

## **MARRIAGE REGISTRATION AND SOLEMNIZATION AMONG MIGRANT MUSLIMS IN GERMANY**

### **Harmonizing Islamic and State Law and the Existence of Origin Country Law**

Ahmad Bunyan Wahib

Sunan Kalijaga State Islamic University Yogyakarta, Indonesia

Email: [ahmad.wahib@uin-suka.ac.id](mailto:ahmad.wahib@uin-suka.ac.id)

#### **Abstract**

This article highlights the way of Islamic and state law intersect in the context of marriage administration and solemnization among migrant Muslim groups in Germany, with a particular emphasis on the coexistence of Islamic law and state law. The differences between the two legal systems are well known, with Islamic law being religious in nature and German law being secular. However, the article argues that interviews with two Turkish and Egyptian mosque imams in Göttingen reveal a harmonious relationship between the two legal systems. It sheds light on the ways in which these legal systems can complement each other and work together in harmony, despite their differences. The harmony between Islamic law and state law in Germany is linked to the context in which these legal systems are implemented, including their nature, place, time, and manner. The flexible and adaptable nature of Islamic law means that it can negotiate and adapt to state law depending on the circumstances. At the same time, the religious practices carried out by immigrant Muslim communities in Göttingen also reflect the presence of the law of their countries of origin.

[Artikel ini membahas tentang praktik administrasi perkawinan yang dilakukan oleh kelompok minoritas Muslim di Jerman dengan fokus pada keberadaan hukum negara dan hukum Islam. Meskipun kedua system hukum ini mempunyai aturan yang berbeda secara substansi dan procedural, hasil wawancara dengan dua Imam masjid komunitas Turki dan Mesir di Goettingen menunjukkan adanya hubungan yang harmonis antara kedua system

hukum tersebut. Harmoni yang terjadi antara hukum Islam dan hukum negara di Jerman ini berhubungan dengan watak, tempat, waktu, dan cara kedua system hukum ini dilaksanakan. Watak dan karakter hukum Islam yang lentur/fleksibel berkaitan dengan waktu dan tempat pelaksanaan, menjadikan hukum Islam mampu bernegosiasi dan beradaptasi dengan hukum Negara. Pada level tertentu, tata cara praktik keagamaan yang dilakukan oleh komunitas immigrant Muslim di Goettingen ini juga mencerminkan/membawa keberadaan hukum negara asal Muslim imigran.]

### Keywords

Marriage administration, solemnization of marriage, origin country law

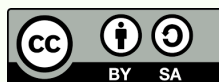
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### Introduction

The migration of Muslims to Western Europe has been significant since the early nineteenth century<sup>1</sup> and has rapidly developed since the end of World War II.<sup>2</sup> In the 1950s, the number of Muslims in Western Europe was still in the tens of thousands. Just three to four decades later, the Muslim population in Europe reached 6 million people (in

<sup>1</sup> Norman Davies, *Europe: A History* (Random House, 2020).

<sup>2</sup> Fatima Husain and Margaret O'Brien, "Muslim Communities in Europe: Reconstruction and Transformation," *Current Sociology* 48, no. 4 (2000): 1–13, <https://doi.org/10.1177/0011392100048004002>.

the mid-1990s). Germany ranks second in the number of Muslims after France. Most Muslims in Germany come from Turkey.<sup>3</sup> An estimated 6,500 Muslims were living in Germany in 1961; by 1989, the Muslim population had grown to 1.8 million, and by 2002 there were approximately 3.4 million Muslims. In 2019, there were at least 5.5 million Muslims in Germany (6.6% of Germany's total population of 83.1 million people), and 2.5 million (more than 40%) came from Turkey.<sup>4</sup>

Muslim Turkish migrants, as the majority of Muslims in Germany, have a significant influence on the everyday practices of Muslims in Germany. The process of secularization that has taken place in modern Turkey has made it easier for them to live in Germany and has made the German government more accepting of Islam compared to France and the United Kingdom.<sup>5</sup> However, some obstacles to religious practice are still faced by Muslims. Muslim religious practices in Germany often conflict with state policies in the areas of family law, burial regulations, the slaughter of animals, and public recognition of religious holidays. Muslim religious practices in Germany are in a tug-of-war between acceptance and rejection. This pro and con is evident in the statements of Wolfgang Schäuble and Angela Merkel, who accept Islam as part of Germany,<sup>6</sup> and Horst Seehofer who rejects Islam.<sup>7</sup> This debate affects the process of Muslim integration into German society<sup>8</sup> in their daily lives.<sup>9</sup>

<sup>3</sup> Ceri Peach and Günther Glebe, "Muslim Minorities in Western Europe," *Ethnic and Racial Studies* 18, no. 1 (1995): 26–45, <https://doi.org/10.1080/01419870.1995.9993852>.

<sup>4</sup> Pfündel, Katrin, Anja Stichs, and Kerstin Tanis. "Executive Summary of the Study "Muslim Life in Germany 2020"," 2021. [https://www.ssoar.info/ssoar/bitstream/handle/document/75547/ssoar-2021-pfundel\\_et\\_al-Executive\\_Summary\\_of\\_the\\_study.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2021-pfundel\\_et\\_al-Executive\\_Summary\\_of\\_the\\_study.pdf](https://www.ssoar.info/ssoar/bitstream/handle/document/75547/ssoar-2021-pfundel_et_al-Executive_Summary_of_the_study.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2021-pfundel_et_al-Executive_Summary_of_the_study.pdf).

<sup>5</sup> John R Bowen and Mathias Rohe, "Juridical Framings of Muslims and Islam in France and Germany," in *European States and Their Muslim Citizens* (Cambridge Univ. Press, 2015), 135–63.

<sup>6</sup> Reuters. "Merkel Says Islam 'belongs to Germany' Ahead of Dresden Rally." January 12, 2015, sec. World News. <https://www.reuters.com/article/us-germany-islam-merkel-idUSKBN0KL1S020150112>.

<sup>7</sup> BBC News. "Horst Seehofer: Islam Does Not Belong to Germany, Says New Minister." March 16, 2018, sec. Europe. <https://www.bbc.com/news/world-europe-43422770>.

<sup>8</sup> Alexandra Bayer, "The Racialization of Islam in Germany" (University of Missouri--Columbia, 2018); Enes Bayrakli, Farid Hafez, and Leonard Faytre, "Engineering a European Islam: An Analysis of Attempts to Domesticate European Muslims in Austria, France, and Germany," *Insight Turkey* 20, no. 3 (2018): 131–56, <https://doi.org/10.25253/99.2018203.08>; Isabell Diekmann, "Differentiation between Religion and Individuals? Measuring Hostile Attitudes towards Islam and Muslims in Germany," in *Religion, Migration, and Existential Wellbeing* (Routledge, 2020), 53–67, <https://doi.org/10.4324/9780429326288>; Matthias Kortmann, "Debating the 'Integration of Islam': The Discourse between Governmental Actors and Islamic Representatives in Germany and the Netherlands,"

In the context of Islamic legal studies, the position of Muslims in Germany as described above has resulted in a variety of works on the relationship between Islamic law and German state law in everyday life. These works range from those that highlight obstacles faced by Muslims in expressing their religious practices in public spaces<sup>10</sup> to the procedures and substance of marriage/family law,<sup>11</sup> burial regulations,<sup>12</sup> assumptions regarding animal slaughter for halal meat,<sup>13</sup> construction of places of worship/mosques,<sup>14</sup> and the recognition of religious holidays as days off for Muslims.<sup>15</sup> Other works demonstrate the functional role of Islamic law in German civil courts in dealing with civil cases involving Muslim immigrants.<sup>16</sup> Zada and Irfan even demonstrate the practice of

- Comparative Migration Studies* 6, no. 1 (2018): 1–20, <https://doi.org/10.1186/s40878-018-0086-2>; Ufuk Olgun, “Does Islam Belong to Germany? On the Political Situation of Islam in Germany,” in *The State as an Actor in Religion Policy: Policy Cycle and Governance Perspectives on Institutionalized Religion* (Springer, 2014), 71–84, [https://doi.org/10.1007/978-3-658-06945-2\\_3](https://doi.org/10.1007/978-3-658-06945-2_3); Riem Spielhaus and Martin Herzog, “Finding a Place for Islam in Germany: Islamic Organisations under Private and Public Law,” *Journal of Religion in Europe* 8, no. 3–4 (2015): 419–43, <https://doi.org/10.1163/18748929-00804009>; Menna Taher, “Resource Mobilization and the Institutional Framework of Islam: The Integration of Muslim Turks in Germany,” *Migration and Integration Challenges of Muslim Immigrants in Europe: Debating Policies and Cultural Approaches*, 2021, 207–44, [https://doi.org/10.1007/978-3-030-75626-0\\_7](https://doi.org/10.1007/978-3-030-75626-0_7).
- <sup>9</sup> Franz Erhard and Kornelia Sammet, “Everyday Lived Islam of Young People from Muslim Migrant Families in Germany,” in *Young People and the Diversity of (Non) Religious Identities in International Perspective* (Springer, 2019), 221–39, [https://doi.org/10.1007/978-3-030-16166-8\\_13](https://doi.org/10.1007/978-3-030-16166-8_13); Pfündel, Katrin, Anja Stüch, and Kerstin Tanis. “Executive Summary of the Study “Muslim Life in Germany 2020”,”
- <sup>10</sup> Staunton, Denis. “German State Allows Crucifixes in Schools but No Head Scarves.” *The Irish Times*, July 28, 1998. <https://www.irishtimes.com/news/german-state-allows-crucifixes-in-schools-but-no-head-scarves-1.177591>.
- <sup>11</sup> Andrea Büchler, *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws* (Ashgate Publishing, Ltd., 2016), <https://doi.org/10.4324/9781315590028>.
- <sup>12</sup> Peter Heine, “Contacts and Conflicts over Worship and Burial in the Kreuzberg District of Berlin,” in *Urban Planning and Cultural Inclusion: Lessons from Belfast and Berlin* (Springer, 2001), 134–40, [https://doi.org/10.1057/9780230524064\\_9](https://doi.org/10.1057/9780230524064_9).
- <sup>13</sup> Dorothee Brantz, “Stunning Bodies: Animal Slaughter, Judaism, and the Meaning of Humanity in Imperial Germany,” *Central European History* 35, no. 2 (2002): 167–93, <https://doi.org/10.1163/15691610260420656>.
- <sup>14</sup> Stefano Allievi, *Mosques in Europe: Why a Solution Has Become a Problem*, London: Alliance (London: Alliance, 2010).
- <sup>15</sup> Jolanda Van der Noll, “Religious Toleration of Muslims in the German Public Sphere,” *International Journal of Intercultural Relations* 38 (2014): 60–74, <https://doi.org/10.1016/j.ijintrel.2013.01.001>.
- <sup>16</sup> Bowen and Rohe, “Juridical Framings of Muslims and Islam in France and Germany”; Büchler, *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws*; Mahmoud Jaraba, “Khul ‘in Action: How Do Local Muslim Communities in Germany Dissolve an Islamic Religious-Only Marriage?,” *Journal of Muslim Minority Affairs* 40, no. 1 (2020): 26–47, <https://doi.org/10.1080/13602004.2020.1737414>; Mathias Rohe, “Islamic Law in German Courts,” *Hawwa* 1, no. 1 (2003): 46–59,

Islamic law in Germany without any conflict with state law.<sup>17</sup> Bowen and Rohe have portrayed a more complex daily life. Their everyday practices not only show tensions and differences between Islamic law and state law, but also their coexistence and negotiation.<sup>18</sup> Furthermore, they show that the relationship formed is influenced not only by the attitude of German Muslims towards Islamic law, but also by the state law where they live.<sup>19</sup>

This article is in line with Bowen and Rohe's work above.<sup>20</sup> However, unlike their work which states that the form of the relationship is caused by the attitudes of German Muslims towards Islamic law and their place of residence, this article argues that the coexistence of Islamic law and state law on the administration and solemnization of marriage in Germany is related to the nature, place, time, and manner of the implementation of these two legal systems. The flexible and adaptable nature of Islamic law is related to the time and place of implementation, such as in wedding ceremonies, which makes Islamic law capable of negotiation and adaptation with state law. On the other hand, the nature of German law which considers Islamic marital law as a part of religious ritual makes the solemnization of marriage can be conducted. At a certain level, the existing religious practices also reflect the presence of the origin country's state law of Muslim immigrants.

This article is mainly based on the results of observation and interviews with several Muslim respondents in Göttingen during September 2014 (two mosque imams/Turkish and Egyptian), an Egyptian immigrant, two immigrants from Indonesia, and two German Muslims. Before discussing Muslim law practices in Germany, the discussion begins with the position of Muslims as a minority in Germany and the state's policy towards Islam followed by the coexistence of Islamic and state law in the process of administration and the solemnization of marriage. At the end, before the conclusion, the discussion is supplemented with a discussion of the influence of the origin country's state law on the religious practices of German Muslims.

<https://doi.org/10.1163/15692078-00101001>; Diana Schawlowski, "The Islamic Mahr in German and in English Courts," *YB Islamic & Middle EL* 16 (2010): 147, <https://doi.org/10.1163/22112987-91000245>.

<sup>17</sup> Khamami Zada and M Nurul Irfan, "Negotiating Sharia in Secular State: A Case Study in French and Germany," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 47–63, <https://doi.org/10.22373/sjkh.v5i1.9753>.

<sup>18</sup> Bowen and Rohe, "Juridical Framings of Muslims and Islam in France and Germany."

<sup>19</sup> Bowen and Rohe.

<sup>20</sup> Bowen and Rohe.

## Muslims as a Minority and State Policies towards Islam

The significant migration of Muslims to Western Europe has been ongoing since the early 19th century<sup>21</sup> and has experienced rapid development since the end of World War II.<sup>22</sup> This development can be seen in the increase in their numbers after the end of World War II. In the 1950s, the number of Muslims in Western Europe was only in the tens of thousands. Just three to four decades later, their numbers had reached millions. Muslims in Europe have grown to six million people (in the mid-1990s), with France (North and West African immigrants), Germany (Turkish and Balkan immigrants), and the United Kingdom (Indian subcontinent/India and Pakistan) being the largest populations. Germany is one of the Western European countries with a relatively large Muslim population.

Germany is the second Western European country with the largest Muslim population after France,<sup>23</sup> and Islam is now the third largest religion in Germany after Catholicism and Evangelical Protestantism. In 2017, Pew Research Center released a report stating that in 2010, at least 3.3 million Muslims (4.1% of the population) lived in Germany.<sup>24</sup> This number increased to almost 5 million (6.1% of the population) in 2016, with immigrants being a significant contributor to the growth of Muslims in Germany.<sup>25</sup> Data from 2019 shows an increase to 5.5 million Muslims in Germany (6.6% of the total population of 83.1 million people). The majority of them, around 2.5 million (over 40%), come from Turkey.<sup>26</sup>

As a minority religious group, the position of Muslims in Germany is not as strong as that of Christians who have been regarded as shaping the identity of German society.<sup>27</sup> In the eyes of the state, the church has had the status of a public corporation without

<sup>21</sup> Davies, *Europe: A History*.

<sup>22</sup> Husain and O'Brien, "Muslim Communities in Europe: Reconstruction and Transformation."

<sup>23</sup> Peach and Glebe, "Muslim Minorities in Western Europe."

<sup>24</sup> Mitchell, Travis. "The Growth of Germany's Muslim Population." *Pew Research Center's Religion & Public Life Project* (blog), November 29, 2017. <https://www.pewresearch.org/religion/2017/11/29/the-growth-of-germanys-muslim-population-2/>.

<sup>25</sup> Chester N. Mitchell and Shona McDiarmid, "Medical Malpractice: A Challenge to Alternative Dispute Resolution," *Canadian Journal of Law and Society* 3 (1988): 227–45, <https://doi.org/10.1017/S0829320100001393>.

<sup>26</sup> Pfündel, Katrin, Anja Sticks, and Kerstin Tanis. "Executive Summary of the Study "Muslim Life in Germany 2020"."

<sup>27</sup> Simsek, Ayhan. "Islam Does Not Belong to Germany? Interior Minister." Anadolu Agency, March 16, 2018. <https://www.aa.com.tr/en/europe/islam-does-not-belong-to-germany-interior-minister-/1090588>

objection, so it can receive financial support from the government under the scheme of social welfare and education.<sup>28</sup> This is different for the Muslim community. Muslim communities and institutions do not easily obtain the status of a public corporation,<sup>29</sup> because Muslims in Germany were not part of the group that made the early agreements of German civil society.<sup>30</sup> Until the late 1990s to date, no Land government has recognized any Muslim group as a public corporation,<sup>31</sup> although the German constitution opens the possibility for any religious group, with the procedures and conditions set out, to obtain public corporation status. Article 137 (5) of the Basic Law (Grundgesetz) sets out a procedure for granting public corporation status to other religious entities: “Other religious communities shall be granted like rights upon application where their constitution and the number of their members offer an assurance of their permanency.”<sup>32</sup>

The procedure for applying for public corporation status requires several requirements, such as the formal application of community status for a specific area, the group's existence for at least thirty years, its members comprise at least one-one thousandth of the total Land population, and respect for the law.<sup>33</sup> In practice, this procedure has become a problem for Muslims in Germany (*Körperschaft des öffentlichen Rechts/corporation of public rights*).<sup>34</sup> At least until 2003, no Muslim group had yet received this recognition (KIGST 2003) because the requirements were incomplete. Some organizations had insufficient members. Others failed the "permanency" test, while still, other groups are viewed as unrepresentative or undemocratic.<sup>35</sup>

<sup>28</sup> Luis Hernández Aguilar, *Governing Muslims and Islam in Contemporary Germany: Race, Time, and the German Islam Conference* (Brill, 2018), <https://doi.org/10.1163/9789004362031>.

<sup>29</sup> Riva Kastoryano, “Religion and Incorporation: Islam in France and Germany,” *International Migration Review* 38, no. 3 (2004): 1234–55, <https://doi.org/10.1111/j.1747-7379.2004.tb00234.x>.

<sup>30</sup> J Christopher Soper and Joel S Fetzer, “Explaining the Accommodation of Muslim Religious Practices in France, Britain, and Germany,” *French Politics* 1 (2003): 39–59, <https://doi.org/10.1057/palgrave.fp.8200018>.

<sup>31</sup> Staunton, Denis. “German State Allows Crucifixes in Schools but No Head Scarves.”

<sup>32</sup> “Basic Law for the Federal Republic of Germany.”

<sup>33</sup> Joel S Fetzer and J Christopher Soper, *Muslims and the State in Britain, France, and Germany* (Cambridge University Press, 2005).

<sup>34</sup> Aguilar, *Governing Muslims and Islam in Contemporary Germany: Race, Time, and the German Islam Conference*; Christopher Soper and Fetzer, “Explaining the Accommodation of Muslim Religious Practices in France, Britain, and Germany.”

<sup>35</sup> Fetzer and Soper, *Muslims and the State in Britain, France, and Germany*.

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The lack of status as a public corporation for Muslims has made the position of the Muslim community problematic and, in some respects, controversial. Muslims have become a neglected group in terms of group welfare. Muslims collectively find it difficult or even obstructed to receive financial assistance from the state in the form of social welfare organizations,<sup>36</sup> ranging from funds for education and religious activities in state schools to the construction of places of worship/mosques.<sup>37</sup> Moreover, achieving public corporation status would also represent a symbolic affirmation by the state that Islam has become part of the everyday religious landscape in Germany. Eventually, in 2000, the Federation of Islam in Berlin was recognized as a public corporation after the Muslim struggle for two decades, and became the only Islamic institution recognized as a public corporation (1980-2000).<sup>38</sup>

Despite the issue of status for Muslims in Germany, the German government has provided public facilities for Muslims. For instance, the state has funded some Islamic social welfare and cultural organizations as well as an Islamic school in Berlin. Additionally, in the state of North Rhine-Westphalia, education authorities have mandated the teaching of Islam in religion courses in public schools, and have even written the approved textbook. This decision was made to encourage Muslims to learn more about their faith in public schools and to ensure that the version of Islam they are taught is fully compatible with liberal democracy. On September 27, 2006, the German Ministry of the Interior established the *Deutsche Islam Konferenz*/DIK (German Islam Conference) with the mission of transforming Muslims into German-Muslims. The DIK has addressed issues such as the training of “homegrown” imams, national security concerns related to “Islamist” terrorism, the construction of Mosques on German soil, gender inequality within Muslim communities, the organization of Muslims, and the place of Sharia in the German legal framework.<sup>39</sup>

In the public sphere, discussions about the acceptance of Islam in Germany have also caused controversy. The German public discourse involving state officials is marked by discussions and debates about the acceptance and rejection of Muslims in Germany.

<sup>36</sup> Fetzter and Soper.

<sup>37</sup> Fetzter and Soper.

<sup>38</sup> Kastoryano, “Religion and Incorporation: Islam in France and Germany.”

<sup>39</sup> Aguilar, *Governing Muslims and Islam in Contemporary Germany: Race, Time, and the German Islam Conference*.



Acceptance of Islam can be seen from the statement made by the Minister of the Interior (Wolfgang Schäuble) in 2006: "Islam is part of Germany and part of Europe. It is part of our present and part of our future. Muslims are welcome in Germany." Nine years later, this statement was reinforced by Chancellor Merkel with the statement "These Muslims belong to Germany, and also their religion of Islam belongs to Germany".<sup>40</sup> Meanwhile, the rejection of Islam can be seen from the statement made by Horst Seehofer, the Minister of the Interior in 2018.<sup>41</sup> Seehofer clearly stated at the time that Islam is not part of Germany, "Islam does not belong to Germany. Germany is characterized by Christianity."<sup>42</sup>

Although the institutional recognition of Muslims in Germany is not as strong as that of Christians and Jews, and the German public sphere is marked by the rejection of Muslims, on an individual level, German Muslims receive good protection from the state. The German Constitution broadly protects individuals' rights to exercise their religion freely. Article 4 of the Basic Law states that freedom of faith and conscience as well as freedom of creed, whether religious or ideological are inviolable.<sup>43</sup> In general, Muslims do not report violations of this right. At the individual level, there are no restrictions on Muslims' religious freedom. Loyalty to the state and loyalty to religion can coexist, and the expression of religious themes in the public arena is permitted.<sup>44</sup> The *Grundgesetz* not only protects a person's right to believe but also their right to put those religious beliefs into practice. Article 4 guarantees the undisturbed practice of religion, while Article 140 prohibits the state from restricting one's civil liberties based on the "exercise of religious freedom". The Basic Law even goes so far as to protect the right not to work on Sundays and publicly recognized religious holidays (Article 140) and the right to decline military service based on personal conscience. In various cases, the German Constitutional Court has also recognized this positive notion of religious freedom. However, Muslims are more likely to complain about violations of this expansive understanding of religious liberty.

The above description shows that although there is no discrimination against groups at the legislative level, the Constitution nonetheless provides opportunities for them

<sup>40</sup> Reuters. "Merkel Says Islam 'belongs to Germany' Ahead of Dresden Rally."

<sup>41</sup> BBC News. "Horst Seehofer: Islam Does Not Belong to Germany, Says New Minister."

<sup>42</sup> Simsek, Ayhan. "'Islam Does Not Belong to Germany': Interior Minister."

<sup>43</sup> "Basic Law for the Federal Republic of Germany."

<sup>44</sup> Büchler, *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws*.

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to argue for state recognition of their religious practices.<sup>45</sup> However, the presence of Muslims in Germany has created polemics and controversies. Therefore, it is not surprising that Muslim practices often conflict with German policies in such areas as family law,<sup>46</sup> burial regulations, the slaughter of animals,<sup>47</sup> and public recognition of religious holidays.<sup>48</sup> While Muslims recognize that the Basic Law is rooted in a Christian worldview (Elyas 2001), on a practical level, Muslims in Germany often clash with government policies in several areas due to differences in marriage/family law procedures and substance,<sup>49</sup> burial regulations and the limited Muslim burial areas,<sup>50</sup> the belief that animal slaughter to obtain halal meat is a cruel act towards animals,<sup>51</sup> obstacles in building places of worship/mosques,<sup>52</sup> and the recognition of religious holidays as holidays for Muslims.<sup>53</sup> In the context of the presence of Muslims in Germany, which is colored by pros and cons, the administrative and academic practices of Islamic marriage in Germany show different facts. Both can be practiced without any obstacles, as will be explained in the following section.

## Marriage Administration and Solemnization: Islamic and State Law Coexistence

As minority and immigrant groups, in their daily lives, German Muslims have not only adapted to the majority group but also maintained their identity as Muslims. Mosques have become Religious Social Spaces,<sup>54</sup> centers of Islamic activities in Germany and a meeting

<sup>45</sup> Fetzer and Soper, *Muslims and the State in Britain, France, and Germany*.

<sup>46</sup> Büchler, *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws*; Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Transplantation* (Routledge, 2016), <https://doi.org/10.4324/9781315597072>.

<sup>47</sup> Pablo Lerner and Alfredo Mordechai Rabello, "The Prohibition of Ritual Slaughtering (Kosher Shechita and Halal) and Freedom of Religion of Minorities," *Journal of Law and Religion* 22, no. 1 (2006): 1–62, <https://doi.org/10.1017/S0748081400003210>.

<sup>48</sup> Van der Noll, "Religious Toleration of Muslims in the German Public Sphere."

<sup>49</sup> Büchler, *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws*.

<sup>50</sup> Heine, "Contacts and Conflicts over Worship and Burial in the Kreuzberg District of Berlin."

<sup>51</sup> Brantz, "Stunning Bodies: Animal Slaughter, Judaism, and the Meaning of Humanity in Imperial Germany."

<sup>52</sup> Allievi, *Mosques in Europe: Why a Solution Has Become a Problem*.

<sup>53</sup> Van der Noll, "Religious Toleration of Muslims in the German Public Sphere."

<sup>54</sup> Synnøve Bendixsen, *The Religious Identity of Young Muslim Women in Berlin: An Ethnographic Study* (Brill, 2013), <https://doi.org/10.1163/9789004251311>.

point for German Muslims,<sup>55</sup> while mosque imams have become non-formal leaders of the Muslim community. From here, they can collectively maintain their identity and practice their religious rituals.<sup>56</sup> In addition to mosques, at the individual level, homes have become places where Islamic identity and daily religious practices are carried out,<sup>57</sup> because at a certain level, although the state guarantees individual rights to practice religion,<sup>58</sup> in practice, Muslims face obstacles in expressing their religious practices in public spaces.<sup>59</sup>

This section aims to examine the process and reasons for the interaction between Islamic law and German law in the administration and marriage contracts of Muslim communities in Germany. In this field, the legal relationship between Islamic law and state law is characterized by coexistence and mutual complementarity among Muslims in Göttingen. The relationship between the two is not at all colored by competition or domination. Both laws can run concurrently without conflict between one another. Although they have different rules regarding the conditions and essentials of marriage,<sup>60</sup> because the time and place of implementation can be done at different times and places, these two legal systems can avoid conflict.

An interview with two mosque imams from Egypt and Turkey indicates that the procession and administration of Islamic marriages among Muslims in Göttingen do not experience any problems. Although there are differences in the procedures and rules of marriage between the two legal systems, the application of both legal systems shows coexistence between them and does not indicate any friction/tension between them. Both operate according to their respective roles. Religious law provides legitimacy to the marriage that they conduct, which is considered valid according to religion. Meanwhile, the administration/registration of the marriage they carry out provides legal legitimacy and legal protection/guarantees from the state to them (Amer and Azet). Amer, the imam of the Egyptian mosque, said "As a mosque imam, I often conduct marriage ceremonies in

<sup>55</sup> Thijl Sunier, "The Making of Islamic Authority in Europe," *Imams in Western Europe: Developments, Transformations, and Institutional Challenges*, 2018, 51–69, <https://doi.org/10.1515/9789048540006-005>.

<sup>56</sup> Sunier.

<sup>57</sup> Bendixsen, *The Religious Identity of Young Muslim Women in Berlin: An Ethnographic Study*; Ruth Mandel, "Turkish Headscarves and the " Foreigner Problem": Constructing Difference through Emblems of Identity," *New German Critique*, no. 46 (1989): 27–46, <https://doi.org/10.2307/488313>.

<sup>58</sup> Fetzer and Soper, *Muslims and the State in Britain, France, and Germany*.

<sup>59</sup> Staunton, Denis. "German State Allows Crucifixes in Schools but No Head Scarves."

<sup>60</sup> Fournier, *Muslim Marriage in Western Courts: Lost in Transplantation*.

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this mosque to ensure that the marriage is carried out according to Islamic teachings. After the marriage ceremony in the mosque and a simple celebration, the couple continues the process of registering/administering the marriage at the *rathaus* (City Hall). We do not object to the marriage administration process by the state because the registration of the marriage provides legal protection to German citizens." Similar statements were also made by Azet, the imam of the Turkish community mosque. For the Muslim community in Göttingen, the administration of marriage is an act of obedience to the government to obtain legal protection.

There are two procedures taken to fulfill or implement both legal systems. The Turkish immigrant community first conducts the marriage administration in accordance with state law. The couple visits the local registry office (*Standesamt*) located in the city hall (*Rathaus*) of the city they reside in (Göttingen) and submits all marriage documents (marriage application/*Antrag auf Eheschließung*). After the administrative process is completed, which usually takes two to six weeks, the couple then proceeds to conduct the religious wedding ceremony. Mehmet, a Turkish Muslim, confesses that he came to *standesamt* first before he conducted the marriage solemnization in the mosque. In contrast, the Egyptian Muslim communities choose to conduct the religious marriage ceremony first before registering their marriage with the city hall.

The coexistence between Islamic law and state law in the field of marriage occurs because, in addition to allowing its citizens to carry out their religious rituals, the state law also enables both procedures and legal rules to be carried out in different times and places. The principle of marriage rules in Germany, based on the citizenship status of the marriage partners<sup>61</sup> is one of the key factors that influence the coexistence between both legal systems. This principle allows for the implementation of Islamic law which leads to a compromise between German law and other laws. The difference in time and place in practicing marriage administration and solemnization of marriage also plays an important role that allows both legal systems to operate independently without competing roles between the two legal systems. Therefore, the freedom to choose the time to carry out marriage administration and the wedding ceremony is another factor that contributes to the coexistence between the two legal systems.

<sup>61</sup> Büchler, *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws*.

## The Existence of the Law of Origin Country

Country of origin laws refers to legal systems that apply the laws of a person's country of origin, rather than the laws of the country in which they are currently residing. This concept has gained popularity among Muslim migrant communities in Europe in recent years, as they seek to resolve legal issues according to their own cultural and religious traditions. The use of country of origin laws is seen by many Muslim migrants as a way to maintain their cultural identity and avoid assimilation into the dominant culture of their host country. In some cases, country of origin laws has been used to resolve disputes related to marriage, divorce, inheritance, and other family matters.<sup>62</sup> Some works on immigrants in the West also have shown the issue of dual citizenship and divided allegiance and nationality between the country where the immigrants reside and their country of origin.<sup>63</sup>

More explanation, the process of marriage ceremony and administration among Muslim immigrants in Germany not only shows the coexistence of Islamic law and state law but also indicates the existence of the law of the origin countries, which often serves as a reference and manifests in citizenship issues among immigrants in the West (Europe and America). The difference in marriage administration rules in Muslim-majority countries such as Egypt and Turkey can have an impact on the marriage process for Muslim immigrants in Germany.

The Turkish community that prioritizes registration/administration of marriage before performing the religious marriage ceremony seems unable to detach from the rules of marriage registration in Turkey. Turkish marriage law states that a religious ceremony cannot be performed without presenting a civil marriage certificate, and that a religious marriage ceremony does not affect the validity of the marriage (Article 143 of the Civil Code/Law of Marriage, 2001: "A religious ceremony shall not be performed without

<sup>62</sup> Samia Bano, *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law* (Springer, 2012).

<sup>63</sup> Barry R Chiswick, Anh T Le, and Paul W Miller, "How Immigrants Fare across the Earnings Distribution in Australia and the United States," *ILR Review* 61, no. 3 (2008): 353–73, <https://doi.org/10.1177/001979390806100305>; Jaap Dronkers and Maarten Peter Vink, "Explaining Access to Citizenship in Europe: How Citizenship Policies Affect Naturalization Rates," *European Union Politics* 13, no. 3 (2012): 390–412, <https://doi.org/10.1177/1465116512440510>; Michael Jones-Correa, "Institutional and Contextual Factors in Immigrant Naturalization and Voting," *Citizenship Studies* 5, no. 1 (2001): 41–56, <https://doi.org/10.1080/13621020020025187>.

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showing the civil marriage certificate. Validity of marriage shall not depend on religious ceremony."). Furthermore, the Turkish Criminal Code states that a religious marriage ceremony performed before the marriage registration is considered a criminal act (Article 230 of the Turkish Criminal Code, 2004), not only for the couple performing the marriage ceremony but also for other parties involved in the religious marriage ceremony.

(5) The couples who marry by arranging a religious ceremony without executing official marriage transactions shall be sentenced to imprisonment from two months to six months. Both the public action and the punishment imposed thereby are abated, as are all their consequences, when the civil marriage ceremony is accomplished.

(6) Any person who conducts a religious marriage ceremony without seeing the certificate of marriage shall be punished with imprisonment from two months to six months.

Therefore, the interplay between Islamic law and state law can also reflect the influence of the law of the origin country. The Turkish community in Goettingen tends to prioritize state registration/administration of marriage before the religious ceremony, which may be influenced by the Turkish civil code that requires civil registration of marriage before a religious ceremony can take place. The Turkish criminal code also prohibits religious marriage ceremonies from taking place without civil registration.

Similarly, other studies have shown how immigrants from other countries, such as Morocco and Egypt, may prioritize the religious ceremony before civil registration due to the legal requirements in their countries of origin.<sup>64</sup> The issue of dual citizenship and divided loyalty can also arise in cases where the country of origin has laws that conflict with the laws of the country of residence. For example, some countries may not recognize divorce or may require a specific process for divorce that is not recognized in the country of residence.<sup>65</sup> Overall, the issue of the law of the origin country among Muslim migrants highlights the complexities of navigating multiple legal systems and the challenges of reconciling conflicting laws and values.

<sup>64</sup> Dronkers and Vink, "Explaining Access to Citizenship in Europe: How Citizenship Policies Affect Naturalization Rates."

<sup>65</sup> Chiswick, Le, and Miller, "How Immigrants Fare across the Earnings Distribution in Australia and the United States."

Unlike the marriage administration rules in Turkey, which consider a religious wedding ceremony before marriage registration by the state to be illegal, Egypt applies the opposite rule. According to R. Saham,<sup>66</sup> a religious marriage ceremony before marriage registration is not a crime in Egypt. On the contrary, Egypt provides opportunities for unofficial marriages (customary marriages), including unregistered religious marriages, to be processed into legal marriages through marriage administration (registration) by fulfilling the marriage requirements set by the state, without having to perform a new marriage ceremony. Thus, the timing of the religious wedding ceremony and state marriage registration (in Germany) is not an issue for Muslim immigrants from Egypt. They can have a religious ceremony before or after state registration, and the registration process will still recognize their marriage as legal as long as they fulfill the necessary requirements set by the state.

## Conclusion

The Muslim practice of the administration and solemnization of marriage in Germany, although both legal systems have different substantial and procedural rules, indicates the coexistence of Islamic and state law, which usually happens in a society with legal pluralism that recognizes the coexistence interaction of multiple legal systems within a given society. This coexistence of legal systems indicates the complexity of the situation and the importance of understanding the various factors that contribute to it. The coexistence of both legal systems regarding marriage is influenced by various factors, such as the context, location, timing, and method of implementation of each legal system. Islamic law is known for its adaptable nature and ability to be flexible, which makes it well-suited to be incorporated and negotiated with state law during wedding ceremonies. Additionally, the religious practices of Muslim immigrants reflect the laws of their country of origin, both written and unwritten, which are present in their society.

Islamic law and state law can coexist in the realm of marriage because state law allows individuals to practice their religious customs while providing its own set of procedures and regulations that can be implemented separately and at different times and

<sup>66</sup> Rôn Šaham, *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Sharī'a Courts, 1900-1955*, vol. 3 (Brill, 1997).

locations. This allows both legal systems to function independently without conflicting with one another. Moreover, the option to choose the timing of the marriage registration and the wedding ceremony further facilitates the coexistence of these two legal systems. In addition to the coexistence of these two legal systems, the practice of administering Islamic marriages in Germany also shows the influence of the home country's laws on Muslim immigrants. Transnational family law is an area that deals with legal issues arising from families living across national borders. The Turkish Muslim community, which has been administering marriage registrations before religious ceremonies, cannot be separated from Turkish law which considers religious marriage without registration as a criminal offense. Meanwhile, the Egyptian and Moroccan communities which prioritize religious ceremonies before registering their marriages cannot be separated from the laws of both countries which do not consider religious marriage to be a criminal offense.

The phenomenon of marriage administration of Muslims in Göttingen which indicates the existence of the law of country origin is in line with Bhabha and Schmidt's thesis stating that immigrants may continue to follow the legal traditions and practices of their home country while also adhering to the laws of the host country. In more relevant issues on marriage, divorce, child custody, and inheritance, Eeklaar and Nhlapo argue that the presence of the law of country origin comes to the fore as individuals may need to navigate the legal systems of both their home country and the host country to resolve disputes and ensure that their legal rights are protected.

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