

## Qawā'id Fiqhiyyah and Legal Pluralism: Reconstructing Islamic Family Law toward Gender Equality in Indonesia

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### Abstract

*The relationship between Islamic family law and national law in Indonesia is still an important legal issue, especially in the areas of marriage, inheritance, child custody, and family rights. However, existing studies tend to focus on formal legal reform and legal pluralism without providing a systematic analytical framework for harmonization that is explicitly based on Qawā'id Fiqhiyyah and oriented towards gender equality. This research fills this gap by formulating and applying an analytical framework based on Qawā'id Fiqhiyyah to examine how key legal principles can be used to resolve the normative conflict between Islamic family law and Indonesian national law while promoting gender justice. This study uses a qualitative research design with a comparative-analytical approach through document analysis of classical and contemporary Islamic legal sources, Indonesian laws and regulations, important court decisions, and scientific works that have gone through a peer review process, using iterative coding and thematic comparison. This study centers on the basic principles of justice ('adl), benefit (maṣlaḥah), prevention of harm (dar' al-mafāsīd), and custom ('urf), which are operationalized as criteria for assessing legal provisions and patterns of interpretation. The findings of the study show, first, that Qawā'id Fiqhiyyah facilitates a contextual reinterpretation of family law rules so that provisions on marriage guardianship, alimony, and divorce can be harmonized with constitutional guarantees of equality; second, that the principles of maṣlaḥah and the prevention of harm provide a principled basis for courts to prioritize protection from violence and discrimination in childcare and inheritance disputes; and third, that the recognition of the legitimate 'urf opens up space for the integration of Indonesian socio-legal realities into Islamic legal reasoning without abandoning its doctrinal foundation. Theoretically, this study makes a contribution to formulating Qawā'id Fiqhiyyah not only as a technical rule of fiqh, but as a normative-analytical framework for the harmonization of rights-based law between Islamic family law and national law in the context of modern countries with Muslim populations.*

**Keywords:** *Qawā'id Fiqhiyyah; Islamic Family Law; Legal Pluralism; Legal Harmonization; Islamic Legal Reform.*

### Abstrak

Hubungan antara hukum keluarga Islam dan hukum nasional di Indonesia masih menjadi persoalan hukum yang penting, khususnya dalam bidang perkawinan, kewarisan, pengasuhan anak, dan hak-hak keluarga. Namun, studi-studi yang ada cenderung berfokus pada reformasi hukum secara formal dan pluralisme hukum tanpa menyediakan kerangka analitis yang sistematis untuk harmonisasi yang secara eksplisit berbasis pada Qawā'id Fiqhiyyah dan berorientasi pada kesetaraan gender. Penelitian ini mengisi kekosongan tersebut dengan merumuskan dan menerapkan suatu kerangka analitis berbasis Qawā'id Fiqhiyyah untuk mengkaji bagaimana kaidah-kaidah hukum kunci dapat digunakan untuk menyelesaikan pertentangan normatif antara hukum keluarga Islam dan hukum nasional Indonesia sekaligus mendorong keadilan gender.



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Penelitian ini menggunakan desain penelitian kualitatif dengan pendekatan komparatif-analitis melalui analisis dokumen terhadap sumber-sumber hukum Islam klasik dan kontemporer, peraturan perundang-undangan Indonesia, putusan-putusan pengadilan yang penting, serta karya-karya ilmiah yang telah melalui proses telaah sejawat, dengan menggunakan pengkodean berulang (iterative coding) dan perbandingan tematik. Kajian ini berpusat pada kaidah-kaidah pokok tentang keadilan ('adl), kemaslahatan (maṣlaḥah), pencegahan kerusakan (dar' al-mafāsid), dan kebiasaan ('urf), yang dioperasionalkan sebagai kriteria untuk menilai ketentuan hukum dan pola penafsiran. Temuan penelitian menunjukkan, pertama, bahwa Qawā'id Fiqhiyyah memfasilitasi reinterpretasi kontekstual terhadap aturan-aturan hukum keluarga sehingga ketentuan tentang wali nikah, nafkah, dan perceraian dapat diselaraskan dengan jaminan konstitusional mengenai kesetaraan; kedua, bahwa kaidah-kaidah tentang maṣlaḥah dan pencegahan kerusakan menyediakan dasar yang berprinsip bagi pengadilan untuk memprioritaskan perlindungan dari kekerasan dan diskriminasi dalam sengketa pengasuhan anak dan kewarisan; dan ketiga, bahwa pengakuan terhadap 'urf yang sah membuka ruang bagi integrasi realitas sosial-hukum Indonesia ke dalam penalaran hukum Islam tanpa meninggalkan landasan doktrinalnya. Secara teoretis, penelitian ini memberikan kontribusi dalam merumuskan *Qawā'id Fiqhiyyah* bukan hanya sebagai kaidah teknis fiqh, melainkan sebagai kerangka normatif-analitis untuk harmonisasi hukum berbasis hak antara hukum keluarga Islam dan hukum nasional dalam konteks negara-negara modern dengan mayoritas penduduk Muslim.

**Kata Kunci:** *Qawā'id Fiqhiyyah*; *Hukum Keluarga Islam*; Pluralisme Hukum; Harmonisasi Hukum; Reformasi Hukum Islam.

## INTRODUCTION

In many Muslim-majority environments, Islamic family law is coming under increasing scrutiny against the backdrop of global discussions on human rights, gender equality and legal reform. As nations experience population transition, increased levels of education, and changing socio-economic structures, the issues of how inheritance is distributed, how vulnerable family members are protected, and how different family formations are recognised have grown more pressing.<sup>1</sup> In this global context, academics and practitioners are both looking for legal solutions that can retain the religious purity of Islamic family law while answering to modern aspirations for justice, equality and legal certainty.<sup>2</sup>

Indonesia is a particularly useful case study in which to explore these difficulties, because Islamic family law is nested inside a complex framework of legal diversity. Islamic law, national law, and local customary practices (*adat*) interact, creating a vibrant, although sometimes fragmented, landscape of norms and institutions. An example is the integration of customary law in Islamic inheritance customs in Aceh which shows how *adat* is absorbed in Islamic legal reasoning, with flexibility and strong communal authority.<sup>3</sup> In Makassar, the convergence of Islamic law, local customs and family debate in inheritance disputes exemplifies the continuing significance of respect for women and

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<sup>1</sup> Yusida Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah," *NURANI: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 122–40. <https://doi.org/10.19109/nurani.v25i1.27133>.

<sup>2</sup> Achmad Musyahid Idrus et al., "The Tradition of Mappasikarawa in the Bugis-Makassar Community Marriage: A Study of Islamic Law Philosophy," *Samarah : Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 848. <https://doi.org/10.22373/sjhh.v7i2.17125>.

<sup>3</sup> Muhammad Lutfi Hakim, "Ismail Mundu on Islamic Law Ff Inheritance: A Content Analysis of Majmū' Al-Mīrāth Fī Ḥukm Al-Farā'Id," *Al-Jami'ah: Journal of Islamic Studies* 61, no. 1 (2023): 59–79. <https://doi.org/10.14421/ajis.2023.611.59-79>.

kin relations in the determination of legal solutions.<sup>4</sup> At the same time, wider societal changes such as the expansion of women's education and their increasing participation in public life have spurred Muslim couples and families to challenge gender scripts based on religion and to renegotiate authority within the household, influencing the practice and application of Islamic family norms.<sup>5</sup>

In contemporary Indonesia these changes have heightened the importance of aligning Islamic family law with national legal standards and constitutional safeguards. In contrast, the Islamic law of inheritance, especially in the Shāfi'ī school and as developed by academics such as Ismail Mundu, contains comprehensive regulations about set portions and types of heirs that are still followed by court and social practice.<sup>6</sup> However, Indonesia's national legal framework, shaped by constitutional commitments to equality, human rights instruments, and evolving socio-legal expectations, dictates that the application of these rules must be consistent with gender equality and the protection of vulnerable family members, including women, stepchildren, and adopted children.<sup>7</sup> The tension between these normative regimes is no longer just theoretical, but concretely manifest in arguments over the allocation of inheritance, the recognition of mixed families, and claims to equitable treatment within the family sphere.<sup>8</sup>

This tension has been increasingly addressed by scholars from the perspective of Islamic legal reform, legal pluralism and the role of Islamic legal maxims (*Qawā'id Fiqhiyyah*) in current legal thinking. Studies on the development and use of the *Qawā'id Fiqhiyyah* have shown that historically, these maxims have helped Islamic law to adapt to evolving conditions and to deal with complicated instances that are not immediately answered by textual sources.<sup>9</sup> The studies on moderate Islamic jurisprudence and current reforms highlight the necessity to eliminate the rigidity and inflexibility in Islamic law so that we might attain justice and public welfare in modern circumstances. Other publications show how selected legal maxims are applied in certain jurisdictions, such as Malaysia, to handle issues such as pronouncement of divorce outside the courts, demonstrating their practical importance to procedural and substantive fairness.<sup>10</sup> The employment of the *Qawā'id Fiqhiyyah* by institutions such as the National Sharia Council in Indonesia indicates the significance of these instruments in solving newly emerging

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<sup>4</sup> Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 537–55. <https://doi.org/10.22373/sjkh.v6i2.13882>.

<sup>5</sup> Rachel Rinaldo, "Obedience and Authority among Muslim Couples: Negotiating Gendered Religious Scripts in Contemporary Indonesia," *Sociology of Religion* 80, no. 3 (2019): 323–49. <https://doi.org/10.1093/SOCREL/SRY045>.

<sup>6</sup> Hakim, "Ismail Mundu on Islamic Law Ff Inheritance: A Content Analysis of Majmū' Al-Mirāth Fī Ḥukm Al-Farā'Id."

<sup>7</sup> Elvina Jahwa and Sugeng Wanto, "An Islamic Legal Perspective on Fatherlessness and the Responsibility to Realize Family Resilience: A Case Study of Tanjungbalai City," *Nizham: Journal of Islamic Studies* 14, no. 01 (2026): 15–28.

<sup>8</sup> Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah."

<sup>9</sup> Ismail Jalili and Ilham Syukri, "Utilizing Qawa'id Fiqhiyyah in Legal Analysis: A Review of Their Evolution and Application in Indonesian Islamic Jurisprudence," *Istinbath: Jurnal Hukum Dan Ekonomi Islam* 24, no. 1 (2025): 51–65. <https://doi.org/10.20414/ijhi.v24i1.776>.

<sup>10</sup> Mohd Al Adib Samuri and Muhammad Nazir Alias, "Child Marriage in Malaysia: Reforming Law through the Siyasa Al-Shar'iyya Framework," *Samarah : Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 58. <https://doi.org/10.22373/sjkh.v7i1.16011>.

socio-economic challenges and harmonizing Islamic legal reasoning with the requirements of a modern legal system.<sup>11</sup>

Although previous studies have made significant contributions, several critical limitations remain unresolved. First, existing scholarship acknowledges the relevance of *Qawā'id Fiqhiyyah* in facilitating legal adaptation and reform; however, these studies often approach Islamic legal maxims from a predominantly theoretical or doctrinal perspective. Consequently, they provide limited methodological guidance on how these principles can be systematically employed as an analytical framework to examine specific tensions between Islamic family law and national legal systems. Second, studies on Indonesian legal pluralism have extensively explored the interaction and coexistence of Islamic law, customary law (*adat*), and state law. Nevertheless, they have not sufficiently examined the potential of *Qawā'id Fiqhiyyah* as a structured interpretive mechanism for navigating conflicts, intersections, and normative negotiations among these legal traditions, particularly within the complex domain of inheritance law. Third, existing debates on gender equality in Islamic family law tend to focus either on normative reinterpretations of Islamic principles or sociological analyses of changing gender relations. Less attention has been devoted to investigating how *Qawā'id Fiqhiyyah* may serve as a methodological tool for reconciling classical inheritance doctrines and fixed allocation principles with contemporary perspectives on gender justice, equality, and the recognition of rights among non-biological family members.<sup>12</sup>

This research tries to solve these gaps by establishing and using an analytical framework based on *Qawā'id Fiqhiyyah* in harmonizing Islamic inheritance law and Indonesian state law within the framework of mixed households. The article addresses important maxims of justice ('*adl*), public interest (*maṣlaḥah*), prevention of harm (*dar' al-mafāsid*), and customary practice ('*urf*) and investigates how they might be translated into criteria for evaluating legal provisions, judicial practices, and interpretative patterns in inheritance cases. The work contributes to the existing knowledge in three ways by combining the perspectives of Indonesian legal diversity, contemporary debates on gender equality, and the doctrinal evolution of Islamic legal maxims. From an analytical perspective it provides a structured framework that goes beyond descriptive descriptions of pluralism and reform by showing how certain maxims can assist in resolving normative contradictions between Islamic law and national law. In substance, it suggests ways of interpreting and administering the rules of inheritance so as to better safeguard women, stepchildren and adopted children, but in ways that remain anchored in accepted Islamic principles. Theoretically, it reconceptualizes *Qawā'id Fiqhiyyah* as a normative-analytical framework for rights-based legal harmonization in Muslim-majority legal systems (with Indonesia as a prominent case), not just as auxiliary instruments of fiqh.

## RESEARCH METHODS

This study adopts a qualitative juridical-normative (doctrinal) design combined with a comparative legal approach. It examines how *Qawā'id Fiqhiyyah* can be operationalized to harmonize Islamic family law with Indonesian national law, focusing

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<sup>11</sup> Evren Tok and Abdurahman Jemal Yesuf, "Embedding Value-Based Principles in the Culture of Islamic Banks to Enhance Their Sustainability , Resilience , and Social Impact," *Sustainability* 14, no. 916 (2022).

<sup>12</sup> Mukhammad Nur Hadi, Latifatul Islamiyah, and Cecep Soleh Kurniawan, "Conservatism on Islamic Legal Maxims: Judicial Interpretation of Polygamous Marriage at the Religious Courts of Mojokerto, Indonesia," *Journal of Islamic Law* 4, no. 2 (2023): 172–96. <https://doi.org/10.24260/jil.v4i2.1637>.

on issues of inheritance, marriage, divorce, custody, gender equality, and the position of stepchildren and adopted children. The data consist of primary and secondary legal materials. Primary sources include the Qur'an, Hadith, classical fiqh manuals (especially within the Shāfi'ī tradition), the Compilation of Islamic Law (KHI), Law No. 1 of 1974 on Marriage and its amendments, relevant inheritance provisions, and selected landmark judicial decisions from religious and higher courts. Secondary sources comprise peer-reviewed literature on Islamic jurisprudence, *Qawā'id Fiqhiyyah*, comparative family law, gender justice, and legal pluralism, selected for their thematic relevance and scholarly credibility. Data collection and analysis proceeded in several stages: (1) systematic identification and screening of legal documents using predefined keywords; (2) exclusion of materials that lacked clear authority or contemporary relevance; and (3) qualitative content and doctrinal analysis of the selected texts. Thematic coding was guided deductively by core legal maxims justice ('adl), public interest (maṣlaḥah), prevention of harm (*dar' al-mafāsid*), and customary practice ('urf) and inductively refined as new patterns emerged in relation to inheritance, guardianship, custody, and mixed-family scenarios. Coding and comparison were conducted iteratively to reveal points of convergence, conflict, and ambiguity between Islamic norms and national law. To strengthen analytical validity, interpretations were triangulated across different categories of sources (classical texts, fatwas, statutes, judicial decisions, and scholarly works) and repeatedly checked for internal consistency with the Qawā'id-based framework. The study is limited by its focus on selected domains of family law, its exclusive reliance on documentary materials (without interviews or fieldwork), and its concentration on the Indonesian context rather than a broad cross-country comparison. Within these boundaries, the research aims to develop and test a *Qawā'id Fiqhiyyah*-based normative-analytical framework for rights-oriented harmonization of Islamic family law and national law.

## RESULTS AND DISCUSSION

### Application of *Qawā'id Fiqhiyyah* in Modern Family Contexts

Application of *Qawā'id Fiqhiyyah* to modern families using principles of *al-'adl* (justice), *al-maslaha* (public interest), and *al-'urf* (customary practices) offers a versatile model to modern Islamic family law. These principles allow the handling of cases involving, for example, mixed or nontraditional families, which frequently exceed the inflexible structures of classical Islamic family law. The principle of *al-maslaha*, for example, allows family lawyers to protect the interest of step or adopted children and other family members while observing Islamic principles and provides an example of flexibility of Islamic law in the face of the complexities of modern family structures.<sup>13</sup>

The flexibility is further reinforced by the integration of customary law in Islamic law. The integration of *al-'urf* in Islamic legislation in Aceh provides a good example of the coexistence of different legal systems and addresses issues such as adopted children and replacement successors and wills in the context of Islamic law.<sup>14</sup> Further, the principle of *al-'urf* provides the acknowledgment of the role of local customs, and can be particularly important in those instances when local customs exercise a substantial impact

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<sup>13</sup> Haqqi and Mohiddin, "Islamic Legal Maximz as a Tool of Harmonization of Shari'ah and Civil Law: An Appraisal."

<sup>14</sup> Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives."

over a legal decision, for example, in Indonesian child marriages where judges synthesize the Islamic law, customary law, and international human rights law.<sup>15</sup>

The flexibility of Islamic legal principles is evident amongst Muslims living in secular states such as Canada, and how they aim to marry their civic duties with Shari'a through Islamic arbitration.<sup>16</sup> This pluralistic perspective is demonstrated in Malaysia, where the administration of Islamic law interacts with the framework of Human Rights and demonstrates the flexibility of Islamic jurisprudence in accommodating various legal and cultural frameworks.<sup>17</sup> The employment of *Qawā'id Fiqhiyyah* in contemporary family contexts showcases the necessity of equilibrium of justice, public interests, and customary practices to cater to the developing needs of Muslim families in the global community.

### **Gender Equity in Inheritance Distribution**

The interaction of traditional Islamic inheritance laws with modern gender equality standards is complicated. Traditionally, Islamic inheritance laws distribute large shares to male heirs. However, legal and cultural changes have sought to address the balance. Provisions of al- 'adl, or fairness, in *Qawā'id Fiqhiyyah*, help integrate these systems by providing a framework of fairness concerning the needs of the heirs. Judges, legal scholars, and others have used these provisions to adapt Islamic laws for the benefit of society at large and offer solutions that empower citizens while respecting Islamic values and laws and the national gender equality initiatives.<sup>18</sup>

Innovative inheritance orders of the Sephardi Jewish communities of Toledo and Fez provide historical examples of adapting religious laws to achieve gender equality in the inheritance systems and provide an example of focusing integration of religious and national laws for gender justice.<sup>19</sup> In Indonesia, Article 185 of the Compilation of Islamic Laws has utilized gender responsive laws and *maqāshid al-syariah* to support gender justice by permitting the substitution of heirs for the benefit of the family.<sup>20</sup>

Similarly, in Aceh, the fusion of Islamic inheritance laws and traditional laws has produced gender equality in a legally pluralistic system.<sup>21</sup> Such initiatives, including those in other regions, have sought to eliminate gender disparities by modernizing laws related to women's rights at the levels of Islamic and international standards.<sup>22</sup> Patriarchal

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<sup>15</sup> Hoko Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java : Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection," *Journal of HUMAN RIGHTS PRACTICE* 12, no. 11 (2020): 501–23, <https://doi.org/10.1093/jhuman/huaa041>.

<sup>16</sup> Charles P. Trumbull, "Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts," *Vanderbilt Law Review* 59, no. 2 (2019): 609–47.

<sup>17</sup> Farid Sufian Shuaib, "ADMINISTRATION OF ISLAMIC LAW AND HUMAN RIGHTS: The Basis and Its Trajectory in Malaysia," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 2 (2018): 281–304, <https://doi.org/10.14421/ajis.2018.562.281-304>.

<sup>18</sup> Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah : Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 1046–64, <https://doi.org/10.22373/sjhk.v6i2.12466>.

<sup>19</sup> Pinhas Haliwa, "Laws of Succession Ordinances by the Religious Leadership of Sephardi and Moroccan Jewish Communities and Their Economic, Social and Gender Implications," *Religions* 14, no. 819 (2023): 1–23, <https://doi.org/10.3390/rel14070819>.

<sup>20</sup> Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin."

<sup>21</sup> Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives."

<sup>22</sup> Thekla Morgenroth and Michelle K. Ryan, "Addressing Gender Inequality Addressing Gender Inequality : Stumbling Blocks and Roads Ahead," *Group Processes & Intergroup Relations* 21, no. 5 (2018): 671–77, <https://doi.org/10.1177/1368430218786079>.



societies and their customs pose serious hurdles despite the progress made in pluralistic systems.<sup>23</sup> Nevertheless, balancing their gender equality and pluralistic systems with religious laws has demonstrated the modern liberal legal system and the Islamic legal system.

### **Harmonization with Indonesian National Law**

The combination of Islamic family law with Indonesia's statutory law is viable and valuable in marriage, divorce, and custody. It accommodates a legal pluralism that merges Islamic law and statutory law. The inclusion of *Qawā'id Fiqhiyyah* in legal reasoning improves the flexibility of interpretations, ensuring that rulings and judicial interpretations are socially just and accepted. The Indonesian legal system, using a pluralistic approach, integrates the norms of rights and the religions of the people. It provides adjudicators the freedom to harmonize conflicting legal orders, for example, child marriage in West Java.<sup>24</sup>

In the region of Aceh, Shari'a has been said to focus more on the legal sphere of Shari'a with less focus on how it offers solutions to the society, indicating that it has more scope to be reconstructed to meet the all-embracing and universal objectives of Shari'a.<sup>25</sup> The implementation of Islamic law in Aceh in the past has focused on religious law, and has been a focus of the criticism for the lack of substantive Islamic law and for the lack of the implementation of justice and prosperity. It has also highlighted the challenges of implementing Islamic law formally through the political process.<sup>26</sup> The integration of Islamic law and Aceh's customary law, especially concerning inheritance, reflects the flexibility of Islamic law and strengthens social cohesion.<sup>27</sup>

The patriarchal structures of Indonesian Islamic family law show there is an urgent need for gender-based reforms where women's representation is prioritized in both policy and law to combat gender-based discrimination.<sup>28</sup> Furthermore, the moderation of local Shari'a law in Cianjur, West Java, known as '*Akhlaq al-Karimah*', attempts to establish a compromise among the varying Islamic groups in the locality and decrease the civil unrest caused by Islamic law.<sup>29</sup> There is a possibility for harmonizing Islamic family law with national law in Indonesia, which would create a legal framework that is adaptable and culturally aligned, as well as compliant with the global human rights standards.

### **Inclusion of Mixed-Family Scenarios**

The inclusion of mixed-family scenarios, such as those involving children from previous marriages, stepchildren, or adopted children, presents significant challenges

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<sup>23</sup> Daria Tisch and Tamara Gutfleisch, "Unequal but Just? Experimental Evidence on (Gendered) Distributive Justice Principles in Parental Financial Gifts," *Socio-Economic Review* 21, no. 3 (2023): 1369–90, <https://doi.org/10.1093/ser/mwac041>.

<sup>24</sup> Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java : Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection."

<sup>25</sup> Danial Danial, Mahamatayuding Samah, and Munawar Rizki Jailani, "QUO VADIS ACEHNESE SHARI'A: A Critical Approach to the Construction and Scope of Islamic Legislation," *Al-Jamiah: Journal of Islamic Studies* 60, no. 2 (2022): 621–54, <https://doi.org/10.14421/ajis.2022.602.621-654>.

<sup>26</sup> Kamaruzzaman Bustamam-ahmad, "THE APPLICATION OF ISLAMIC LAW IN INDONESIA : The Case Study of Aceh," *Journal of Indonesian Islam* 01, no. 01 (2007): 135–80.

<sup>27</sup> Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives."

<sup>28</sup> Abu Rokhmad and Sulistiyono Susilo, "CONCEPTUALIZING AUTHORITY OF THE LEGALIZATION OF INDONESIAN WOMEN'S RIGHTS IN ISLAMIC FAMILY LAW," *Journal of Indonesian Islam* 11, no. 02 (2017): 489–508, <https://doi.org/10.15642/JIIS.2017.11.2.489-508>.

<sup>29</sup> Hakimul Ikhwan, "PALATABLE SHARIA: 'Killing Two Birds with One Stone,'" *Al-Jami'ah: Journal of Islamic Studies* 56, no. 1 (2018): 1–28, <https://doi.org/10.14421/ajis.2018.561.1-28>.

within both Islamic and national legal frameworks, particularly in Indonesia. The principle of *al-ʿurf*, which acknowledges customary and social practices, offers a potential solution by allowing courts and legal practitioners to interpret inheritance and custody rules more flexibly. This approach is evident in Aceh, where Islamic law has been successfully integrated with customary laws to address inheritance issues involving substitute successors, joint assets, and obligatory wills for adopted children, thereby enhancing social cohesion and justice while adhering to religious norms.<sup>30</sup>

The dynamics of stepfamilies, as explored in various studies, reveal complexities in emotional closeness and support, with stepmothers often providing less support than biological mothers, and stepfathers' support being unaffected by the presence of biological fathers.<sup>31</sup> In the U.S., the prevalence of stepfamilies has increased, yet these families often experience fewer transfers of time and resources, highlighting the need for legal frameworks that recognize and accommodate these nontraditional family structures.<sup>32</sup>

Furthermore, the legal recognition of Muslim marriages, particularly in contexts like England and Wales, underscores the vulnerability of spouses in unrecognized unions, suggesting a need for legal reforms that align with both statutory requirements and religious practices.<sup>33</sup> The growing complexity of family structures, including mixed-faith and multi-ethnic families, further complicates the legal landscape, necessitating a nuanced understanding of cultural and religious identities within legal systems.<sup>34</sup> Overall, the integration of customary practices with formal legal frameworks, as demonstrated in Aceh, provides a model for addressing the challenges posed by mixed-family scenarios, promoting legal reforms that reflect the realities of modern family dynamics while maintaining cultural and religious integrity.

### **Implications for Legal Reform and Policy**

The application of *Qawā'id Fiqhiyyah* in Indonesia offers significant insights for legal reform, particularly in the realm of family law, by promoting inclusivity, equity, and gender sensitivity. The integration of these jurisprudential principles into national legislation can address ambiguities and disputes in areas such as inheritance, custody, and marriage regulations. For instance, the Constitutional Court's decision to include biological evidence like DNA in determining child legitimacy reflects a move towards harmonizing Islamic law with constitutional rights, thereby addressing issues arising from unregistered marriages and expanding the definition of legitimate children beyond traditional fiqh doctrines.<sup>35</sup> Inheritance practices in regions like Malay Jambi, where

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<sup>30</sup> Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives."

<sup>31</sup> Kirsten Van Houdt, Matthijs Kalmijn, and Katya Ivanova, "Stepparental Support to Adult Children: The Diverging Roles of Stepmothers and Stepfathers," *Journal of Marriage and Family* 82, no. 4 (2020): 639–56, <https://doi.org/10.1111/jomf.12599>.

<sup>32</sup> Emily E. Wiemers et al., "Stepfamily Structure and Transfers Between Generations in U.S. Families," *Demography* 56 (2019): 229–60, <https://doi.org/https://doi.org/10.1007/s13524-018-0740-1>.

<sup>33</sup> Kathryn O'Sullivan and Leyla Jackson, "Muslim Marriage (Non) Recognition: Implications and Possible Solutions," *Journal of Social Welfare and Family Law* 39, no. 1 (2017): 22–41, <https://doi.org/10.1080/09649069.2016.1272767>.

<sup>34</sup> Maaïke Hornstra, Matthijs Kalmijn, and Katya Ivanova, "Fatherhood in Complex Families : Ties between Adult Children , Biological Fathers , and Stepfathers," *Journal of Marriage and Family* 82, no. 10 (2020): 1637–54, <https://doi.org/10.1111/jomf.12679>.

<sup>35</sup> Alfitri Alfitri et al., "Constitutionalizing Islamic Law in Indonesia: Sharia Courts & the Legitimate Child Clause," *Ahkam: Jurnal Ilmu Syariah* 25, no. 2 (2025): 395–414.



daughters receive more substantial inheritance shares than sons, highlight the potential for customary laws to diverge from Islamic norms, necessitating a balance between tradition and gender equity.<sup>36</sup>

The ongoing debate about the role of Sharia in Indonesia underscores the need for thoughtful integration of Islamic jurisprudence into the secular legal framework, ensuring that religious norms do not undermine gender equality and human rights.<sup>37</sup> Despite legal frameworks addressing domestic violence, challenges persist due to conflicting civil and Islamic marriage laws, which perpetuate gender stereotypes and inequalities, indicating a need for comprehensive reform.<sup>38</sup> The patriarchal underpinnings of Islamic family law in Indonesia further necessitate reforms to ensure women's rights are upheld, advocating for greater female participation in policy-making and legal processes.<sup>39</sup> Moreover, the implementation of Sharia bylaws has been criticized for its negative social impacts on women, highlighting the importance of ensuring that religious laws do not exacerbate gender discrimination.<sup>40</sup> Overall, the findings suggest that *Qawā'id Fiqhiyyah* can serve as a bridge between classical jurisprudence and modern legal needs, fostering a legal system that respects religious traditions while advancing gender equity and human rights.

**Table 1.** *Qawā'id Fiqhiyyah* Principles and Their Impact on Resolving Family Law Issues in Indonesia

| Legal Principles<br>( <i>Qawā'id Fiqhiyyah</i> )                                                   | Issue Addressed                                                                                               | Practical Implications / Findings                                                                                                                      |
|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Al-'adl</i> (Justice), <i>Al-maslaha</i> (Public Interest), <i>Al-'urf</i> (Customary Practice) | Complexity of mixed families (stepchildren, adopted children) not explicitly covered in classical Islamic law | Provides flexible framework for judges to fairly resolve inheritance and custody disputes while respecting religious obligations and family well-being |
| <i>Al-'adl</i> (Justice)                                                                           | Gender disparity in traditional inheritance shares (male heirs receiving double)                              | Allows interpretation that balances religious texts with modern gender equality norms, ensuring equitable distribution among heirs                     |
| Integration of <i>Qawā'id Fiqhiyyah</i> with national law                                          | Legal pluralism and harmonization challenges in marriage, divorce, and child custody                          | Strengthens dual compliance: rulings align with statutory law and Islamic moral principles,                                                            |

<sup>36</sup> Nuraida Fitri Habi et al., "Women, Islamic Law and Custom in Pucuk Induk Undang Nan Limo Manuscript of Jambi," *Ahkam (Jakarta)* 24, no. 2 (2024): 233–50, <https://doi.org/10.15408/ajis.v24i2.38557>.

<sup>37</sup> Alfitri Alfitri, "Expanding a Formal Role for Islamic Law in the Indonesian Legal System: The Case of Mu'Amalat," *Journal of Law and Religion* 23, no. 1 (2007): 249–70, <https://doi.org/10.1017/S0748081400002666>.

<sup>38</sup> Alfitri Alfitri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia.," *Studia Islamika* 27, no. 2 (2020): 273–307, <https://doi.org/10.36712/SDI.V27I2.9408>.

<sup>39</sup> Rokhmad and Susilo, "CONCEPTUALIZING AUTHORITY OF THE LEGALIZATION OF INDONESIAN WOMEN'S RIGHTS IN ISLAMIC FAMILY LAW."

<sup>40</sup> Ahmad Fuad Fanani, "The Implementation of Sharia Bylaws and Its Negative Social Outcome for Indonesian Women," *Indonesian Journal of Islam and Muslim Societies* 7, no. 2 (2017): 153–74, <https://doi.org/10.18326/IJIMS.V7I2.153-174>.

|                                                 |                                                                                      |                                                                                                                                                                            |
|-------------------------------------------------|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                 |                                                                                      | enhancing legitimacy and social acceptance                                                                                                                                 |
| Al-ʿurf(Customary Practice)                     | Gaps in law for children from previous marriages or nontraditional family structures | Courts can interpret rules flexibly, including nontraditional heirs, improving inclusivity and social cohesion                                                             |
| Combination of Al-ʿadl, Al-maslaha, and Al-ʿurf | Policy and legal reform needs for modern family law                                  | Provides guidance for drafting inclusive, gender-sensitive regulations that harmonize Islamic law and national legislation, promoting fairness and human rights compliance |

This table highlights how the core principles of *Qawā'id Fiqhiyyah* address key family law challenges and offers practical insights for harmonizing Islamic jurisprudence with Indonesia's national legal framework.

**CONCLUSION**

This study shows that Qawā'id Fiqhiyyah is not just a compilation of ancient legal maxims, but also an adaptive and analytical tool to respond to contemporary issues in Islamic family law under Indonesia's plural legal system. Qawā'id Fiqhiyyah, through principles such as al-ʿadl (justice), al-maṣlaḥah (public interest), and al-ʿurf (customary practice), provides a methodological basis for reconciling Islamic legal norms with national legislation and changing social realities. The results show that these principles can be applied to solve complex family issues in family law such as inheritance disputes, child custody, recognition of adopted and stepchildren and different family structures while also contributing to a more inclusive and gender-sensitive interpretation of Islamic family law. This work contributes to the wider debate on Islamic legal reform by establishing the usefulness of Qawā'id Fiqhiyyah as a tool to negotiate the contradictions between religious standards, state law and social development. This approach does not expect Islamic family law to be a static and unchangeable system. It emphasizes the possibility of contextual interpretation of Islamic family law, with the aim of preserving the underlying principles of justice and public welfare. Hence, the future of family law reform in Indonesia might be better served through the application of Qawā'id Fiqhiyyah as an interpretative tool to build legal solutions that are fair, inclusive, and socially relevant. Furthermore, enhancing the study of Qawā'id Fiqhiyyah in legal education and judicial training may improve the competence of judges, legal practitioners and policy makers to apply Islamic legal reasoning to current circumstances. Further empirical research in other regions of Indonesia should be extended to explore the application of these principles in different social and cultural contexts and to assess their further contribution to gender justice, legal harmonization and the development of Islamic family law.

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