**MAWADDAH: Jurnal Hukum Keluarga Islam** **p-ISSN 3031-5247**
**DOI: https://doi.org/10.52496/mjhki.v4i2.155** **e-ISSN 3026-6076**

# Competing Sunni Madhhab Rulings on Post-Adultery Marriage: Comparative Legal Reasoning

***Bambang Kuswanto[a], Oyo Sunaryo Mukhlas[a], Aden Rosadi[a], Dadang Syarifudin[a], Ahmad Burhanuddin[b]**
[a] Universitas Islam Negeri Sunan Gunung Djati Bandung, Indonesia
[b] Universitas Islam Negeri Raden Intan Lampung, Indonesia
[*]Corresponding author: bambangkuswanto241@gmail.com

| Received: | Revised: | Accepted: | Available Online: | Published: |
|---|---|---|---|---|
| 02/01/2026 | 02/11/2026 | 03/11/2026 | 05/11/2026 | 05/11/2026 |

***Abstract***

*This article examines why Sunni jurists derive different consequences for marriage following zinā despite their shared prohibition of the underlying conduct. It uses qualitative doctrinal research and a scenario-based comparison of selected Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī texts. Contract validity, permission for intercourse, waiting or clearance, repentance, and lineage are treated as separate questions. Contemporary comparative legal scholarship informs the method, while a rules-and-standards perspective supplies a limited analytical vocabulary for institutional design. The findings challenge a simple permissive-versus-restrictive classification of schools. Al-Kāsānī records an internal Ḥanafī disagreement about contracting during illicit pregnancy; the Shāfiʿī passage examined does not impose a waiting period solely because of zinā; Mālikī material requires clearance; and Ibn Qudāmah combines waiting with repentance in the Ḥanbalī position he defends. A separate examination of takhbīb identifies disagreement within the Mālikī materials and a restrictive strand in Ḥanbalī literature, undermining its presentation as an exclusively Mālikī doctrine. The article proposes a consequence-specific typology linking factual trigger, legal consequence, justification, and evidentiary limits. Its novelty lies in this controlled reconstruction and the use of internal disagreements to test the typology. Indonesian marriage regulation is considered as a contextual application, not an empirical assessment of adjudication. The analysis supports precise attribution of school positions and cautions against turning moral condemnation or comparative policy arguments into ungrounded marriage impediments.*

**Keywords:** *Zinā; Marriage Validity; Sunni Madhhabs; Comparative Legal Reasoning; Takhbīb.*

**Abstrak**

Artikel ini mengkaji alasan perbedaan akibat hukum perkawinan setelah zina di kalangan fuqaha Sunni meskipun mereka sama-sama mengharamkan perbuatan tersebut. Penelitian menggunakan metode hukum doktrinal kualitatif dan perbandingan berbasis skenario terhadap teks terpilih mazhab Hanafi, Maliki, Syafi'i, dan Hanbali. Keabsahan akad, kebolehan hubungan seksual, masa tunggu atau istibra, tobat, dan nasab dianalisis sebagai persoalan berbeda. Literatur hukum perbandingan kontemporer mendasari metode, sedangkan perspektif aturan dan standar digunakan secara terbatas untuk menelaah rancangan kelembagaan. Temuan menolak

pengelompokan sederhana mazhab permisif dan restriktif. Al-Kasani mencatat perbedaan internal Hanafi mengenai akad ketika terjadi kehamilan akibat zina; bagian Syafi'i yang dikaji tidak mewajibkan idah semata-mata karena zina; sumber Maliki mensyaratkan istibra; dan Ibn Qudamah menggabungkan masa tunggu dengan tobat dalam pendapat Hanbali yang dibelanya. Kajian tersendiri mengenai takhbib menemukan perbedaan dalam sumber Maliki serta pendapat restriktif dalam literatur Hanbali, sehingga tidak tepat menjadikannya doktrin eksklusif Maliki. Artikel menawarkan tipologi berdasarkan akibat hukum yang menghubungkan pemicu faktual, konsekuensi, alasan hukum, dan batas pembuktian. Kebaruannya terletak pada rekonstruksi terkendali tersebut serta penggunaan perbedaan internal untuk menguji tipologi. Regulasi perkawinan Indonesia ditempatkan sebagai aplikasi kontekstual, bukan evaluasi empiris peradilan. Analisis menekankan ketepatan atribusi pendapat dan kehati-hatian agar kecaman moral maupun argumentasi kebijakan komparatif tidak berubah menjadi halangan perkawinan tanpa dasar hukum.

**Kata Kunci:** Zina; Keabsahan Perkawinan; Mazhab Sunni; Penalaran Hukum Komparatif; Takhbib.

## INTRODUCTION

Marriage following zinā raises several legal questions that should not be answered through a single statement of moral condemnation. A proposed contract may involve an unmarried woman, a pregnancy, an existing husband, a prior divorce, or an allegation of third-party interference. Each circumstance changes the relevant inquiry. This article therefore uses "post-adultery marriage" in the title as shorthand for marriage following alleged or established zinā, including unlawful intercourse outside an existing marriage. The English term adultery is narrower than zinā in ordinary usage; the analysis does not confine the latter to intercourse by a married person.

The principal comparative problem concerns the relation between wrongdoing and its subsequent legal effects. Prohibiting zinā does not, without an additional argument, settle whether a marriage can be contracted, whether intercourse is permitted, whether clearance is required, or how lineage is attributed. Those consequences may be linked in one juristic construction and separated in another. Classical Islamic legal theory supplies the vocabulary for examining this process, including legal impediments, conditions, textual indications, analogy, and the distinction between a ruling's operative cause and its broader wisdom.[1]

[1] Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 82–84, https://doi.org/10.1017/CBO9780511801266; Mohammad Hashim Kamali, *Principles*

Existing comparative scholarship already discusses pregnancy-related marriage across the four schools. Mustarsidin and Khisni, for example, compare school positions and the Indonesian Compilation of Islamic Law (KHI), including differences concerning intercourse during pregnancy.[2] Rachmadhani et al. analyze preventive reasoning in Indonesian Islamic family law.[3] These contributions make it inappropriate to claim that doctrinal comparison or attention to public benefit is itself new. The task undertaken here is narrower: to test what is lost when several legal consequences are collapsed into one school label.

The issue also concerns the method of comparison. Michaels treats functional comparison as useful for understanding legal differences but insufficient by itself for ranking or unifying laws.[4] Van Hoecke advocates methodological choices suited to the research question,[5] while Siems situates comparison within broader legal and social contexts.[6] This article uses their insights to compare matched legal questions before proposing any practical implication. It does not treat the madhhabs as modern nation-states or assume that equivalent institutional objectives produce identical doctrinal classifications.

The research asks three questions. Which consequences do the selected Sunni texts attach to specified post-zinā marriage scenarios? How do their justificatory structures differ, including disagreements within schools? What can a consequence-specific typology contribute to

*of Islamic Jurisprudence*, 3rd ed. (Cambridge: Islamic Texts Society, 2003), 264–67, 441–44, https://its.org.uk/catalogue/principles-of-islamic-jurisprudence-paperback/.

[2] Ahmad Mustarsidin and Akhmad Khisni, "Pregnancy Married in the Perspective of Four Madzhab and Compilation of Islamic Law (KHI)," *Jurnal Daulat Hukum* 1, no. 3 (2018): 699, https://doi.org/10.30659/jdh.v1i3.3370.

[3] Fajar Rachmadhani, Mualimin Mochammad Sahid, and Muchammad Ichsan, "The Use of Sadd al-Dharī'ah in Contemporary Islamic Family Law in Indonesia: Concept and Practice," *Malaysian Journal of Syariah and Law* 12, no. 1 (2024): 206, https://doi.org/10.33102/mjsl.vol12no1.505.

[4] Ralf Michaels, "The Functional Method of Comparative Law," in *The Oxford Handbook of Comparative Law*, ed. Mathias Reimann and Reinhard Zimmermann (Oxford: Oxford University Press, 2006), 363–68, 374–77, https://scholarship.law.duke.edu/faculty_scholarship/1249/.

[5] Mark Van Hoecke, "Methodology of Comparative Legal Research," *Law and Method* (2015): 1–2, https://doi.org/10.5553/REM/.000010.

[6] Mathias Siems, *Comparative Law*, 3rd ed. (Cambridge: Cambridge University Press, 2022), 174–83, https://www.cambridge.org/highereducation/books/comparative-law/1CCBDFCE1ADB48DD34E56DB72E5D9022.

contemporary comparison without being mistaken for a ready-made programme of legal transplantation? Takhbīb, meaning intentional corruption of an existing marital relationship, is retained as a separate boundary case because its contractual consequences test the reach of zinā-related classifications. It is not treated as another name for unlawful intercourse.

The central contribution is a controlled framework linking four elements: the factual trigger, the particular consequence, the stated or reconstructed justification, and the evidentiary limit. Internal disagreements serve as tests of this framework. A rule about contract validity is not treated as an answer about consummation, and a restrictive view in a school is not presented as its sole position. This produces an issue-dependent account of juristic disagreement rather than an enduring division between supposedly permissive and restrictive schools.

## RESEARCH METHOD

Design and object. This study employs qualitative doctrinal legal research with a structured comparative approach. The object is the reasoning recorded in selected legal texts, not the prevalence of conduct or contemporary judicial practice. Doctrinal research requires an explicit account of how authorities are selected and how propositions are derived from them.[7] No interviews, court-file sampling, statistical analysis, or observation were undertaken. References to practical implications are normative proposals or contextual readings of legal materials.

Source selection. The bounded primary corpus comprises al-Kāsānī's Badāʾiʿ al-ṣanāʾiʿ, Saḥnūn's al-Mudawwanah transmitting Mālikī doctrine, the relevant continuation of al-Majmūʿ, Ibn Qudāmah's al-Mughnī, al-Dusūqī's gloss, and al-Mardāwī's al-Inṣāf. They were selected because they contain directly relevant rule statements and, in several instances, explicit disagreement or justification. Sunan Abī Dāwūd supplies a textual point of reference for takhbīb. The KHI is a separate contextual legal source. The selection is purposive and does not claim an exhaustive review of every recension or opinion within each school.

Access and attribution. The analysis uses identifiable Arabic passages available in digital library reproductions, with stable book, chapter, volume, page, or numbered-section locators where the

[7] Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–84, https://doi.org/10.21153/dlr2012vol17no1art70.

reproduction provides them. References record the digital text consulted rather than assigning an unverified publication date or transferring page numbers between editions. Volume 16 of al-Majmūʿ belongs to the work's later continuation and is identified accordingly; the passage is not attributed to al-Nawawī's personal authorship merely because catalogues place the complete work under his name. Publicly accessible sources were checked for this revision on 2 November 2026.

Comparison protocol. The comparison begins with a free adult woman whose proposed marriage is otherwise legally eligible: there is no continuing marriage to another man and no independent impediment arising from a previous valid marriage. It then distinguishes no established pregnancy from established illicit pregnancy, and marriage to the prior partner from marriage to another man where that distinction is material. A separate scenario concerns intentional interference followed by lawful dissolution of the earlier marriage. These analytical scenarios are constructed for comparison; they are not empirical cases.

Extraction and interpretation. Each relevant proposition was read for its factual premise, contract ruling, rule concerning intercourse, waiting or clearance requirement, repentance condition, and treatment of lineage. An authority's express reasoning is distinguished from an explanation reconstructed by this article. The latter is marked as an analytical inference. The comparison was then tested against contrary material: the Abū Yūsuf disagreement in the Ḥanafī text, the repentance requirement in Ibn Qudāmah, and internal Mālikī and Ḥanbalī variation concerning takhbīb. The tables summarize the resulting propositions rather than replacing their textual qualifications.

Limits and validity. Comparative legal method requires justification of the object and the level of comparison, not merely a list of sources.[8] Here, "a school position" means the view identified in the cited passage, with alternatives expressly retained. The article does not establish which position every contemporary institution adopts. It also does not conduct independent hadith authentication or derive a new binding fatwa. Reported juristic use of a narration is distinguished from a fresh claim about its authenticity. These limits prevent an analytical

[8] Marieke Oderkerk, "Methods of Comparative Legal Research: How to Set Up and Carry Out a Comparative Legal Research Project," in *Uncovering European Private Law: A Student Handbook*, ed. Marija Bartl, Laura Burgers, and Chantal Mak (Cambridge: Open Book Publishers, 2025), 324–26, https://doi.org/10.11647/OBP.0448.16.

typology from acquiring more authority than its evidentiary basis permits.

## RESULTS AND DISCUSSION

### Theoretical Framework For Comparing Legal Consequences

The first distinction is between prohibition of conduct and the legal effect of a subsequent act. In the vocabulary of uṣūl al-fiqh, the moral or normative demand expressed through a prohibitory ruling does not eliminate the need to identify the grounds of validity, a condition, or an impediment. A jurist may connect a prohibition to a marriage barrier, but that connection must be demonstrated rather than assumed. Hallaq's account of legal theory and Kamali's exposition are used to frame this inquiry; neither is cited as direct evidence for the detailed marriage rule of a particular school.[9]

A second distinction concerns the level at which a comparison operates. A functional question such as protecting lineage can identify a shared concern, but it does not reveal whether a jurist locates protection in a restriction on contracting, a restriction on intercourse, or rules of attribution. Michaels's discussion supports comparison without assuming that similarity of function establishes equivalence of legal form.[10] Applied here, the analytical step is to compare the legal consequence selected, then ask how the text connects it to its stated concern.

A third distinction concerns the timing and specificity of a legal intervention. Kaplow's analysis of rules and standards provides a limited vocabulary for comparing a specified temporal bar with a determination requiring individualized judgment.[11] This article does not claim that classical jurists used economic analysis. Rather, the vocabulary helps formulate a modern question: what information must be available before a consequence can properly attach? A rule keyed to pregnancy or delivery and a response keyed to intentional interference place different demands on decision-makers.

This modern analogy has limits. Childbirth is not a complete institutional procedure, while repentance cannot be reduced to an administratively measurable fact. Nor is every waiting period merely a technique for detecting pregnancy. The categories are used to expose

[9] Hallaq, *History of Islamic Legal Theories*, 82–84; Kamali, *Principles of Islamic Jurisprudence*, 441–44.

[10] Michaels, "Functional Method", 356–59.

[11] Louis Kaplow, "Rules versus Standards: An Economic Analysis," *Duke Law Journal* 42, no. 3 (1992): 559–60, https://scholarship.law.duke.edu/dlj/vol42/iss3/2/.

differences in legal design, not to translate fiqh into one contemporary theory. The analysis preserves the jurists' own distinctions and identifies where an external explanation adds an interpretive layer.[12]

Finally, a comparison needs a theory of its own practical limits. Legrand's critique of legal transplantation emphasizes the importance of meaning within an interpretive setting.[13] The relevant implication is caution about moving a rule into another institutional order while assuming that its authority remains unchanged. The article therefore distinguishes a doctrinal conclusion, a contextual reading of Indonesian law, and a reform proposal. Showing that a preventive argument exists in fiqh does not itself authorize a court or registrar to create a new impediment.

**Reconstructing The Doctrinal Positions**

The Ḥanafī passage separates contracting from intercourse. Al-Kāsānī permits contracting during illicit pregnancy in the position of Abū Ḥanīfah and Muḥammad while recording a restriction on intercourse until delivery. He also reports the contrary position of Abū Yūsuf and Zufar. The disagreement concerns whether an impediment to intercourse also prevents the contract. His discussion differentiates a pregnancy with legally established attribution from one resulting from zinā and uses the temporary character of other impediments to explain how contract and intercourse can be separated.[14] The analytical significance is internal disagreement about the transmission of a restriction from one legal consequence to another, rather than a uniformly permissive school.

The identity of the proposed husband must also remain visible. Mustarsidin and Khisni report a Ḥanafī distinction between marriage to the man responsible for the pregnancy and marriage to another man when discussing permission for intercourse.[15] That secondary account should not silently overwrite the formulation in the particular al-Kāsānī passage examined. The revised matrix therefore records the latter's contract–intercourse distinction and flags partner identity as a qualification

[12] Van Hoecke, "Methodology", 1–2; Siems, *Comparative Law*, 40–48.

[13] Pierre Legrand, "The Impossibility of 'Legal Transplants'," *Maastricht Journal of European and Comparative Law* 4, no. 2 (1997): 114–18, https://doi.org/10.1177/1023263X9700400202.

[14] Abū Bakr ibn Masʿūd al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ fī tartīb al-sharāʾiʿ*, Islamweb digital edition, 2:269–70, https://www.islamweb.net/ar/library/content/12/1170/.

[15] Mustarsidin and Khisni, "Pregnancy Married", 703.

requiring its own textual authority. It avoids presenting an isolated formulation as a complete resolution of every Ḥanafī case.

The Mālikī source examined permits a man who committed zinā with a woman to marry her, but requires clearance of her womb before contracting. The relevant passage in al-Mudawwanah thus concerns a pre-contract condition, not permanent exclusion simply because zinā occurred.[16] In the pregnancy scenario, delivery is the relevant temporal endpoint in the comparative account recorded by Ibn Qudāmah.[17] The inference drawn here is limited: clearance can condition the availability of the contract even where the parties are the same. No single clearance duration is imposed across all nonpregnant cases.

The Shāfiʿī continuation examined takes a different route. It states that zinā does not itself generate an obligatory waiting period, whether pregnancy is present or absent, and recognizes the possibility of a subsequent contract; the pregnant case is discussed with a qualification of disapproval. Its reasoning connects the absence of legally attributed lineage from the illicit act with the absence of the asserted marriage barrier.[18] This should not be rewritten as a generic school requirement of clearance before marriage. Equally, freedom from a zinā-generated waiting period does not cancel an independent waiting period arising from an earlier valid marriage.

The Ḥanbalī position defended in al-Mughnī combines two requirements for the person who knows of the zinā: completion of the waiting requirement and repentance. Where pregnancy exists, delivery marks the stated endpoint. Ibn Qudāmah also records disagreement concerning repentance and bases his defended view in part on his reading of Q. 24:3.[19] Consequently, he cannot be placed in an unqualified contract-stability group alongside the Shāfiʿī position. His text also rejects soliciting renewed illicit conduct as a legitimate test of repentance; the article does not endorse such a test.

---

[16] Saḥnūn ibn Saʿīd, *Al-Mudawwanah*, Islamweb digital edition, 2:173, "al-Rajul yaznī bi-l-marʾah wa-yaqdhifuhā thumma yatazawwajuhā", https://islamweb.net/ar/library/content/30/2084/.

[17] Ibn Qudāmah, *Al-Mughnī*, Islamweb digital edition, 7:107–8, § 5409, https://www.islamweb.net/ar/library/content/15/4682/.

[18] *Al-Majmūʿ sharḥ al-Muhadhdhab*, later continuation associated with Muḥammad Najīb al-Muṭīʿī (Dār al-Fikr, n.d.), 16:242, https://ablibrary.net/book_content/b/3943/242.

[19] Ibn Qudāmah, *Al-Mughnī*, 7:107–9, § 5409.

These propositions show that two sorts of disagreement coexist. Some concern which consequence follows from a fact already assumed, such as pregnancy. Others concern whether one legal obstacle necessarily travels with another, such as whether temporary nonpermission for intercourse also defeats the contract. Repentance adds another dimension that cannot be captured by the presence or absence of pregnancy. The comparison therefore needs more than one axis: eligibility to contract, permission for intercourse, temporal conditions, and rehabilitative conditions must be recorded separately.

**Comparative Matrix And Controlled Scenarios**

Table 1 uses the same starting assumptions across the schools. It concerns subsequent marriage following zinā where no existing marriage or independent post-divorce waiting period obstructs the proposed contract. “No zinā-generated waiting period” does not mean the absence of all possible impediments. The entries identify the selected source or view, not a complete census of school doctrine. Each row can be traced to the discussion in section 2.

**Table 1.** Selected Doctrinal Positions Under Matched Assumptions

| Source or view | Contract and temporal condition | Separate qualification |
|---|---|---|
| Ḥanafī al-Kāsānī | Abū Ḥanīfah and Muḥammad permit the pregnancy-stage contract in the cited passage; intercourse is restricted until delivery. | Abū Yūsuf and Zufar dissent on contracting. Partner identity requires separate specification. |
| Mālikī al-Mudawwanah | Clearance is required before marriage, including marriage to the former partner. | Illicit pregnancy is not treated as a permanent bar merely because zinā occurred. |
| Shāfiʿī al-Majmūʿ continuation | No obligatory waiting period arises solely from zinā; the contract remains possible. | The pregnant case is qualified by disapproval; independent marriage impediments remain. |

| Source or view | Contract and temporal condition | Separate qualification |
|---|---|---|
| Ḥanbalī Ibn Qudāmah's defended view | Waiting is required; during pregnancy, contracting is delayed until delivery. | Repentance is a separate requirement. This differs from the unqualified contract-stability grouping. |

Source: Authors' Reconstruction Of The Specified Passages Discussed In Section 2.

A first controlled scenario involves an otherwise eligible woman who is not established to be pregnant after zinā and wishes to marry the same partner. The comparison asks whether clearance or repentance is required before the contract. The Shāfiʿī passage does not impose a waiting period merely because zinā occurred, whereas the Mālikī material requires clearance and the defended Ḥanbalī view adds repentance to waiting. The scenario does not establish the precise duration of every clearance mechanism. It demonstrates why "all schools permit marriage if formal requirements are satisfied" is uninformative: the disputed conditions are part of what determines legal eligibility.

A second scenario holds established illicit pregnancy constant and changes the proposed spouse to another man. Al-Kāsānī's main formulation separates a possible contract from intercourse while recording an internal dissent that bars contracting. The Shāfiʿī passage declines to derive a waiting impediment merely from the illicit pregnancy. The Mālikī and defended Ḥanbalī configurations delay contracting, with repentance remaining a separate Ḥanbalī requirement. This is a comparison of selected doctrinal constructions, not a recommendation that a contemporary registrar choose whichever outcome seems easiest.

A third scenario changes a different fact: the woman remains married to another man, or an independent waiting period from a valid marriage remains operative. The post-zinā propositions in Table 1 cannot be applied as if those facts were absent. In this situation, reducing the matter to an illicit-pregnancy exception would compare unlike cases. A consequence-specific method first identifies the independent legal obstacle and only then asks what additional effect, if any, follows from the alleged wrongdoing. This is a rule of sound comparison, not a finding about actual litigation.

The scenarios also clarify the proper use of lineage. A rule allowing a contract is not, by itself, a ruling assigning paternity, inheritance, guardianship, or every civil consequence to the prospective husband. Those questions require their own legal premises and evidence. Consequently, this article does not infer automatic retrospective legitimation of conception from the validity of a later marriage. Nor does it infer the loss of all civil protection for a child from a disagreement about that contract. These distinct questions cannot be resolved through a one-word permissibility entry.

**Takhbīb As A Test Of The Typology**

Takhbīb concerns interference with a subsisting marital relationship and can arise without proof of illicit intercourse. The condemnation expressed in Sunan Abī Dāwūd, hadith 2175, establishes a textual point of reference for the wrongdoing, but does not itself state the complete civil consequences of a later contract.[20] The article therefore treats this issue separately from pregnancy and waiting following zinā. Neither a message nor a later marriage, considered alone, establishes that the intervening relationship was intentionally corrupted.

The Mālikī material resists a binary classification of school positions. Al-Dusūqī records one view imposing permanent prohibition and another requiring dissolution without permanent prohibition. He describes the latter as the well-known view and relates later eligibility to a specified intervening return to the former husband followed by divorce or death.[21] This passage cannot support the unqualified statement that permanent prohibition is simply "the Mālikī rule." The formulation is reported as historical doctrine, not offered as a practical sequence to be engineered.

A restrictive strand also appears within Ḥanbalī literature. Al-Mardāwī reports Ibn Taymiyyah's response concerning interference followed by divorce and remarriage, including invalidity and separation in one of the views attributed to the schools of Mālik and Aḥmad.[22] That is evidence against describing Ḥanbalī reasoning as invariably

[20] Abū Dāwūd, *Sunan Abī Dāwūd*, "Kitāb al-ṭalāq", hadith 2175, https://sunnah.com/abudawud:2175.

[21] Muḥammad ibn Aḥmad al-Dusūqī, *Ḥāshiyat al-Dusūqī ʿalā al-Sharḥ al-kabīr*, Islamweb digital edition, 2:219, https://www.islamweb.net/ar/library/content/13/2137/.

[22] ʿAlāʾ al-Dīn al-Mardāwī, *Al-Inṣāf fī maʿrifat al-rājiḥ min al-khilāf*, Islamweb digital edition, 8:122, "Bāb al-muḥarramāt fī al-nikāḥ," faʾidah on corrupting a marriage, https://islamweb.net/ar/library/content/26/4035/.

preserving the subsequent contract. It is not evidence that every Ḥanbalī jurist adopts the reported response. The comparison now retains both the scope and the attributed status of the statement.

The analytical result is a cross-cutting pattern. A jurist may demand repentance and waiting after zinā while a different discussion within the same legal tradition debates the contractual consequences of intentional interference. Conversely, a source allowing marriage after zinā may retain restrictions in another factual setting. Thus, "strict" and "lenient" are unstable labels when they attach to an entire school rather than to a specified legal question. Takhbīb functions here as a counterexample that tests the typology instead of being folded into a universal theory of adultery-related marriage.

This distinction also limits preventive policy. Calling a consequence deterrent explains a possible rationale; it does not prove that the consequence reduces misconduct in practice. The present study has no evidence about the frequency of interference, the effect of sanctions, or the behavior of court users. It therefore withdraws any claim that a permanent bar is empirically more effective than another response. A normative argument about removing incentives and an empirical argument about actual deterrence require different kinds of support.

**A typology of reasoning rather than fixed school blocs**

The corrected comparison supports three analytical configurations. They are constructed by this article from the consequences examined; they are not historical names used by jurists. The first separates the legal status of the contract from a different restriction. The second makes clearance or a temporal endpoint a precondition to contracting. The third adds a further consequence directed to repentance or misconduct. A source can participate in more than one configuration, and an internal dissent can move one issue into another configuration.

**Table 2.** Consequence Specific Configurations of Reasoning

| Configuration | Analytical question | Illustration and limit |
|---|---|---|
| Separation of consequences | Does a restriction on intercourse also prevent a contract? | The disagreement within al-Kāsānī's account demonstrates that one need not entail the other. |
| Precondition to contracting | What clearance or temporal event must precede the contract? | Mālikī clearance and the pregnancy-related delay in the defended Ḥanbalī view. |
| Additional misconduct condition | Does repentance or interference generate a further consequence? | Ḥanbalī repentance; internally disputed responses to takhbīb. Neither is an invariant school label. |

Source: Authors' analytical synthesis. The configurations are issue-specific and may overlap.

The important explanatory question is where a concern becomes operative. Two arguments may both invoke protection of lineage yet attach that concern to different legal decisions. One may restrict intercourse while allowing a contract; another may deny contracting until a temporal condition is fulfilled. If the comparison records only the final permission to marry, the legal mechanism disappears. Mapping the mechanism explains a doctrinal difference more precisely than repeating that one school prioritizes certainty while another prioritizes welfare.

An analogous point concerns the relation between cause and wisdom. The article uses "justification" as the broad comparative term and reserves ʿillah for an operative cause actually established in the legal analysis. A modern description such as contract stability, institutional protection, or deterrence may capture an intelligible policy logic without being the jurist's own formal ʿillah. Conflating them would give an external interpretation the appearance of a classical doctrinal statement. This distinction follows the need for disciplined use of uṣūl terminology.[23]

[23] Kamali, *Principles of Islamic Jurisprudence*, 267, 299–300.

Contemporary legal theory contributes questions about specification and decision-making rather than a replacement legal foundation. A predetermined temporal condition may reduce one kind of discretion while overreaching some factual situations; a misconduct-based standard can attend to context but requires findings about intent and causation. These are the authors' comparative applications of the rules-and-standards vocabulary, not claims that Kaplow analyzed Sunni marriage law. Their value is to make institutional trade-offs explicit before a proposal is recommended.[24]

The approach also resists a reverse simplification: neither extensive discretion nor a formal rule is inherently fair in every context. A factual assessment can become arbitrary if it relies on assumptions about women's conduct, while a seemingly uniform bar can obscure an independent entitlement or an internal exception. These are criteria for evaluating a proposed procedure, not findings that the classical texts or Indonesian institutions exhibit each defect. A coherent comparison must state the consequence and its justificatory burden before assessing its merits.

**Indonesian Context and The Limits of Transplantation**

The KHI supplies a concrete contextual rule. Article 53 permits a woman pregnant outside marriage to marry the man responsible for the pregnancy, allows the marriage without awaiting childbirth, and does not require a repeat ceremony after birth.[25] Its wording does not amount to an express general permission to marry any man in that situation. It should also not be read as a complete answer to every lineage or child-status question. This limited textual reading is more defensible than an unsupported claim about how all courts apply it.

The relevance of the comparative analysis is accordingly diagnostic. A decision-maker or scholar discussing article 53 should identify whether the issue concerns the person covered by its wording, the timing of the contract, an independent marriage impediment, or a separate claim about civil consequences. Mustarsidin and Khisni provide an existing doctrinal comparison;[26] the present article adds a way of keeping those consequences distinct. It does not infer that the KHI reproduces all conditions of one classical school or that classical disagreement overrides its operative wording.

[24] Kaplow, "Rules versus Standards", 559–62.

[25] Republic of Indonesia, *Kompilasi Hukum Islam*, 1991, bk. 1, art. 53(1)–(3), https://jdih.usu.ac.id/id/regulasi/kompilasi-hukum-islam-khi.

[26] Mustarsidin and Khisni, "Pregnancy Married", 701–3.

Preventive reasoning requires an equally careful transition. Rachmadhani et al. discuss sadd al-dharāʾiʿ in Indonesian family-law provisions.[27] Their discussion supports considering how prevention is articulated in a contemporary legal setting, but it does not authorize an additional takhbīb sanction or a new evidentiary threshold in this article. Any proposal would require identification of the competent institution, a lawful basis, a defined consequence, and procedural protection. The availability of a juristic rationale is an argument to examine, not a substitute for those conditions.

A "pattern of conduct" requires examination as a research question rather than acceptance as an applicable proof standard. The material examined does not establish a legally operative standard for proving intentional interference in Indonesian proceedings. Electronic communications may raise questions of authenticity, context, relevance, and lawful access, but the article does not equate their existence with proof of zinā or with a criminal conviction. It also does not lower a criminal evidentiary requirement by describing a dispute as a family matter.

A comparative reform assessment should distinguish a protection measure from a punitive consequence and should account for consent, safety, and access to lawful separation. Counseling or mediation cannot be treated as interchangeable with a marriage bar, and recommending dialogue does not resolve coercion or abuse. The normative requirement proposed here is to justify each response in its own institutional setting. This is consistent with a contextual approach to comparison and the caution that meanings do not travel unchanged with textual formulations.[28]

The same separation protects analytical clarity concerning children. This study does not determine an individual child's legal status. It argues that a proposal directed at parental misconduct must state its implications for other rights and must establish a lawful basis for any asserted consequence. Assertions of either automatic legitimacy or total exclusion exceed the comparison undertaken. Further research should examine relevant legislation, adjudication, and evidence on the precise

[27] Rachmadhani, Mochammad Sahid, and Ichsan, "Use of Sadd al-Dharī'ah", 211–13.

[28] Legrand, "Impossibility of 'Legal Transplants'", 114–18; Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 120–21, https://doi.org/10.1017/CBO9780511801044.

child-status question rather than treating it as a by-product of a school typology.

**Novelty and Limitations**

The article's novelty is an analytical reconstruction, not discovery of an unknown classical ruling. It converts a broad comparison of permissibility into a consequence-specific matrix and then tests that matrix against internal disagreements. The Abū Yūsuf alternative shows why one label cannot exhaust the Ḥanafī material; the repentance requirement disrupts a uniform contract-stability grouping; and the al-Dusūqī and al-Mardāwī passages prevent permanent prohibition after takhbīb from being presented as an exclusively Mālikī position. These counterexamples change the structure of the explanation rather than adding qualifications to a fixed binary model.

The theoretical contribution is to connect internal doctrinal reconstruction with controlled functional comparison and a limited institutional vocabulary. Functional similarities do not erase different legal mechanisms; different outcomes do not prove different moral commitments; and an intelligible rationale does not establish the authority to transplant a rule. The resulting framework gives reviewers and readers a way to challenge an attribution: they can ask which source, which factual premise, which consequence, and which inferential step supports it. The contribution is therefore testable at the level of legal argument.

Several limits remain. The corpus is selective; digital reproductions are not a critical edition; some relevant passages belong to later commentators rather than school founders; and the analysis does not inventory every position on nonpregnant clearance or partner-specific exceptions. The article also does not measure courtroom behavior, coercion, deterrence, stigma, or practical welfare effects. These are limits on the conclusions, not claims that the proposed framework has been empirically validated. The framework is offered for scholarly examination and further testing.

Future research can extend the source corpus, examine the transmission and authority of particular opinions, and compare actual judicial treatment of the same factual configurations. A separate empirical project would be necessary to assess whether an intervention protects families or creates collateral burdens. That work should begin with identifiable legal questions and independently documented facts. It should not treat the moral seriousness of an allegation as evidence that the alleged conduct occurred.

## CONCLUSION

The selected Sunni texts do not support a stable division between three contract-preserving schools and one deterrence-oriented school. Their differences concern distinct consequences and include internal disagreement. Al-Kāsānī separates contracting from intercourse while recording a contrary Ḥanafī view; the Shāfiʿī passage examined does not generate a waiting impediment solely from zinā; the Mālikī source requires clearance; and Ibn Qudāmah's defended Ḥanbalī position combines waiting with repentance. These conclusions concern the specified sources and scenarios rather than every possible school position.

Takhbīb confirms the need for precise attribution. It is distinct from zinā, and the cited Mālikī and Ḥanbalī texts contain positions that cannot be represented by a binary grouping. The article consequently proposes a typology linking factual trigger, legal consequence, justification, and evidentiary limits. Contemporary comparative theory helps structure that inquiry while preserving the difference between a juristic explanation and an externally reconstructed policy rationale.

For contextual discussion of Indonesian law, the framework encourages close attention to article 53 of the KHI and to separate questions of proof, independent impediments, and civil consequences. It does not prescribe an unlegislated marriage bar, a new proof standard, or an automatic determination of child status. Its contribution is methodological and doctrinal: a more transparent comparison that explains where legal concerns operate, makes internal disagreement visible, and states what additional authority or evidence a practical proposal would require.

## BIBLIOGRAPHY

Abū Dāwūd, Sulaymān ibn al-Ashʿath. *Sunan Abī Dāwūd*. "Kitāb al-ṭalāq," hadith 2175. https://sunnah.com/abudawud:2175.

al-Dusūqī, Muḥammad ibn Aḥmad. *Ḥāshiyat al-Dusūqī ʿalā al-Sharḥ al-kabīr*. Vol. 2. Islamweb digital edition. https://www.islamweb.net/ar/library/content/13/2137/.

Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh*. Cambridge: Cambridge University Press, 1997. https://doi.org/10.1017/CBO9780511801266.

Hallaq, Wael B. *An Introduction to Islamic Law*. Cambridge: Cambridge University Press, 2009. https://doi.org/10.1017/CBO9780511801044.

Hutchinson, Terry, and Nigel Duncan. "Defining and Describing What We Do: Doctrinal Legal Research." *Deakin Law Review* 17, no. 1 (2012): 83–119. https://doi.org/10.21153/dlr2012vol17no1art70.

Ibn Qudāmah, ʿAbd Allāh ibn Aḥmad. *Al-Mughnī*. Vol. 7. Islamweb digital edition. https://www.islamweb.net/ar/library/content/15/4682/.

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. 3rd ed. Cambridge: Islamic Texts Society, 2003. https://its.org.uk/catalogue/principles-of-islamic-jurisprudence-paperback/.

Kaplow, Louis. "Rules versus Standards: An Economic Analysis." *Duke Law Journal* 42, no. 3 (1992): 557–629. https://scholarship.law.duke.edu/dlj/vol42/iss3/2/.

al-Kāsānī, Abū Bakr ibn Masʿūd. *Badāʾiʿ al-ṣanāʾiʿ fī tartīb al-sharāʾiʿ*. Vol. 2. Islamweb digital edition. https://www.islamweb.net/ar/library/content/12/1170/.

Legrand, Pierre. "The Impossibility of 'Legal Transplants.'" *Maastricht Journal of European and Comparative Law* 4, no. 2 (1997): 111–24. https://doi.org/10.1177/1023263X9700400202.

*Al-Majmūʿ sharḥ al-Muhadhdhab*. Later continuation associated with Muḥammad Najīb al-Muṭīʿī. Vol. 16. Dār al-Fikr, n.d. https://ablibrary.net/book_content/b/3943/242.

al-Mardāwī, ʿAlāʾ al-Dīn. *Al-Inṣāf fī maʿrifat al-rājiḥ min al-khilāf*. Vol. 8. Islamweb digital edition. https://islamweb.net/ar/library/content/26/4035/.

Michaels, Ralf. "The Functional Method of Comparative Law." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 339–82. Oxford: Oxford University Press, 2006. https://scholarship.law.duke.edu/faculty_scholarship/1249/.

Mustarsidin, Ahmad, and Akhmad Khisni. "Pregnancy Married in the Perspective of Four Madzhab and Compilation of Islamic Law (KHI)." *Jurnal Daulat Hukum* 1, no. 3 (2018): 699–704. https://doi.org/10.30659/jdh.v1i3.3370.

Oderkerk, Marieke. "Methods of Comparative Legal Research: How to Set Up and Carry Out a Comparative Legal Research Project." In *Uncovering European Private Law: A Student Handbook*, edited by Marija Bartl, Laura Burgers, and Chantal Mak, 311–42. Cambridge: Open Book Publishers, 2025. https://doi.org/10.11647/OBP.0448.16.

Rachmadhani, Fajar, Mualimin Mochammad Sahid, and Muchammad Ichsan. "The Use of Sadd al-Dharī'ah in Contemporary Islamic Family Law in Indonesia: Concept and Practice." *Malaysian Journal of Syariah and Law* 12, no. 1 (2024): 206–15. https://doi.org/10.33102/mjsl.vol12no1.505.

Republic of Indonesia. *Kompilasi Hukum Islam*. 1991. Text reproduced from the 2001 Department of Religious Affairs edition. https://jdih.usu.ac.id/id/regulasi/kompilasi-hukum-islam-khi.

Saḥnūn ibn Saʿīd. *Al-Mudawwanah*. Vol. 2. Islamweb digital edition. https://islamweb.net/ar/library/content/30/2084/.

Siems, Mathias. *Comparative Law*. 3rd ed. Cambridge: Cambridge University Press, 2022. https://www.cambridge.org/highereducation/books/comparative-law/1CCBDFCE1ADB48DD34E56DB72E5D9022.

Van Hoecke, Mark. "Methodology of Comparative Legal Research." *Law and Method* (2015): 1–35. https://doi.org/10.5553/REM/.000010.

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

.