

Legal System Resilience in Afghanistan: Dynamics of Pluralism and Political Transformation

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ABSTRACT

Afghanistan is a multiethnic country with a complex legal system characterized by intricate interactions between Islamic law, customary law, and modern legal frameworks. This research critically examines the resilience mechanisms of Afghanistan's legal and judicial systems within the context of persistent political uncertainty and societal pluralism. Employing a descriptive qualitative methodology and comprehensive literature review, the study analyzes legal documents, international reports, and academic literature spanning the post-Taliban period from 2001 to the present. The research investigates the dynamic challenges confronting Afghanistan's legal infrastructure, particularly its capacity to integrate diverse normative systems while maintaining institutional legitimacy. Key findings reveal significant complexities in Afghanistan's legal landscape. The system encounters substantial obstacles in harmonizing Islamic legal principles, traditional customary practices, and contemporary legal standards. Family law reforms emerge as a critical focal point, demonstrating progressive attempts to enhance women's rights while simultaneously navigating conservative societal resistance. The research illuminates the intricate interplay between legal pluralism, political transformation, and institutional adaptation. It highlights how Afghanistan's judicial system continuously negotiates between preserving traditional legitimacy, accommodating societal diversity, and meeting international normative standards. The study recommends a comprehensive, nuanced approach to judicial reform that holistically considers cultural diversity, respects traditional values, and aligns with international human rights principles. By exploring the mechanisms of legal resilience in a conflict-affected context, this research contributes valuable insights into understanding adaptive strategies within complex, multi-layered legal systems. The findings provide a critical framework for comprehending how legal institutions can maintain functionality and relevance amid profound political and social transformations.

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1. INTRODUCTION

Afghanistan is a nation characterized by cultural diversity (Park, 2020; Stanikzai et al., 2024) and breathtaking natural beauty, as well as being a majority Muslim country where Islamic values significantly influence social practices and law (Al-Bar & Chamsi-Pasha, 2015). Throughout history, Afghanistan has been a country plagued by conflict, chaos, and social unrest for years due to its geographical location along trade routes and repeated invasions by foreign rulers and governments (Barrett, 2022). Wars for power, both among Afghan tribes and with other countries such as Britain, the Soviet Union, and the United States, have been frequent occurrences (Goodson & Johnson, 2011; Johnson & Mason, 2007; Noury & Speciale, 2016; Shroder, 2014b, 2014a). The impact of these conditions has led to instability in security, politics, society, law, and the economy (Hanif et al., 2024; Justino, 2025; Shams & Muhammad, 2023).

The resilience of the legal and judicial system in the face of political instability is a crucial phenomenon in conflict-ridden countries, especially in Afghanistan. This resilience is reflected in the system's ability to maintain its essential functions while adapting to various regime changes and complex political dynamics. Afghanistan's condition reflects the long and arduous journey of its legal system. The majority of Afghan society still strongly adheres to local customary laws. In this context, customary law has a strong presence in people's lives, especially in rural areas. Customary law, known as Pashtunwali, serves as an ancient moral code, patriarchy, and self-defense that governs the Pashtun tribes. This code encompasses various aspects of life, including social behavior, family relationships, and conflict resolution, reflecting the values and traditions of the Pashtun people (Janos Jany, 2020).

Even before the Taliban era, Afghanistan had a rich legal tradition, albeit often disrupted by conflict and political instability. After the fall of the Taliban, efforts to rebuild the judicial system faced many challenges, including corruption, lack of infrastructure, and legal uncertainty (Singh, 2015; Swenson, 2017). In this context, the gradation of the judiciary becomes important for organizing judicial institutions, separating powers, and providing better access to justice for the public. Moreover, the interaction between Islamic law and the formal legal system further adds to the complexity, creating an urgent need to understand how this gradation can function amidst prolonged crises (Choudhury, 2010; Mendoza, 2008).

In the 20th century, the majority of Muslim countries undertook legal reform efforts in response to societal dynamics. Starting with Turkey, which carried out the process of legitimizing family law through legislation, the Hanafi school of thought became the basis for responding to legislative reforms in Turkey. In 1920, Egypt took on the next role in reforming family law. Subsequently, in 1929, Egypt made changes to several articles related to family law (Nader & Debian, 2017).

One manifestation of this reform was the enactment of laws related to family law, including in Afghanistan, with the aim of improving the status and position of women in relation to dowry, child marriage, polygamy, and divorce. This family law reform was also

a response to changing times and addressing the influence of neighboring countries and Western culture entering Afghanistan (Luis Guterres et al., 2024; Shah, 2005).

In the contemporary context, the resilience of Afghanistan's legal system is further tested by drastic political changes. The judicial system must adapt to various demands: maintaining traditional legitimacy, accommodating societal pluralism, and meeting international standards. This adaptive capacity becomes key in understanding the resilience of Afghanistan's legal system.

Legal reform can take place if supported by strong legal institutions. Judicial institutions can be functioned as drivers and law enforcers that can help meet the needs of society in preventing disputes and conflicts. In this context, judicial institutions are part of social institutions in general and legal institutions in particular. Therefore, judicial institutions serve as institutions capable of translating concrete events when dealing with applicable written laws or legislation (Akpuokwe et al., 2024; Giancotti et al., 2024)

The purpose of writing this article is to examine the legal system and judicial structure in Afghanistan, investigate the interaction between Islamic law and formal law in the Afghan judiciary, and analyze how the gradation of the judiciary affects society's access to justice and protection of human rights.

Previous studies have also addressed issues of the judiciary in Afghanistan, such as "Peradilan Agama di Afghanistan" by Sindia Ayu, which discusses the legal system applied in Afghanistan and its evolution over the past hundred years, as well as the development of legislation in Afghanistan (Ayu et al., 2015). The study entitled "Studi Hukum Keluarga Islam di Afghanistan" by Dewi Faridah explains that the reform of family law in Afghanistan uses an adaptive type carried out in response to the changing times while still enforcing conventional fiqh provisions. Nafay Choudhury's research titled "Reconceptualizing Legal Pluralism in Afghanistan" highlights the significant challenges in Afghanistan's legal system, emphasizing that to achieve a functional and fair legal system, it is crucial to build a stable governance structure, ensure the involvement of local sources in legal reform, and navigate the complexity of integrating statutory laws with existing cultural norms (Choudhury, 2010).

Although previous studies have discussed the structural and normative aspects of Afghanistan's legal system, there remains a gap in understanding the resilience mechanisms of this system in the face of political uncertainty. Previous research has not comprehensively analyzed how the interaction between societal pluralism and political uncertainty affects the adaptability of Afghanistan's legal system and judiciary.

Unlike previous writings, this study not only reveals the political conditions of Afghanistan and the transformation of family law but also provides an in-depth analysis of the resilience mechanisms of the legal system and judiciary in the face of political uncertainty. This research offers a new perspective on how Afghanistan's legal system and judiciary adapt and endure in the context of a multicultural society and ongoing political uncertainty. The findings of this study are expected to make a significant contribution to the development of theories on legal system resilience in conflict-ridden countries and provide practical understanding of the adaptive mechanisms of the judiciary in pluralistic societies.

2. METHODS

This research employs a qualitative approach with descriptive analysis methods to investigate the resilience mechanisms of Afghanistan's legal and judicial system in the context of political uncertainty and societal pluralism (Creswell & Poth, 2017). The research relies on secondary data obtained through library research (Fazal &

Chakravarty, 2021). Secondary data includes court documents, reports from international organizations, and relevant academic literature (Baye et al., 2020). The library research focuses on gathering information from legal documents, academic publications, and reports related to Afghanistan's legal system and its evolution (Ata et al., 2023). The collected data is analyzed using thematic analysis and content analysis methods (Vaismoradi et al., 2013).

The scope of this research is limited to the post-Taliban era, focusing on the period from 2001 to the present. This research primarily examines the legal system and its interaction with Islamic law, with special emphasis on judicial hierarchy. Its geographical focus is Afghanistan as a whole, with attention given to both urban and rural areas.

Using this methodology, the research aims to provide a nuanced understanding of resilience mechanisms in Afghanistan's legal and judicial system, contribute to the development of theory regarding legal system resilience in conflict-affected societies, and offer practical insights into judicial adaptability in facing political uncertainty and societal pluralism.

3. RESULTS AND DISCUSSION

3.1. Afghanistan: A Historical and Cultural Tapestry in Central Asia

Afghanistan is a landlocked country situated in the heart of Central and South Asia. Geographically, it shares borders with Pakistan to the south and east, Iran to the west, and Turkmenistan, Uzbekistan, and Tajikistan to the north. Afghanistan is a multiethnic country with diverse tribes, dialects, and cultures. Afghanistan's diversity is characterized by its multicultural heritage, complex family structures, the impact of historical events, and a rich cultural tapestry of practices that continues to evolve. This diversity is not only a source of strength but also reflects the challenges faced by the Afghan people throughout their history (Zubair, 2021). Among these tribes are Pashtun 40%, Tajiks 30%, Hazara 10-15%, Uzbek 13%, and others such as Baluch, Turkmen, Aimaq, and Kyrgyz. The majority of Afghanistan's population follows Islam, divided into 80% Sunni Muslims, 19% Shia Muslims, and 1% other religions (Salindri et al., 2024).



Figure 1. Geographic Map of Afghanistan

Source: takorub.blogspot.com

In historical records, Islam entered Afghanistan during the era of Caliph Umar bin Khattab through a missionary expedition commanded by military commander Asim bin Umarat Tamimy. Later, during the caliphate of Uthman bin Affan, Muslim forces expanded into Khurasan under the command of Sa'ad bin Abi Waqash. During the Umayyad and

Abbasid Dynasties, Islamic expansion intensified, leading to more people embracing Islam (Thohir, 2019).

As time progressed, Afghanistan became contested by many parties. In 1747 CE, Britain and the Soviet Union became involved in the "Great Game" to gain influence in Afghanistan. As a result of the cold war between these two military powers, Britain gained control over the Southern Coast of the Arabian Sea, namely Pakistan. After being contested between Britain and the Soviet Union for a considerable time, Afghanistan finally declared itself as an independent kingdom in 1926 with an absolute monarchy system led by Amanullah Khan.

After some time, power was taken over by Zahir Shah, a king fully supported by the Soviet Union, leading to controversial policies, including a cultural revolution by eliminating Islamic practices and even prohibiting hijab for Muslim women. In 1953, King Zahir Shah appointed Muhammad Daud Khan, a communist cadre, as prime minister. However, during his administration, he firmly maintained a non-aligned position without siding with any country, which angered the Soviet Union. Eventually, Muhammad Daud Khan was killed in a coup known as the "Saur Revolution" (Fatianda, 2023).

The next leadership was held by Nur Taraki, who was very close to the Soviet Union and wanted to implement communism as the state ideology. This policy was strongly opposed by religious scholars and gave birth to the Mujahideen Fighter movement in Afghanistan. Even the subsequent president, Najibullah, was unable to contain attacks from this group. Finally, Najibullah surrendered, and leadership was transferred to prime ministers Burhanuddin Rabbani and Gulbuddin Hekmatyar. This group received support from the United States, Britain, and Saudi Arabia. After the Soviet Union suffered defeat in the war with the Mujahideen forces, they announced their troop withdrawal and agreed to a peace treaty with Afghanistan (Syarifuddin, 2016).

During the Mujahideen control of Afghanistan, the country's condition became chaotic with widespread criminal activities such as corruption, robbery, and extortion. This condition and situation became the genesis of the group known as the Taliban. This group was formed in 1994, consisting of students studying in Afghanistan. The Taliban took action in 1996 and successfully overthrew the Mujahideen government, taking control of Kabul, the capital city of Afghanistan (Fatianda, 2023).

The transition from chaotic conditions under Mujahideen rule to the emergence of the Taliban provides insight into the political and security dynamics that have colored Afghanistan's historical journey. In this context, understanding Afghanistan's social and cultural background becomes important to explore more deeply how this nation, with its ethnic diversity and traditions, faces challenges in building political stability and social harmony.

Afghanistan is a multicultural country with a rich and complex cultural heritage. Its ethnic, linguistic, and traditional diversity reflects the long history of this country, marked by various influences and conflicts. Although Islam is the majority religion and plays an important role in shaping national identity, Afghanistan also faces challenges in managing differences and building social cohesion amid prolonged political instability (McNair, 2006; Yawar, 2023; Younus & Shahzad, 2020). Understanding Afghanistan's profile becomes an important foundation for examining the dynamics of law and justice in the country, and how this system adapts to diverse socio-cultural contexts.

3.2. The Taliban in Afghanistan: Impact on Legal and Social Transformation

The Taliban is a religious and militant political movement composed of students or knowledge seekers from various madrasas in Balochistan and Khyber Pakhtunkhwa. This group was pioneered by Mohammed Omar, a former Soviet-Afghan war fighter. Most Taliban members come from the Pashtun ethnic group, which is the largest ethnic group in Afghanistan. The Taliban movement was fundamentally inspired by the Deobandi movement in Pakistan, which teaches Islamic teachings conservatively. Therefore, this group was also dissatisfied with the implementation of Islamic Sharia law in Afghanistan (Salsabila, 2023).

The Taliban's mission was to fight for Islamic revolution, restore peace, disarm society, implement Islamic law, and maintain the integrity of Islamic character in Afghanistan. During their rule, the Taliban had strict policies based on rigid and conservative interpretations of Islam. Thus, the Department of Amar Makruf Nahi Munkar was established, led by Mullah Qalam al-Din. Additionally, Taliban Religious Police conducted patrols in Afghanistan carrying whips and automatic rifles, performing their duties zealously and brutally (Musta'id, 2022).

The Taliban's presence significantly impacted Afghan society, including limited job opportunities with 500,000 people losing their jobs since the Taliban regime came to power, gender inequality with restrictions on women's public rights limiting their access to education and spaces, and killings carried out by the Taliban against women and children deemed unable to feed Taliban members (Asylos/Clifford Chance, 2022).

Fundamentally, the Taliban's existence received support from Pakistan and the United States. U.S. involvement in helping the Taliban was based on maintaining anti-Soviet movement. Meanwhile, Pakistan used the Taliban movement as an instrument by making Afghanistan a puppet state through playing the Pashtun ethnic card and Islamic fundamentalism. This effort was also Pakistan's attempt to ensure Afghanistan could support its political interests and serve as an ally during potential conflicts (Fanani & Andri, 1970).

The Taliban governed Afghanistan for a relatively short period from 1996-2001. However, their presence posed a threat to Afghanistan with fundamentalist ideology attempting to control Afghanistan's political and social aspects through various means. The Taliban implemented many policies viewed by the international community as radical. During their rule, numerous wars occurred, causing poor infrastructure, economic, health, and security development. Additionally, there were highly restrictive rules for society such as banning non-Islamic music, prohibiting cinema, destroying other religions' cultural heritage, banning women from education and work, and mandating beards for men and burqas for women. These severely restricted human rights (Fatianda, 2023).

During their rule, the Taliban resolved disputes between two Mujahideen factions: Burhanuddin Rabbani's faction and Gulbuddin Hekmatyar's faction, establishing security stability. The Taliban also successfully provided protection to the mujahideen, including Al-Qaeda leader Osama bin Laden. In late 2001, the United States invaded Afghanistan to overthrow the Taliban government and capture Osama bin Laden by launching Operation Enduring Freedom on October 7, 2001, ultimately succeeding in overthrowing the Taliban government (Salsabila, 2023).

After being overthrown by the United States, the Taliban continued to survive and launched guerrilla warfare tactics for two decades against the United States. In 2021, the Taliban regained power in Afghanistan. This was caused by several external and internal

factors. After occupying Afghanistan for 20 years, the United States initiated a meeting to pursue peace between Afghanistan and the Taliban in Doha, Qatar. This meeting produced the Doha Agreement. There were four main points in the agreement:

1. Taliban's obligation to ensure Afghanistan is not a base for U.S. and allied groups, and no more attacks against U.S. and allied interests.
2. U.S. and allies would withdraw forces from Afghanistan within 2 years and release 15,000 Taliban member prisoners.
3. Negotiations would be held between the Taliban and Afghan Government regarding Afghanistan's future form.
4. A ceasefire between the U.S. Government and Taliban.

Internally, the Taliban could exploit the weaknesses of Ashraf Ghani's government regime as U.S. forces withdrew. Afghanistan experienced a political crisis during that time because the government vacuum made it easy for the Taliban to take power. In September 2021, the Taliban declared victory and expressed commitments to creating welfare for Afghan society (A. Martin & Saputro, 2024).

The emergence and power of the Taliban in Afghanistan have brought significant impacts on the country's political, social, and legal dynamics. With conservative ideology and rigid interpretation of Islamic law, the Taliban sought to transform Afghan society according to their vision (Ayman, 2013; Johnson, 2006; Zulkarnain et al., 2023). However, this approach often conflicted with local traditions and minority group rights, creating tensions in society. Although Taliban power was temporarily disrupted by international intervention, their influence remained and became an important factor in the evolution of Afghanistan's legal system. Understanding this history and role of the Taliban provides important context for analyzing the resilience and adaptability of Afghanistan's judicial system in facing drastic political changes.

3.3. Afghanistan's Legal System: A Complex Interplay of Traditional, Islamic, and Modern Law

Afghanistan's legal system reflects its long and complex history involving customary law, Sharia law, and modern law. Customary law in Afghanistan serves as the primary guide, especially in Pashtun communities known as Pashtunwali Law. The power of customary law is considered significant in resolving problems within society. This is due to the legal process being directly executable, flexible, and not requiring lengthy procedures (Sethi, 2022; Sethi et al., 2024).

For some communities, customary law serves as an effective means of dispute resolution. Customary law contains a code of ethics covering aspects of life such as honor, marriage, conflict, and retribution. Customary law developed in Afghanistan became a target of manipulation by the government to foster a fair legal framework for all ethnicities. However, government manipulation of customary law in Afghanistan posed significant challenges (Elliesie, 2006).

Afghanistan's position at the crossroads of various cultures has resulted in a rich tapestry of traditions and customs. However, the legal system often reflects the values of dominant ethnic groups, which can marginalize minority groups. The legal framework may not adequately represent the diverse cultural practices and beliefs of all ethnicities, causing tensions and conflicts in society. Indeed, during Taliban rule, legal practices led to the loss of traditional rights and freedoms, exacerbating ethnic tensions, particularly for women and non-Pashtun communities (Zubair, 2021).

Historically, from 1880-1964, Afghanistan had a dual judicial system: religious courts (Sharia) and state courts (Government). Sharia courts were tasked with

adjudicating family matters, criminal cases, individual matters, inheritance, divorce, and waqf. Meanwhile, state courts handled matters of trade, taxation, civil service, and governance. However, in 1920, Amir Amanullah Khan identified legal reforms enacted in the first constitution of 1923 (Ayu et al., 2015).

Afghanistan is a country with the largest Muslim population. Afghan society follows the Hanafi school. The supremacy of Islamic law in this country's government was recognized through Afghanistan's First Constitution in 1923 and second constitution in 1931. Most of these laws were taken from parallel legislation disseminated in the Ottoman Empire, Egypt, and Sudan. In the 1930s, Afghan legal experts published a law titled al-Qada based on Hanafi legal principles. In the 1950s, several legislations were approved such as Tijaratnamah in 1954, the Law of Administration of Justice in 1956, and Civil Law in 1958. The 1964 Constitution declared Islam as the sacred religion of Afghanistan and the Hanafi school as the protector of the basic principles of sacred Islam (BN et al., 2023).

The President of Afghanistan has authority in overseeing the implementation of the enacted constitution while regulating all strategic and fundamental state policies. In carrying out duties, the President of Afghanistan is assisted by Vice Presidents and Ministers. During Amanullah Khan's rule, Afghanistan established a parliamentary system responsible for important functions such as enacting laws, approving budgets, ratifying laws, and overseeing government operations (Azizi, 2020). The Afghan parliament consists of three bodies:

3.3.1. *Wolesi Jirga* (House of People)

The *Wolesi Jirga* plays a central role in Afghanistan's legislative system, functioning as the people's voice and government overseer, and contributing to the development of laws and policies that impact society. This institution is a People's Representative Council consisting of 249 directly elected people's representatives tasked with drafting laws, budget approval, and government ratification. This assembly provides space for 68 women representatives from each province in Afghanistan (Azizi, 2020).

3.3.2. *Meshrano Jirga* (House of Elders)

This institution is the government senate consisting of Presidential appointees, provincial representatives, representatives of disabled citizens, and representatives of Afghanistan's nomadic people. This institution functions to provide advice and revision on draft laws passed by the *Wolesi Jirga*. Although the *Wolesi Jirga* has a dominant role, the *Meshrano Jirga* maintains an important role in providing support and approval for laws affecting the state (Azizi, 2020).

3.3.3. *Loya Jirga* (High Council)

The *Loya Jirga* is an ancient tradition in Afghanistan that facilitates large meetings of leaders, community figures, tribal chiefs, and religious leaders from various regions and ethnicities in the country. The *Loya Jirga* is viewed as a form of traditional democracy rooted in Afghan culture. This institution consists of traditional and tribal chiefs in Afghanistan. This assembly established the government as an Islamic republic consisting of executive, legislative, and judicial bodies according to Islamic law (Syarifuddin, 2016).

Historically, during King Amanullah's reign, the *Loya Jirga* was to be abolished as part of a series of modern reforms. However, the *Loya Jirga*'s existence continued, and in every crisis that emerged in Afghanistan, this institution has always been part of discussions about how to resolve such issues (Smith, 2019).

The Executive Body in Afghanistan's governmental system consists of the chief of state, head of government, and cabinet. The Legislative Body is divided into the National Assembly, consisting of the *Meshrano Jirga* and House of Elders with 102 members, while the *Wolesi Jirga* has 249 members (Ayu et al., 2015).

Afghanistan's legal system reflects the complex interaction between Islamic law, customary law, and modern law. This legal pluralism creates challenges in developing a coherent and inclusive legal framework (Choudhury, 2010). Although Islamic law plays a central role, particularly in family and civil law, its application is often influenced by diverse local interpretations and traditions. On the other hand, efforts to adopt modern law and align it with international norms also face resistance from conservative groups. The success of legal reform in Afghanistan will depend on the ability to manage these tensions and find a balance between Islamic law principles, customary law, and modern law in a pluralistic context.

3.4. Family Law Reform in Afghanistan: Harmonizing Islamic Principles with Modern Legal Framework

The development of law in the Islamic world has demonstrated the flexibility of Islamic family law through family law reforms in Muslim countries. This change was motivated by the transformation of Islamic law and dialogue between Islamic law, Western law, and customary law through *takhayyur* (selection of legal alternatives), *talfiq* (legal integration), and *ijtihad* (legal innovation). The idea of legal change in Muslim countries stems from economic, political, sociological, and legal aspects occurring within society (Wahib, 1967).

Legal reform in Turkey became a historical milestone in legal reform in the Islamic world and had a significant impact on the development of family law in other countries. Turkey established a codification of legislation entitled Qanun Huquq al-A'ilah al-Usmaniyah (Ottoman Family Rights Law) based on the Maliki school. This breakthrough was then carried out by Egypt, particularly in the field of family law, and codified in legislation named al-Ahkam al-Syar'iyah al-Ahwal al-Syakhsiyah (Sharia Law in Personal Matters) based on the Hanafi school (Zayyadi & Faiz, 2020).

In 1971, Qanuni Izdiwaj (marriage law) was enacted in Afghanistan. The formation of this law was based on family law in Egypt in 1929 and Muslim family law provisions in India in 1939. In 1977, Afghanistan enacted a new constitution; however, in 1978, a coup occurred, and the constitution was revoked. After the coup, the Revolutionary Council on Women's Rights was formed (Marzuki, 2019).

To respond to the developments of the times and the influence of family law reform in neighboring countries, this reform also occurred in Afghanistan, including:

3.4.1. *Mahr*

Islam regulates the rights and obligations of husband and wife in marriage, including *Mahr*. *Mahr* is one of the valid requirements for marriage and has deep meaning in the context of husband-wife relationships. According to Ibn Rushd, scholars agree that *Mahr* is a valid requirement for marriage, so it cannot be eliminated (Rusyd, 2004).

According to Afghan family law, marriage without *Mahr* remains valid; however, if the *Mahr* is not specified, then based on the Hanafi school, *Mahr* must still be given as *Mahr mithl* or *Mahr* adjusted to social status. In the Hanafi school, the minimum amount of *Mahr* is 10 dirhams. Then in civil law 1977 explains the provisions of *Mahr* based on the Hanafi school. Article 99 stipulates that the wife is entitled to receive *Mahr musamma*, and if no *Mahr* is specified, the wife is entitled to *Mahr mithl*.

Article 101 explains that *Mahr* can be paid in cash or delayed, while Article 102 allows an increase in the amount of *Mahr* after the agreement on the amount of *Mahr* is determined. Articles 103 and 113 explain that *Mahr* is the wife's full right that the guardian cannot interfere with. Thus, Afghan family law contained in the 1977 Civil Law

accommodates Islamic law, which highly respects women's rights to *Mahr* (Toisuta, 2013).

3.4.2. Child Marriage

Afghanistan established laws regarding child marriage by looking at physical puberty aspects, relating to the age limit for marriage. Articles 71 and 80 of the 1977 Civil Law stipulate that the competency to marry for women is at age 17 and for men at age 18. Women who have not reached the age of 17 can only be married by their father or guardian judge as stated in Article 80, and *khiyar bulugh* applies when they reach adulthood. Articles 5 and 6 of the Civil Law state that adult women may marry without guardian permission.

Along with the times and social conditions of society, the Revolutionary Council of Afghanistan in 1978 issued Decision No.7 regarding child marriage that the minimum age of marriage for women is 16 years and for men, and violators can be subject to imprisonment from 6 months to 3 years. Thus, although Islam does not provide a minimum age for marriage, Afghanistan provides special provisions for this matter (Hughes, 2008; Maley, 2002).

3.4.3. Polygamy

Afghanistan is a country that prohibits polygamy without reason. According to the 1971 law and 1977 civil law, polygamy is only permitted if it aims to avoid great harm. The husband's financial considerations and personal character become the minimum requirements for polygamy permits in court. Not having offspring is also included as a legal reason for polygamy in Afghanistan. But this must go through specific procedures. To ensure the truth of this reason, husband and wife must wait for six to eight years of marriage. The husband must also submit proof of his fertility to be submitted to court. If it turns out that the wife is infertile, then the husband is allowed to practice polygamy, and if otherwise, the wife has the right to file for divorce in court (Marzuki, 2019).

In principle, Afghanistan connects the obligation to be fair in polygamy with judicial control in the form of requirements for court permission for husbands who practice polygamy. The court can issue permits with considerations such as financial capability, the condition of the wife being unable to have children, and the consent of the first wife (Bukido & Aminah, 2024; Marzuki, 2019)

3.4.4. Divorce

Against the background of laws giving husbands room to divorce wives unilaterally, resulting in abuse of husband's authority, Afghanistan reformed this divorce law flexibly. This means that this legal reform does not only refer to the Hanafi school.

One form of reform was the appointment of female judges to provide consultation and solutions for women. Women were given opportunities to appear in public and improve conditions and guarantee women's rights because of the desire of guardians or relatives to control these rights, which resulted in women often failing to obtain their rights effectively in court (Hoodfar, 2007; Mashwani, 2017; Rubin & Rudeforth, 2016; Sharp et al., 2002).

Besides Afghanistan being a multi-ethnic country still strong with tribal customary laws, customary law and local practices must be part of legal reform occurring in Afghanistan. In some cases, customary law is considered irrelevant or contradictory to modern principles, which can cause marginalization of communities with different value systems, thus creating conflicts between state law and customary norms (Fazli et al., 2024; Jamil Hanifi, 2011; Sharp et al., 2002).

Family law reform in Afghanistan reflects efforts to improve women's status and rights within the framework of Islamic law. By adopting a progressive approach and

utilizing the diversity of Islamic law schools, reformers seek to address discriminatory practices and protect women's rights in marriage, divorce, and inheritance (Akpuokwe et al., 2024; Choudhury, 2010; Hanif et al., 2024; Mendoza, 2008; Shah, 2005). However, these reform efforts also face challenges from conservative groups that reject change and see it as a threat to traditional values (Nafi'ah et al., 2024). The success of family law reform in Afghanistan will depend on the ability to overcome this resistance and build support from various stakeholders, including religious scholars, civil society, and state institutions.

3.5. The Judicial System of Afghanistan: Integration of Modern Jurisprudence and Traditional Justice

The judicial system of Afghanistan functions based on the framework regulated in the Afghan Constitution ratified in 2004, as well as the Law on Organization and Authority of Islamic Courts of Afghanistan which came into effect in 2005. This Constitution establishes the judiciary as an independent organ of the state, which aims to create a legal system that upholds the rule of law and justice (Armytage, 2007).

The Afghan Judicial System consists of several institutions:

3.5.1. Supreme Court

The Supreme Court in Afghanistan represents the pinnacle of the judicial system as the highest judicial power body. This institution functions to oversee the implementation of the state constitution, supervise the overall judicial system, handle lower-level appeals, and issue decisions related to legal matters. The Supreme Court's role also includes examining and deciding cases at the cassation level, which produces decisions in the form of jurisprudence. Based on the judicial function held by the Supreme Court, this institution carries out its role as a Court of Cassation by ensuring laws are applied correctly and consistently (Naibaho et al., 2021).

3.5.2. Court of Appeals

The appellate court is part of the judicial system hierarchy regulated by the 2004 constitution. Each province in Afghanistan has an appellate court as a second-level court under the Supreme Court. The appellate court will process applications within a certain period, which generally takes between 3 to 6 months for civil or criminal cases (Sethi, 2022; Sethi et al., 2024). The appellate court functions as a control mechanism to maintain justice and integrity in the legal system. This institution receives and examines appeals against court decisions and ensures that the law is applied correctly and consistently throughout the judicial system.

3.5.3. Civil Courts

Civil courts play a vital role in maintaining social justice and resolving conflicts in society. This institution provides formal and structured channels for dispute resolution, different from traditional conflict resolution systems such as jirga (customary council). The civil court's duties are handling civil cases, resolving family cases, receiving and evaluating evidence submitted by parties involved in disputes, and issuing decisions based on applicable law.

3.5.4. City Courts

City Courts are first-level courts at the municipal level throughout Afghanistan tasked with adjudicating legal violations. In applying the law, city courts must consider customary law and traditional practices of local communities as long as they do not conflict with national law. The existence of city courts serves as a forum for resolving conflicts between citizens and providing information and education about law to local communities (Martin, 2006).

The Afghan judiciary has faced many challenges and complexities, especially in the post-Taliban era. The level of public trust in the Afghan judicial system is affected by the fact that Afghanistan's judicial components do not work professionally, and many people seek resolution of disputes through non-governmental mechanisms such as shura and jirga (Ardak, 2016).

The dispute resolution process in Afghanistan can involve various actors and government institutions. Most disputes are initially submitted to elders, who usually advise both parties to resolve their problems through jirga by presenting cases and evidence to all members of the group. The jirga elders are considered to have high integrity. If the decision cannot resolve the conflict between both parties, then this case will be brought to government judicial institutions (Coto & Evangelides, 2016).

The Afghan judicial system faces various challenges in efforts to uphold justice and maintain legal integrity. Lack of resources, corruption, and informal power influence are significant obstacles in realizing independent and effective justice (Fazli et al., 2024; Shams & Muhammad, 2023). Although there are efforts to strengthen the capacity of judicial institutions and increase public access to justice, many Afghans still prefer traditional dispute resolution mechanisms, such as jirga and shura. Integrating these mechanisms into the formal judicial system and ensuring compliance with human rights norms are challenges that must be faced in judicial reform in Afghanistan.

3.6. Comparison of Afghan and Indonesian Judicial Systems

3.6.1. Legal Basis

Most of Afghanistan's legal basis is Islamic Law (Sharia), especially under Taliban rule, although customary law also plays an important role in decision-making that reflects local norms and practices. Meanwhile, Indonesia has a mixed legal system consisting of positive law using the Criminal Code and Civil Code as legal bases, customary law that plays a role in resolving disputes in various regions, and Islamic law applied in religious courts for marriage, inheritance, and divorce cases.

3.6.2. Judicial Structure

There are several levels of courts in Afghanistan, ranging hierarchically from city courts to the supreme court. This judicial system has complex characteristics influenced by legal traditions, norms, social and changing political situations. Meanwhile, Indonesia's judicial system has district courts, high courts, and the supreme court. Besides that, there are special courts such as religious courts and administrative courts.

Indonesia and Afghanistan face similar challenges in harmonizing modern law with local traditions, but their social, cultural, and political contexts provide different approaches to legal integration. Indonesia seeks to integrate diversity by creating space for customary and religious law within the national legal framework. Meanwhile, Afghanistan tends toward the dominance of Islamic law, with customary law continuing to play an informal role in society.

The comparison between Afghan and Indonesian judicial systems shows similarities and differences in approaches to legal pluralism. Both Afghanistan and Indonesia face challenges in harmonizing Islamic law, customary law, and modern law within the national legal framework. However, different socio-political contexts have shaped different trajectories in the evolution of judicial systems in both countries. Indonesia has developed a more accommodative model towards legal diversity, while Afghanistan still struggles to find the right balance. Studying Indonesia's experience in managing legal pluralism can provide valuable insights for Afghanistan in its judicial reform efforts.

4. CONCLUSION

The Afghan legal and judicial system is a reflection of complex history and turbulent political dynamics. The resilience of the legal system is reflected in its ability to adapt to regime changes, mediate societal pluralism, and maintain its essential functions despite facing various challenges. The interaction between Islamic law, customary law, and modern law demonstrates the complexity of legal reform efforts in Afghanistan. The future success of the judicial system will heavily depend on the ability to create a balance between tradition and modernity, protect fundamental rights, and accommodate ethnic and cultural diversity that characterizes Afghanistan.

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