Jenayah Syariah Di Malaysia." *Journal of Shariah Law Research* 6, no. 1 (2021): 89–108. https://doi.org/10.22452/jslr.vol6no1.6.

Sebar, Hind, and Shahrul Mizan Ismail. "The Use of Flogging as a Punishment in Saudi Arabia from the Perspective of International Human Rights Law." *IIUM Law Journal* 29, no. 1 (2021): 77–102. https://doi.org/10.31436/iiumlj.v29i1.609.

Sezgin, Yüksel. "Muslim Family Law Reform: Understanding the Difference between Muslim-Majority and Muslim-Minority Jurisdictions." *Journal of Law, Religion and State* 10, no. 2–3 (2023): 218–51. https://doi.org/10.1163/22124810-20230004.

Shaikh, Sa'diyya. "Family Planning, Contraception, and Abortion in Islam." In *Sacred Rights: The Case for Contraception and Abortion in World Religions*, edited by Daniel C Maguire, 105–24. New York: Oxford University Press, 2003. https://doi.org/10.1093/acprof:oso/9780195160017.003.0005.

———. "Family Planning, Contraception, and Abortion in Islam BT - Sacred Rights: The Case for Contraception and Abortion in World Religions." edited by Daniel C Maguire, 105–24. New York: Oxford University Press, 2003. https://doi.org/10.1093/acprof:oso/9780195160017.003.0005.

Sheeha, Mounira Al. "Awareness and Use of Contraceptives among Saudi Women Attending Primary Care Centers in Al-Qassim, Saudi Arabia." *International Journal of Health Sciences* 4, no. 1 (January 2010): 11–21.

Ssenyonjo, Manisuli. "Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari'a: A Human Rights Critique." *International Human Rights Law Review* 13, no. 2 (2024): 265–312. https://doi.org/10.1163/22131035-13020005.

Tunisienne, Republique. "Le Code Penal." *Article 277*, 2010.

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (1974). https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974.

"United Nations Population Fund." Tunis: UNFPA, 2017. https://tunisia.unfpa.org/sites/default/files/pub-pdf/Tunisia Country Assessment_English.pdf.

Voorhoeve, Maaike. *Gender and Divorce Law in North Africa: Sharia, Custom and the Personal Status Code in Tunisia*. Bloomsbury Publishing, 2014.

———. "Law and Social Change in Tunisia: The Case of Unregistered Marriage." *Oxford Journal of Law and Religion* 7, no. 3 (2018): 479–97. https://doi.org/10.1093/ojlr/rwy027.

Welchman, Lynn. *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*. Amsterdam: Amsterdam University Press, 2007. https://doi.org/10.5117/9789053569740.

Wijayati, Mufliha. "Family Law Reform in Tunisia (Reading the Rules of Polygamy in the Tunisian Code of Personal Status)." *Jurnal Ilmiah Mizani* 8, no. 1 (2024): 133–48. https://doi.org/10.29300/mzn.v8i1.2757.