

Harmonising Islamic Law with Gender Equality Principles in Indonesia's Family Law

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Abstract

This study examines the harmonisation of Islamic law with the principle of gender equality in Indonesian family law through the lens of a renewed methodology for interpreting Islamic law that is oriented towards substantive justice. Adopting a normative juridical methodology with a conceptual approach, the study employs qualitative content analysis to examine the interaction between Islamic legal principles, constitutional values, and contemporary human rights norms. The findings demonstrate that the harmonisation of Islamic law and gender equality can be achieved through a reinterpretation of Islamic legal methodology that restores the primary objectives of the *sharī'ah* (*maqāṣid al-sharī'ah*), namely justice, public welfare, the protection of human dignity, and the preservation of the family, as the central foundation of legal reasoning. The study further reveals that Indonesian family law has evolved through a multilevel process of harmonisation involving *sharī'ah* principles, the Indonesian Constitution, and international human rights obligations, thereby producing a dialogic and adaptive model of legal pluralism. Building upon these findings, the study proposes the Progressive Islamic Legal Harmonisation Model (PILHM), a novel conceptual framework founded upon six interrelated pillars: the reinterpretation of *maqāṣid al-sharī'ah*, Indonesian constitutionalism, the principle of non-discrimination, family protection, substantive equality, and sensitivity to Indonesia's socio-cultural context. This model advances contemporary scholarship on the harmonisation of Islamic law by providing a theoretically robust framework for family law reform that preserves the normative identity of Islamic law while ensuring compatibility with constitutional guarantees of gender equality and internationally recognised human rights standards.

Keywords: *Gender equality, Harmonisation of Islamic law, Indonesian family law, Legal pluralism, Maqāṣid al-Sharī'ah*



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INTRODUCTION

The development of Indonesian society, which is becoming increasingly democratic and open and influenced by global developments in human rights law, has spurred calls for the establishment of a family law system that not only guarantees legal certainty but also reflects the value of substantive justice. From this perspective, the principle of gender equality is no longer understood as a concept that conflicts with religious teachings, but rather as part of the effort to realise the protection of human dignity, which is the primary objective of Islamic law (*maqāṣid al-sharī'ah*) (Malik et al., 2025). Various issues such as child marriage, polygamy, divorce, maintenance rights, child custody, the status of husbands and wives within the household, the division of joint property, and women's reproductive rights demonstrate that the implementation of family law still presents a range of normative and empirical challenges (Nisa et al., 2022; Suleman et al., 2023; Yazid et al., 2023). On the one hand, there is a need to preserve the character of Islamic law as a living source of values within Indonesian Muslim society; whilst on the other hand, there is a demand that the national legal system be capable of accommodating the principles of non-discrimination and equality as guaranteed in the Constitution and various human rights instruments.

The Indonesian Constitution explicitly establishes the principle of equality before the law as one of the foundations of the rule of law. Article 27(1) of the 1945 Constitution of the Republic of Indonesia guarantees that every citizen has an equal standing before the law and in government. Furthermore, Article 28D(1) guarantees protection, legal certainty and equal treatment before the law, whilst Article 28I(2) prohibits all forms of discrimination. These constitutional provisions are reinforced by the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through Law No. 7 of 1984, which obliges the state to eliminate various forms of discrimination against women in all spheres of life, including family law.

On the other hand, Islamic law, as a system of norms practised within Indonesian society, is dynamic. The literature on *usul al-fiqh* demonstrates that Islamic law is constructed through the interaction between the text, the context and the objectives of the law (Haerozi et al., 2023; Insani, Sumiyati, et al., 2024). Consequently, many contemporary scholars argue that the provisions of classical fiqh cannot be regarded as definitive norms applicable across all times and places. Still, they must instead be understood in light of the changing social contexts in which they arose. The approaches of *maqāṣid al-sharī'ah*, *maslahah*, *istiḥsān*, *sadd al-ẓarī'ah*, and the theory of legal change due to changing times (*taghayyur al-aḥkām bi taghayyur al-azminah wa al-amkinah*) demonstrate that Islamic law offers ample scope for the reinterpretation of contemporary issues.

Debates regarding gender equality in Indonesian family law are often framed in dichotomous terms, pitting those who uphold classical interpretations against those who advocate for the reinterpretation of Islamic law (Karimullah, Mukhid, et al., 2024). This polarisation means that academic discussions often get bogged down in normative debates over whether a particular provision is right or wrong, without providing a conceptual framework for how harmonisation might be achieved methodologically.

Consequently, the issue of gender equality is frequently perceived as an agenda for legal liberalisation that is deemed to conflict with sharia, whilst others view Islamic law as an obstacle to the protection of women's rights (Arifuddin et al., 2025). In fact, developments in contemporary Islamic legal thought demonstrate that many fundamental principles of sharia are oriented towards the protection of human dignity, justice, the public good, and the elimination of harm; thus, conceptually, they share common ground with the principles of gender equality that have emerged in modern law.

Changes to national regulations indicate a trend towards such harmonisation. One of the most striking examples is the change to the minimum age of marriage under Law No. 16 of 2019, which sets the minimum age for both men and women at 19 years. This change arose in response to Constitutional Court Ruling No. 22/PUU-XV/2017, which found that the previous provisions constituted discrimination. This reform demonstrates that the development of Indonesian family law is moving towards the protection of children's rights and gender equality without automatically eliminating the character of Islamic law as one of its sources (Karimullah & Sugitanata, 2024). However, these changes have not yet fully resolved various other issues, such as the practice of marriage dispensations, polygamy, the division of domestic roles, women's economic rights following divorce, or judges' interpretations in the resolution of family disputes (Wiranti et al., 2025).

In the practice of religious courts, developments in judicial rulings also reveal a dynamic interpretation of family law principles. Various rulings are beginning to demonstrate the use of arguments based on substantive justice, the protection of women, the best interests of the child, and the *maqāṣid al-sharī'ah* approach in resolving family disputes (Butt, 2018; Fattah et al., 2025). This phenomenon indicates that legal practice has evolved more progressively than the normative constructs in some regulations. However, this development has not yet been accompanied by a theoretical framework that systematically explains how to harmonise Islamic law with the principle of gender equality within the national family law system. Consequently, there remain disparities in rulings, inconsistencies in the application of norms, and a lack of uniformity in judicial practice (Ayu et al., 2026).

Academic research on Islamic family law and gender equality has advanced rapidly. Various studies have examined family law reform in Muslim countries through the lenses of comparative law, *maqāṣid al-sharī'ah*, Islamic feminism, constitutionalism, and human rights approaches (Fadhilah et al., 2025; Lenggono, 2025). These studies generally indicate that family law reform is inevitable as a consequence of social change and increasing demands for the protection of human rights. Studies on Indonesia have also examined the dynamics of the formulation of the Compilation of Islamic Law, amendments to the Marriage Act, the strengthening of the role of the Constitutional Court, and developments in the jurisprudence of religious courts in providing protection for women and children (Parhi et al., 2025; Rifa'i et al., 2026). The findings of these studies make a significant contribution to clarifying the direction of Indonesian

family law reform towards a legal system that is more responsive to societal developments.

Several other studies have placed greater emphasis on criticising family law norms that are still considered to be gender-biased. The focus of the studies is generally directed at issues such as polygamy, maintenance obligations, the division of roles between husband and wife, inheritance rights, divorce, marriage dispensations, and domestic violence (Karimullah, 2024; Kurniawan et al., 2025; Sugitanata et al., 2024). These studies have successfully identified various forms of gender inequality that still arise in the implementation of family law. However, the majority of studies have emphasised an evaluative approach to the substance of the norms without developing a conceptual model regarding the mechanisms for harmonising the principles of Islamic law with the principle of gender equality. Consequently, the resulting recommendations often stop at proposals for regulatory changes without providing an epistemological foundation for how the reinterpretation of Islamic law can be carried out correctly, in accordance with the methodology of Islamic law itself.

Other studies have attempted to integrate the *maqāṣid al-sharī'ah* approach with a human rights perspective as the basis for family law reform (Esposito, 1976; Mahmood, 1972). This approach demonstrates that the protection of women's rights is, in fact, among the objectives of sharia in safeguarding religion, life, reason, lineage, and property. Nevertheless, these studies are largely conceptual and have not yet explained how the relationship among the principles of *maqāṣid*, gender equality theory, the principles of legislative drafting, and judicial practice can be formulated within a single comprehensive framework of harmonisation.

Studies on Islamic feminism have also made a significant contribution to encouraging the reinterpretation of religious texts that have long been regarded as perpetuating the subordination of women (Millati et al., 2025; Nazar et al., 2026). This approach emphasises that gender bias stems more from socio-historical processes of interpretation than from the teachings of Islam itself. Nevertheless, the Islamic feminist approach is often criticised for not yet being fully capable of bridging the needs of the national legal system, which requires legal certainty through formal regulation.

Based on developments in the literature, several research gaps remain inadequately addressed. Firstly, previous studies have tended to examine the relationship between Islamic law and gender equality in a fragmented manner, whether from a normative, human rights or Islamic feminist perspective, without establishing an integrative framework for harmonisation. Secondly, the majority of studies remain focused on evaluating the substance of specific regulations and have therefore not developed a theoretical framework capable of explaining the relationship between *maqāṣid al-sharī'ah*, the theory of gender equality, the principle of the rule of law, and the practice of national law-making (Siregar et al., 2026).

Thirdly, studies on Indonesian family law generally still treat Islamic law and the principle of gender equality as two opposing paradigms, rather than as two value systems that can be reconciled through a legal harmonisation approach. Fourthly, there are still few studies that link legislative dynamics, developments in court rulings, and

the transformation of the methodology of *ijtihad* as a unified analytical framework to explain the direction of reform in Indonesian family law. These gaps indicate that, to date, there is no conceptual model that comprehensively explains how the harmonisation of Islamic law with the principle of gender equality can be realised within the Indonesian family law system, both theoretically and practically.

Building on this research gap, this study was developed to present a more integrative perspective on understanding the relationship between Islamic law and the principle of gender equality. This study does not position these two concepts as two opposing poles, but rather as a system of values that can be harmoniously constructed through the *maqāṣid al-sharī'ah* approach, legal harmonisation theory, the principles of a democratic rule of law, and developments in judicial practice and national legislation. This study aims to conduct an in-depth analysis of the harmonisation of Islamic law with the principle of gender equality in Indonesian family law, using an approach that integrates perspectives from Islamic law, gender equality theory, national law, and developments in judicial practice. The significance of this study lies in its contribution to the development of contemporary Islamic legal harmonisation theory, the conceptual strengthening of national family law reform, and the provision of academic recommendations that can serve as a foundation for legislators, judges, academics and legal practitioners in building an Indonesian family law system that is more just, inclusive and responsive to societal developments, whilst remaining rooted in Islamic values as an integral part of the national legal system.

METHODS

This study employs a normative legal approach with a conceptual-prescriptive design, combined to a limited extent with comparative and case-based approaches, to analyse the harmonisation of Islamic law with the principle of gender equality in family law in Indonesia. The choice of these approaches is based on the study's objective, which is not only to identify the compatibility of positive legal norms with the principles of Islamic law and gender equality, but also to formulate a framework for harmonisation that bridges the values of Sharia, the constitution, and human rights. The study focuses on Islamic family law norms as found in legislation, Islamic legal doctrine and court rulings, with the principle of gender equality serving as the parameter for analysing harmonisation. The research data consists of primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1974 as amended by Law No. 16 of 2019, the Compilation of Islamic Law, rulings of the Constitutional Court and the Supreme Court, as well as human rights instruments ratified by Indonesia.

Secondary legal materials comprise books, reputable academic articles, research findings and expert opinions; whilst tertiary legal materials serve to support conceptual interpretation. Data collection was carried out through a systematic literature review utilising techniques for searching, selecting, classifying, and critically evaluating relevant legal sources, whilst the validity of the data was ensured through source triangulation, analysis of the consistency of legal norms, and systematic, historical, teleological, and comparative interpretation (Chigbu et al., 2023). Subsequently, the

data were analysed qualitatively using content analysis and prescriptive legal analysis, integrating the perspectives of *maqāṣid al-sharī'ah*, the theory of legal harmonisation, the theory of gender equality, and the theory of progressive law to produce a conceptual framework capable of explaining the model of harmonising Islamic law with the principle of gender equality within the Indonesian family law system in a comprehensive, consistent and practical manner.

RESULTS AND DISCUSSION

A Reinterpretation of the Concept of Justice in Islamic Law

The distinction between sharia and fiqh is a crucial starting point for establishing a paradigm for harmonising Islamic law with the principle of gender equality. Sharia is understood as a universal divine value oriented towards justice, the public good, and the protection of human dignity, whilst fiqh is the product of human reasoning regarding the sources of sharia, which are historical, contextual, and open to change (Z. Ibrahim et al., 2025). When the construction of fiqh is equated with sharia, any criticism of the results of ijtihad is perceived as a criticism of the religion itself. Conversely, if fiqh is understood as an epistemological product arising from a process of interpretation, then the scope for legal reform is opened up without diminishing the normative authority of the Qur'an and the Sunnah. This distinction has highly significant methodological implications, as it enables the evaluation of family law doctrines developed within the classical tradition in light of the fundamental objectives of sharia (*maqāṣid al-sharī'ah*), rather than solely on the textual formulations established by jurists of the past.

In the context of Indonesian family law, most of the provisions that are frequently debated, relating to family leadership (*qiwāmah*), polygamy, the right to divorce, the distribution of rights and obligations between husband and wife, guardianship, and inheritance, actually represent the legal constructions of specific schools of jurisprudence rather than a direct representation of the universal principles of Sharia (Karimullah, 2021; Sugitanata & Karimullah, 2023). The dominance of a textual approach to these provisions has led to Islamic law often being understood as a system that establishes hierarchical relationships between men and women. In fact, upon closer examination, the Qur'an consistently places justice (*al-'adl*), the public interest (*al-maṣlahah*), compassion (*rahmah*), the equal dignity of human beings (*karāmah al-insān*), and moral responsibility at the very foundation of social relations.

The fundamental problem with the classical fiqh paradigm does not lie in the existence of norms that distinguish between men and women, but rather in the tendency to interpret these differences as permanent legal categories without taking into account the underlying changes in social structure. At the time of the formation of classical fiqh, Muslim societies lived within a social system vastly different from that of contemporary societies. The economic structure was dominated by men as the primary breadwinners; social protection systems were underdeveloped; women's access to education was relatively limited; and family relationships were built upon strong patterns of patronage (Suwarni et al., 2024). Under such conditions, many legal provisions were

designed to ensure social stability in light of prevailing empirical realities. However, when those realities undergo fundamental transformation, maintaining legal formulations without evaluating their social rationality risks producing injustices that run counter to the very objectives of sharia itself.

It is here that the concept of formal equality reveals its limitations. Within the formal paradigm, justice is understood as the uniform application of norms to every individual, without regard to changes in the social context or the substantive consequences they entail. This approach assumes that justice has been achieved if the law is applied consistently in accordance with the letter of the text. In reality, the application of the same norms does not always result in equal protection of rights, as the social circumstances of each individual differ (Sakinah et al., 2026). Consequently, the development of modern theories of justice has moved towards the concept of 'substantive equality', which is no longer oriented solely towards equal treatment, but towards the achievement of genuine justice through recognition of social conditions, power relations, and the proportional distribution of rights and obligations. This paradigm shift is highly relevant to the development of contemporary Islamic legal methodology, which places the public interest (*maṣlaḥah*) at the centre of law-making.

The concept of substantive gender justice, in essence, shares very close epistemological overlaps with the *maqāṣid al-sharī'ah* (Fathony et al., 2024). In *maqāṣid* theory, the validity of a legal provision is measured not only by its conformity with the text, but also by its ability to ensure the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), reason (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*) and property (*ḥifẓ al-māl*); and, in contemporary developments, has been extended to include the protection of human dignity (*ḥifẓ al-karāmah*) and fundamental human rights. This approach demonstrates that justice does not stop at procedural compliance with norms, but must yield tangible social benefits. Therefore, if the application of a particular fiqh provision in a specific context undermines the public interest, perpetuates discrimination, or demeans human dignity, then, methodologically, there is scope to reinterpret the basis of its argument without altering the fundamental principles of sharia. Various recent studies reveal a growing trend towards positioning *maqāṣid* as a bridge between Islamic law and the principle of gender equality.

This development marks a shift in orientation from a legalistic approach towards a teleological approach in Islamic law. Whilst the legalistic paradigm centres on compliance with established legal formulations, the teleological approach places the objectives of the law at the heart of interpreting every normative provision. Scholars such as Jasser Auda (2022a, 2022b) have developed a systems approach that positions *maqāṣid* as a multidimensional framework, so that Islamic law is no longer understood in a linear, textual manner but rather as an open system capable of interacting with developments in science, human rights, and social change. Through this approach, gender justice is not positioned as an external value imposed upon Islamic law, but as a manifestation of the objectives of sharia in safeguarding the public interest, balance, and respect for the dignity of all human beings.

In addition to *maqāṣid*, the concept of relational justice offers a perspective that enriches our understanding of the relationship between men and women within Islamic family law. Unlike the individualistic paradigm, which emphasises only formal equality of rights, relational justice views justice as a quality of social relationships built upon the principles of mutual respect, reciprocal responsibility, cooperation, and the proportional distribution of obligations in accordance with the actual circumstances of the parties involved. From this perspective, the relationship between husband and wife is no longer understood as one of superiority and subordination, but as an ethical partnership oriented towards the welfare of the family. Such an approach is more in keeping with the spirit of the Qur'an, which describes the relationship between husband and wife as *libās* (mutual protection), *mawaddah*, and *rahmah*, rather than the hierarchical construct that has developed in some classical fiqh literature.

The concept of relational justice also explains that the division of rights and obligations within the family need not always be identical to be considered fair. The primary measure is not mathematical equality, but rather a balance of responsibilities based on the capabilities, needs, and specific circumstances of each family member. Thus, when a woman acts as the primary breadwinner or a man assumes a greater domestic role, such changes cannot be regarded as a deviation from sharia so long as they continue to embody the principles of justice, responsibility, and the welfare of the family. This perspective demonstrates that flexibility within Islamic law is in fact already provided for through a purpose-oriented methodology of *ijtihad*, rather than through alterations to the religion's fundamental principles (Sutisna et al., 2025).

This approach is further reinforced by developments in contextual hermeneutics within the study of Islamic law. Contextual hermeneutics rejects a literal reading that separates the text from the context of its revelation or its application (Shahryari, 2025). Instead, this approach seeks to understand the relationship between the normative meaning of the Qur'an, the social reality at the time of revelation, and the changing conditions of contemporary society. Using this method, verses concerning gender relations are understood not only on linguistic grounds but also in light of the ethical objectives they seek to realise. The interpretation of the concept of *qiwāmah*, for example, is no longer understood as legitimising male superiority but rather as a form of social responsibility that, at a particular time, was linked to the family's economic structure. As economic structures change and family responsibilities become more collective in nature, the operational meaning of *qiwāmah* also transforms without losing the principle of responsibility that lies at the heart of this teaching (Karimullah, Basuki, et al., 2024). It is this hermeneutic approach that enables Islamic law to maintain normative continuity whilst retaining the capacity to adapt to the dynamics of modern society.

The reinterpretation of the concept of justice in Islamic law cannot be understood as an attempt to replace sharia with modern standards of equality, but rather as a process of realigning the law with the authentic objectives of sharia, which the dominance of historical fiqh interpretations has often obscured. The shift from formal equality towards substantive gender justice demonstrates that the primary measure of justice is no longer uniformity of treatment based on classical legal formulations, but

rather the law's ability to realise the protection of human dignity, the public interest, and a balanced social order in accordance with the objectives of sharia. This perspective also reaffirms that harmonising Islamic law with the principles of gender equality does not require a dichotomy between religion and human rights. Rather, it necessitates a transformation of the methodology of Islamic legal interpretation, oriented towards *maqāṣid al-sharī'ah*, relational justice, and contextual hermeneutics as the primary epistemological instruments in the reform of Indonesian family law.

Multilevel Harmonisation between Islamic Law, the Indonesian Constitution, and International Human Rights Standards

Indonesian family law is one of the most tangible manifestations of legal pluralism within the national legal system (Anggraeni, 2023). Unlike many countries that adhere to a unitary legal system, the construction of Indonesian family law is shaped through a dynamic interaction between three mutually influential layers of norms: the principles of sharia as a source of religious values. The Constitution and national legislation as sources of state legitimacy, and the international human rights regime to which Indonesia is bound through various ratified legal instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

These three layers of norms do not exist in a hierarchical or competitive relationship, but rather form a space for normative dialogue that continuously generates processes of legal adaptation, reinterpretation and harmonisation. Consequently, an analysis of Indonesian family law is no longer adequate if it focuses solely on the Compilation of Islamic Law (KHI) or on the normative conflict between Islamic law and CEDAW. Rather, it must explain how the state constructs legal rationalities for legal harmonisation that preserve the identity of Islamic law whilst fulfilling constitutional and international obligations to guarantee the protection of human rights. This multilevel perspective simultaneously positions Indonesia as a laboratory of legal pluralism, offering a model of harmonisation that is relatively unique compared to other Muslim countries.

At the first level, the principles of sharia serve as the ethical and philosophical foundation for the formation of national family law. The status of sharia within the Indonesian legal system is not understood as religious law applied literally, but rather as a source of values internalised into various statutory provisions through the national legislative process (Wahyunisa et al., 2026). Consequently, Indonesian family law is not identical to the products of classical fiqh. Still, it is the result of transforming Sharia values into the framework of a constitutional state governed by the rule of law (Saputra & Sukriyani, 2025). The distinction between Sharia and fiqh is of paramount importance because Sharia represents universal objectives such as justice (*al-'adl*), the public interest (*al-maṣlaḥah*), the protection of human dignity (*karāmah al-insān*), and the balance between rights and obligations, whilst fiqh is the result of the *ijtihad* of scholars arising within a specific social context.

This approach demonstrates that the legitimacy of Islamic law within the national legal system no longer rests on the textual reproduction of classical norms, but on its ability to realise the objectives of sharia within an ever-changing social context. The *maqāṣid al-sharī'ah* approach serves as a methodological instrument enabling this transformation, as its focus lies on the protection of religion, life, reason, lineage and property; and, in contemporary thought, has been expanded to encompass the protection of human dignity, freedom and fundamental human rights (Sianipar et al., 2025). From this perspective, the protection of women, children and vulnerable groups is not viewed as the adoption of external values from the international human rights system, but rather as the direct implementation of the objectives of sharia, which places substantive justice as the primary orientation for the formulation of law (Karimullah, 2023; Karimullah, Ruchiat Nugraha, et al., 2023).

The second layer comprises the Constitution and the national legal system, which provide the normative framework for the formulation of Indonesian family law. The Constitution serves not only as the source of formal legitimacy for all legislation but also as an instrument for integrating religious values, democracy, and the protection of human rights. Articles 27(1), 28D(1), 28B, and 28I(2) of the 1945 Constitution of the Republic of Indonesia affirm the principles of equality before the law, protection of the family, the guarantee of fair legal certainty, and the prohibition of discrimination. At the same time, Article 29(1) and (2) recognise religious values as an integral part of national and state life. This constitutional framework demonstrates that the Indonesian legal system is not built upon a secular paradigm that separates religion from state law, nor does it adhere to a theocratic model that places religious law above the constitution. Rather, the Constitution creates a space for dialogue between various normative systems through the principle of a democratic rule of law, which guarantees respect for religion whilst safeguarding the constitutional rights of all citizens.

This constitutional framework is subsequently reflected in various national regulations, notably Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019; the Compilation of Islamic Law; the Law on Child Protection; and other sectoral regulations. The change in the minimum age of marriage to nineteen years for both men and women is a very clear illustration of how the process of multilevel harmonisation takes place in practice (Karimullah, Nugraha, et al., 2023). This change was driven not only by demands for gender equality but also by the protection of children's rights, advances in scientific knowledge about reproductive health, and the need to foster higher-quality families.

The evolving role of the Constitutional Court has further strengthened this character of harmonisation. In its various rulings, the Constitutional Court does not treat Islamic law and human rights principles as mutually conflicting regimes, but rather engages in constitutional interpretation to maintain a balance among religious values, the protection of the family, and respect for individual rights. The Court's approach demonstrates that the concept of equality in family law is not understood as a formal equivalence that erases all differences in the roles of men and women, but rather as a relationship of complementary rights and obligations, provided that this

does not result in discrimination or the deprivation of the constitutional rights of either party.

The third layer comprises Indonesia's international obligations as a State Party to various human rights instruments, in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was ratified through Act No. 7 of 1984. This ratification entails that the State is obliged to eliminate all forms of discrimination against women in various spheres of life, including within family law (Karimullah & Aliyah, 2023). However, these obligations cannot be interpreted simplistically as a requirement to adopt the entire Western concept of family law into the national legal system. On the contrary, the approach that has developed in both legislative and judicial practice in Indonesia indicates that the implementation of CEDAW is carried out through a process of constitutional and cultural adaptation, so that the principles of non-discrimination are integrated with the religious values that are alive within society.

From this perspective, the relationship between Islamic law and CEDAW is no longer understood as a binary opposition, as is often found in earlier literature. The conflict that has long been perceived between the two essentially stems more from interpretations of classical fiqh formulations constructed within patriarchal societies than from the universal principles of sharia. When Sharia is understood through the *maqāṣid* approach, contextual hermeneutics and the theory of relational justice, values such as respect for human dignity, protection of the family, reciprocity (*mubāḍalah*), shared responsibility, and substantive justice demonstrate a high degree of compatibility with CEDAW's primary objective of eliminating discrimination against women.

Indonesian family law has evolved through a mechanism of dialogue between legal regimes (inter-legality), which is a defining feature of modern legal pluralism. The state does not impose a single system of norms to the exclusion of others, but rather builds mechanisms of integration through legislation, court rulings, and public policy. Within this framework, sharia provides moral and ethical legitimacy, the Constitution provides democratic legitimacy and legal certainty, whilst international human rights instruments provide universal standards of protection that enrich the process of national law-making (Hayatullah et al., 2026). These three layers interact dynamically, resulting in a model of harmonisation that is neither assimilationist nor subordinative, but rather dialogical and adaptive to societal developments.

This dialogical character demonstrates that Indonesia's legal pluralism is not synonymous with the fragmentation of norms, but rather constitutes a form of cooperative legal pluralism that enables various legal systems to complement one another (Hariri & Babussalam, 2024). In the context of family law, Islamic law is not treated as an exception to the constitution or the international human rights regime, but rather as one of the sources of substantive legitimacy that must be interpreted in context through contemporary *ijtihad* methodology. Conversely, the principles of international human rights are not treated as external standards imposed upon Muslim societies but as universal values embedded in the objectives of sharia. Such a model provides scope

for the formation of law that possesses social, constitutional and international legitimacy without losing its national character.

Multilevel harmonisation between sharia, the constitution and international human rights standards is not merely a process of synchronising norms, but rather an epistemological integration that builds mutually reinforcing relationships amongst these three layers of law. The conceptual novelty of this study lies in positioning Indonesia as a laboratory for legal pluralism, demonstrating that the harmonisation of family law is not achieved through the subordination of one legal system to another, but rather through a transformation of the methodology of Islamic legal interpretation so that it is capable of engaging in constructive dialogue with the constitution and the international human rights regime. Thus, the identity of Islamic law is maintained as the ethical foundation for the formation of national family law, whilst constitutional principles and international obligations serve as instruments to ensure that the implementation of sharia values genuinely realises substantive justice, the protection of human dignity, and gender equality in contemporary Indonesian society.

A Model for the Reform of Indonesian Family Law Based on Progressive Islamic Legal Harmonisation

The transformation of family law in Indonesia is entering a phase that demands a more fundamental paradigm shift than merely revising specific norms in the Compilation of Islamic Law (KHI) or the Marriage Act. For several decades, family law reform has been directed primarily at refining normative provisions deemed no longer aligned with societal developments, such as raising the minimum age for marriage, strengthening protections for women and children, and streamlining divorce procedures (Kobko-Odarii et al., 2025). Although these changes have made a significant contribution to enhancing legal protection, the approach taken remains sectoral and piecemeal, as it is oriented towards resolving specific normative issues rather than establishing a conceptual framework that articulates the overall direction of family law reform in Indonesia. Consequently, developments in legislation, court rulings, and the renewal of Islamic legal thought are proceeding simultaneously but have not yet been fully integrated into a harmonisation model that could serve as a reference for future legal formulation.

In the Indonesian context, the need for such a model is becoming increasingly urgent because the character of its legal system is not built on a single source of norms but rather on the interaction among sharia, national law, customary law, and the state's international obligations. Family law reform that relies solely on a positivist approach risks undermining social legitimacy by disregarding the religious dimension that forms part of the community's identity (Ikhsan et al., 2025). Conversely, reforms oriented solely towards the reproduction of classical fiqh are no longer adequate, as they fail to fully address changes in family structure, the increasing participation of women in the public sphere, transformations in household economics, technological developments, or the growing public awareness of constitutional rights (Insani, Ibrahim, et al., 2024).

In light of these needs, this study proposes the Progressive Islamic Legal Harmonisation Model as a conceptual framework for reforming Indonesian family law, oriented towards the progressive harmonisation of Sharia values, Indonesian constitutionalism, and developments in modern law (Al Hamid et al., 2025). This model is not intended to replace the existing legal system, but rather to provide a methodological framework for legislators, judges, academics and legal practitioners to systematically reinterpret family law norms. The use of the term 'progressive' in this model does not refer to a departure of Islamic law from its normative sources, but rather to the capacity of Islamic law to continue to evolve through the mechanism of *ijtihad*, thereby remaining relevant to social change without losing its theological legitimacy (Insani et al., 2023; Muhajir et al., 2023).

This model is built upon six main, interrelated pillars that form a multidimensional system of legal harmonisation. The first pillar is the reinterpretation of *maqāṣid al-sharī'ah* as the epistemological foundation of family law reform. In the classical paradigm, *maqāṣid* is often positioned as a supplementary instrument in the process of *istinbāt* (derivation) of law. However, developments in contemporary Islamic legal thought have positioned *maqāṣid* as the primary paradigm for understanding the relationship between the text, social reality and the objectives of sharia (Azwarfajri et al., 2025). This shift enables family law to no longer be constrained by historical fiqh formulations, but rather to be directed towards achieving the objectives of sharia: justice, the public interest, the protection of human dignity and balance within family relationships.

The second pillar is Indonesian constitutionalism as a mechanism for integrating religious values with the principles of a democratic state governed by the rule of law. Reform of family law cannot be separated from the constitution's role as the fundamental norm that governs the entire process of legislative drafting. Therefore, any reinterpretation of Islamic law must be understood within the framework of protecting citizens' constitutional rights, upholding the principle of equality before the law, protecting the family, respecting religion, and prohibiting discrimination, as guaranteed by the 1945 Constitution of the Republic of Indonesia. From this perspective, the Constitution is not understood as an instrument for the secularisation of Islamic law, but rather as a normative space that allows Sharia values to be implemented through national legal mechanisms in a democratic and accountable manner. Indonesian constitutionalism simultaneously ensures that family law possesses dual legitimacy: religious legitimacy through Islamic values and constitutional legitimacy through the state's law-making mechanisms.

The third pillar is the principle of non-discrimination, used to evaluate all family law norms. This principle is not intended to eliminate all differences between men and women, but to ensure that any distinction has a rational and proportionate basis and does not deprive either party of their fundamental rights. Consequently, the evaluation of family law norms is no longer based on the mere presence or absence of differential treatment, but rather on whether such differences remain relevant to the objectives of sharia and the development of society. This approach aligns with developments in the

theory of substantive equality, which defines justice as the law's capacity to provide tangible protection for all family members, rather than merely ensuring identical treatment. Consequently, the principle of non-discrimination in this model is understood as an instrument for harmonising the *maqāṣid al-sharī'ah* with Indonesia's international obligations to eliminate discrimination against women, without necessitating the elimination of Islamic legal identity.

The fourth pillar is family protection as the primary orientation for the formulation of family law. Until now, much of the discourse on gender equality has often been perceived as focusing solely on the protection of individual rights, and is thus considered to have the potential to undermine the family's function as a social institution. The model proposed in this study, however, positions the family as the primary subject of legal protection. All reforms to legal norms are directed towards strengthening family stability, improving the quality of relationships between family members, ensuring the best interests of the child, and creating a fairer distribution of rights and obligations.

The fifth pillar is substantive equality as a new paradigm of justice in family law. Unlike the formal approach, which identifies justice through equal treatment, substantive equality recognises that the social, economic and cultural conditions of each individual differ (Karimullah, Efendi, et al., 2023). Therefore, the law must be capable of providing equal protection through adaptive mechanisms. Within the context of Islamic law, this paradigm aligns very closely with the principles of *al-'adl*, *al-maṣlahah*, and *raf' al-ḥaraj*, which have from the outset been the primary guiding principles of sharia (Z. S. Ibrahim et al., 2024). Consequently, the division of rights and obligations between husband and wife is no longer understood as a permanent hierarchical structure, but rather as a distribution of responsibilities that can evolve in line with changes in family circumstances, whilst upholding the principles of justice, responsibility and public interest. This approach demonstrates that substantive equality is not a concept imported from outside the Islamic legal system, but rather a contemporary realisation of the fundamental objectives of sharia itself.

The sixth pillar is sensitivity to Indonesia's socio-cultural context. Family law reform cannot be achieved by transplanting norms from other countries or by uncritically reproducing classical fiqh. Indonesia is characterised by a pluralistic, multicultural society comprising various local legal traditions that have long coexisted alongside Islamic law. Therefore, any harmonisation process must take into account the social conditions of society, the economic structure of the family, developments in education, changing gender roles, and the cultural diversity that forms part of the national identity. Sensitivity to this context ensures that legal reform not only possesses normative legitimacy but also gains social acceptance, a key prerequisite for the law's effectiveness. From the perspective of legal pluralism, this approach demonstrates that the success of reform is not determined by the degree of uniformity in norms, but rather by its ability to foster dialogue among the various value systems within society.

These six pillars do not operate in isolation, but rather form a progressive system of harmonisation in which they mutually reinforce one another. The reinterpretation of

maqāṣid provides the epistemological foundation; constitutionalism provides legal legitimacy; the principle of non-discrimination serves as an evaluation parameter; the protection of the family determines policy orientation; substantive equality serves as the paradigm of justice; whilst socio-cultural sensitivity ensures that the implementation of the law remains contextual. It is this integration of the pillars that distinguishes the Progressive Islamic Legal Harmonisation Model from previous reform approaches, which generally focused solely on a single dimension, be it the religious dimension, human rights, or national legislation. Consequently, this model does not merely offer recommendations for changes to family law norms but presents a legal reform framework that can serve as a conceptual foundation for the sustainable formulation, interpretation, and development of Indonesian family law within an increasingly pluralistic, democratic, and dynamic society.

CONCLUSION

The harmonisation of Islamic law with the principle of gender equality in Indonesian family law should not be understood as a process of compromise between Sharia and human rights, but rather as a transformation in the methodology of interpreting Islamic law that realigns it with the fundamental objectives of sharia, namely justice, the public interest, the protection of human dignity, and the sustainability of the institution of the family. Analysis suggests that the perceived tension stems more from the historical nature of classical fiqh than from the universal values of sharia itself; therefore, a reinterpretation grounded in *maqāṣid al-sharī'ah*, relational justice, contextual hermeneutics, Indonesian constitutionalism, and the principle of substantive equality provides a foundation enabling multilevel harmonisation between Islamic law, the constitution, and the international human rights regime without eroding the identity of Islamic law (Beddu et al., 2024).

This research makes an academic contribution through the development of the progressive Islamic law harmonisation model as a conceptual framework for the reform of Indonesian family law, which integrates six key pillars: the reinterpretation of *maqāṣid al-sharī'ah*, Indonesian constitutionalism, the principle of non-discrimination, family protection, substantive equality, and sensitivity to the socio-cultural context, thereby expanding the literature, which to date has tended to stop at normative analysis, towards the formulation of a more systematic, practical and contextual framework for legal reform. This model has theoretical implications, namely strengthening the paradigm of legal pluralism and renewing the methodology of contemporary Islamic law. Its practical implications serve as a guide for judges, legislators and legal practitioners in interpreting and formulating family law that is more responsive to societal dynamics, whilst its policy implications provide a conceptual foundation for the reformulation of the sharia code and the development of family legislation in line with the constitution and Indonesia's international obligations. Nevertheless, this research remains limited to a normative legal approach and has therefore not yet empirically explored the implementation of the harmonisation model in judicial practice, institutional behaviour, or social dynamics across regions with differing

cultural characteristics. Consequently, future research should develop socio-legal studies, cross-national comparative studies in Muslim countries, and empirical studies based on court rulings to test the effectiveness of the proposed model.

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