The Transformation of Islamic Family Law from The Classical Fiqh Tradition to Contemporary Family Law

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Abstract

This study examines the progression of Islamic family law from the classical fiqh tradition to contemporary Indonesian law. The fiqh tradition was established within specific historical and social contexts, and this study seeks to understand how Islamic law adapted to those changes. The research will analyze the characteristics of Islamic family law in the fiqh tradition, as well as how it transformed into the law that is in practice today. The role of ijtihad and maqāṣid al-sharīʿah will be examined in relationship to this transformation. This is a normative study that will examine Indonesian legislation, the Compilation of Islamic Law, and scholarly research into these topics. The data for this research was collected from existing literature on these subjects. The analytical methods that will be used to examine the data will be qualitative and descriptive. The research findings suggest that there are four channels through which Islamic family law transformed from the fiqh tradition to the law that is in practice today. These channels will be examined to assess how they enabled the transformation of Islamic family law to address the needs of a developing society. Additionally, ijtihad, maqāṣid al-sharīʿah, and the concept of maṣlaḥah provided the basis for the reformers of Islamic family law to understand the ways in which it could be transformed to provide the greatest benefit to the members of society. It is concluded that reforms to Islamic family law must be contextual and systematic. Additionally, it is essential for such reforms to respect both the normative foundations of the Sharia and the needs of contemporary society.
Keywords: legal transformation, Islamic family law, classical fiqh, contemporary law, maqāṣid al-sharīʿah.

Introduction

Islamic family law governs the daily lives of individuals, families, and society. Its provisions on marriage, the rights and obligations of spouses, divorce, child custody, and inheritance shape religious observance, protect rights, give legal certainty, and serve social justice. Family law holds an important place in Islamic legal thought as society undergoes social, economic, cultural, and political change. These changes demand an understanding that preserves the fundamental principles of the Sharia and addresses family issues in contemporary life. Classical fiqh is one of the principal sources scholars use to understand and formulate family-law provisions. Scholars from various schools of law built legal thought from the

Qur'an, hadith, consensus (ijmāʿ), analogical reasoning (qiyās), and other methods of ijtihad. That tradition produced a broad body of legal knowledge, and it remains a foundation for Islamic family law today. Fiqh, however, is human understanding of the sources of the Sharia, and it cannot be separated from the social and historical contexts in which it developed. Researchers must scrutinize fiqh to separate the fundamental principles of the Sharia from legal opinions that particular societies and periods shaped.

These issues grow more pressing as Islamic family law meets modern society. Spousal relationships have changed, society pays more attention to protecting women and children, technology has advanced, populations move more, and citizens demand equality before the law. These developments raise issues that textual application of fiqh opinions cannot always resolve. Reform of Islamic family law requires more than replacing old provisions with new ones. Reformers need methodological arguments that connect Islamic legal sources, the objectives of the Sharia, social reality, and the needs of positive lawmaking.

In Indonesia, the relationship among the fiqh tradition, legislation, the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), and the practice of the Religious Courts shows this transformation. Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, draws on fiqh formulations and responds to the need for legal protection in society. Law No. 16 of 2019 set a uniform minimum marriage age of 19 for men and women. That provision shows lawmakers weighing child protection, health, education, and social welfare in family law. Islamic family law changes through interpretation, legislation, and the adaptation of legal norms to social needs.

Official divorce data show the scale of these issues. Statistics Indonesia (Badan Pusat Statistik, BPS) reported 64,569 divorce cases in Central Java Province in 2024, counting petitions that husbands and wives filed (BPS, 2025). The figure shows how many family-law cases the national legal system handles, but divorce statistics cannot establish whether legal reform has succeeded or failed. The data supply empirical context for the importance of regulating and enforcing family law. Divorce also raises questions about post-divorce rights, child custody, maintenance, and the division of marital property. An examination of Islamic family law should look at the purposes and practical consequences of legal change as well as at the changes in provisions themselves.

Recent scholarship examines the transformation of Islamic family law from several angles. In a systematic literature review of publications from 2018 to 2023, Aemanah and Nurkhasanah (2023) found 214 articles and selected 42 for analysis. They identified five main themes: minimum marriage age and the prevention of child marriage; polygamy and gender justice; child-custody rights after divorce; inheritance distribution from an equality perspective; and the harmonization of Islamic family law with positive law. They tie family-law reform to maqāṣid al-sharīʿah, in particular the protection of lineage and justice. Because the review maps the literature, it identifies research trends and leaves open an integrated account of the epistemological relationship among classical fiqh, state lawmaking, and contemporary legal practice. Al Kadumi, Seff, and Hakim (2024) examined the reconstruction of Islamic family law in Indonesia through a normative-comparative approach focused on gender justice and legal modernity. They found that Indonesian family law develops through interaction among classical fiqh, customary law, and state legislation. The study matters because it shows that family-law reform responds to social reality and to the national legal system. Its focus on reconstruction and gender justice does not cover the entire process from classical fiqh to

contemporary family law, including legal authority, codification, and the application of norms in the courts.

Ulfazah, Hafis, Elmiati, and Zakariah (2025) examined modern Islamic family law through the concepts of taghayyur al-fatwā and al-muḥāfaẓah, applied to changes in the regulation of marriage agreements in Indonesia. They show that changing fatwas, the preservation of legal principles, and the need for contemporary regulation together explain legal change. Their contribution is a methodological explanation of one specific issue. Because the study concentrates on marriage agreements, other research can connect the various dimensions of family-law transformation in a more comprehensive analytical framework. Muslih and Almi (2025) studied the Compilation of Islamic Law through a state-typology framework, using doctrinal and socio-legal approaches. They examine the position of the KHI in Indonesia's legal system, the influence of Constitutional Court decisions on the direction of reform, and the need to move from textual-normative interpretation to a contextual-substantive approach. Their findings clarify the state's role in forming Islamic family law. Their emphasis on the status of the KHI and on the relationship between the state and Islamic law leaves room for a more systematic examination of how the legacy of classical fiqh can be preserved, reinterpreted, and applied in contemporary family law.

Rahmani, Akbarizan, and Nurcahaya (2025) discussed the dynamics of contemporary Islamic family law in Indonesia. They addressed the development of the Religious Courts, the KHI, changes to the minimum marriage age, differences among legal schools, globalization, and human-rights demands, and they show that normative and social factors both influence reform. Their study gives a broad overview of the challenges facing family-law reform. Integrating the foundations of classical fiqh, methods of Islamic legal reform, and the forms transformation takes within the national legal system requires further discussion.

The preceding studies approach the transformation of Islamic family law through maqāṣid al-sharīʿah, gender justice, codification, changes in fatwas, and the relationship between Islamic law and the state. Room remains for a single discussion that brings these dimensions together, treating the classical fiqh tradition as an epistemological foundation, legal-reform methods as analytical instruments, and contemporary family law as normative and institutional development. Previous studies have touched on these relationships. The gap lies in a conceptual synthesis that connects legal sources, methods of reasoning, social change, legislation, and the pursuit of justice within one analytical framework.

This paper develops an integrated analysis of the transformation of Islamic family law in Indonesia from the classical fiqh tradition to contemporary family law. It explains continuity and change among classical fiqh thought, methods of ijtihad, the principles of maqāṣid al-sharīʿah and maṣlaḥah, and the formation of positive law. From this perspective, legal reform is a process of legal reasoning that takes normative sources, social context, and the aims of justice into account. This contribution is the paper's analytical position, and the discussion must substantiate it. The paper does not claim to be the first study of this transformation.

This study helps readers understand the foundations, direction, and limits of Islamic family-law reform. Reform without an adequate methodological basis risks two tendencies: reformers preserve particular fiqh opinions without considering changes in context, or they accept social change without defensible legal reasoning. Critical inquiry keeps reform rooted in the principles of the Sharia, respectful of the diversity of scholarly opinions, protective of the rights of family members, and consistent with legal certainty and substantive justice. Students

and academics in Islamic Family Law need this understanding to develop legal thought that brings the Islamic scholarly tradition into dialogue with the needs of contemporary society. This paper aims to analyze the transformation of Islamic family law in Indonesia from the classical fiqh tradition to contemporary family law, to identify the factors and methods that drive reform, and to assess whether this transformation advances public benefit, legal certainty, and justice for family members.

Method

This study, "The Transformation of Islamic Family Law from the Classical Fiqh Tradition to Contemporary Family Law," uses normative, or doctrinal, legal research. Normative research examines the legal norms, principles, concepts, doctrines, and arguments that explain legal issues. It fits this study because the study analyzes the relationship among the classical fiqh tradition, methods of Islamic legal reform, and the development of contemporary family law in Indonesia. The study does not measure social behavior through surveys. It examines legal thought and norms through relevant literature (Putra et al., 2026).

The study is descriptive-analytical. The descriptive component explains the characteristics of classical fiqh, the development of Islamic family law, and the forms of reform within Indonesia's legal system. The analytical component examines the relationship among fiqh norms, methods of ijtihad, maqāṣid al-sharīʿah, maṣlaḥah, and legislation. The analysis explains continuity and change in Islamic family law and assesses its relevance to the needs of contemporary society.

This study uses three approaches. First, the statutory approach examines legislation on Islamic family law in Indonesia. The principal instruments are Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, and the Compilation of Islamic Law, disseminated through Presidential Instruction No. 1 of 1991. This approach identifies changes in family-law regulation and locates family law within the national legal system.

Second, the conceptual approach examines legal concepts and principles relevant to the study: classical fiqh, ijtihad, maqāṣid al-sharīʿah, maṣlaḥah, Islamic legal reform, and substantive justice. This approach explains the reasoning that scholars and lawmakers use to preserve, reinterpret, or develop provisions of Islamic family law. Research on the relationship between positive-law norms and Islamic legal principles uses statutory and conceptual approaches as well (Reskiwati and Bate, 2026).

Third, the historical approach traces Islamic family-law thought and regulation from the fiqh tradition to contemporary legal forms. It shows the context in which fiqh thought emerged, the development of legal codification, and the formation of family-law regulations in Indonesia. The approach shows that legal transformation involves changes in methods of reasoning and in society's needs as well as in statutory wording.

Results

Characteristics of the Classical Fiqh Tradition in Islamic Family Law

The literature review shows that the classical fiqh tradition is an important foundation for Islamic family law. Scholars developed fiqh by interpreting and reasoning about the sources of the Sharia with various methods of legal derivation (istinbāṭ). Differences in methodology, social environment, and legal considerations produced diverse opinions among the schools of fiqh. That diversity shows the intellectual richness of the fiqh tradition and its capacity to

illuminate family issues from different perspectives.

In family law, classical fiqh supplies a foundation for discussions of marriage, dower, maintenance, divorce, child custody, and inheritance. Fiqh opinions differ in status. Some provisions rest on evidence that scholars understand to carry fundamental normative force, while others result from ijtihad and allow differences in interpretation. A reader of classical fiqh must take into account the relevant evidence, the methods of legal derivation, the context in which an opinion emerged, and the legal objectives it seeks to achieve.

These findings agree with Aemanah and Nurkhasanah (2023), who show that Islamic family-law reform in Indonesia stays connected to the epistemological foundations of classical fiqh while developing in dialogue with maqāṣid al-sharīʿah, justice, and societal needs. Their findings indicate that reformers need not reject tradition. The fiqh tradition can supply arguments for assessing new issues when scholars apply it through relevant and defensible legal reasoning.

The study identifies four main characteristics of the classical fiqh tradition: its connection to the sources of the Sharia, its use of legal-reasoning methods, the diversity of scholarly opinions, and the influence of social context on the development of legal thought. These characteristics explain how Islamic family law can change and keep its connection to the principles of the Sharia.

The Transformation of Classical Fiqh into Contemporary Family Law

The findings show that Islamic family law in Indonesia transforms through interaction among the fiqh tradition, state policy, societal development, and judicial practice. The transformation changes the substance of legal norms and changes how lawmakers formulate law, how institutions embed it, and how courts apply it. Fiqh, as a body of legal thought, interacts with legislation and with the institutions that govern family life.

Presidential Instruction No. 1 of 1991 established the Compilation of Islamic Law, one example of this transformation. The KHI serves as an important reference for Islamic family law in Indonesia, in particular on marriage, inheritance, and endowments, and it gives the Religious Courts more structured legal formulations. Its legal status differs from that of a statute because a presidential instruction established it. Scholars still debate its status and normative force in family-law reform in Indonesia (Muslih and Almi, 2025).

The minimum marriage age changed as well. Law No. 16 of 2019 amended Article 7 of Law No. 1 of 1974 and set the minimum marriage age at 19 for both men and women. The change shows legislation responding to child-protection concerns and adapting marriage law. It is a concrete change in positive-law norms, but assessing its implementation requires separate empirical data (Republic of Indonesia, 2019).

Rahmani, Akbarizan, and Nurcahaya (2025) identify changes to the minimum marriage age, the development of the Religious Courts, and the status of the KHI as part of the dynamics of Islamic family law in Indonesia. They emphasize that social development, diversity among schools of law, reformist thought, and demands for rights protection drive legal change. These findings support the view that family law transforms through interaction between religious norms and the regulatory needs of modern society.

From this analysis, the transformation of Islamic family law consists of three interrelated processes. First, scholars reinterpret or reconsider fiqh opinions through legal reasoning. Second, lawmakers codify and legislate, reformulating particular provisions or

incorporating them into positive law. Third, authorized institutions apply and interpret the law. Together these processes show that transformation changes opinions, legal form, authority, and mechanisms of application.

The Role of Ijtihad, Maqāṣid al-Sharīʿah, and Maṣlaḥah in Legal Reform

The literature review shows that ijtihad, maqāṣid al-sharīʿah, and maṣlaḥah supply the methodological foundations of Islamic family-law reform. Ijtihad provides a reasoning mechanism for understanding and applying law to emerging issues. Maqāṣid al-sharīʿah provides a framework for assessing the objectives and orientation of law, and maṣlaḥah helps analyze the benefits, risks, and interests involved in regulating family life.

Ulfazah et al. (2025) apply the principles of taghayyur al-fatwā and al-muḥāfaẓah to changes in the regulation of marriage agreements in Indonesia. The regulatory changes they discuss allow a couple to make a marriage agreement during the marriage as well as before or at its conclusion. The study illustrates how the principle that fatwas may change, together with the preservation of beneficial values, explains legal responses to the needs of modern society. These findings come from the specific context of marriage agreements, and scholars cannot generalize them to every area of family law.

Maqāṣid al-sharīʿah is an important framework in Aemanah and Nurkhasanah (2023). Their research connects discussions of family-law reform to the protection of lineage and justice, including debates on marriage age, child custody, and the relationship between Islamic law and positive law. A maqāṣid approach lets reviewers judge legal reform by the protective objectives it seeks as well as by the formal consistency of its norms.

Using maqāṣid al-sharīʿah and maṣlaḥah does not make every social change a basis for legal change. Arguments for reform must explain the relevant legal sources, methods of reasoning, intended objectives, and the relationship between individual and public interests. Maṣlaḥah requires systematic analysis, and a general appeal to it cannot justify change.

On this basis, ijtihad, maqāṣid al-sharīʿah, and maṣlaḥah work as complementary analytical tools. Ijtihad explains the reasoning process, maqāṣid al-sharīʿah clarifies the orientation toward legal objectives, and maṣlaḥah helps evaluate legal consequences. Together they support reform that attends to the principles of the Sharia and responds to the needs of society.

Challenges in the Transformation of Islamic Family Law in Indonesia

This study finds conceptual and institutional challenges in transforming Islamic family law. Conceptual challenges arise when fiqh opinions from particular historical contexts meet the changing needs of society. Scholars must distinguish the fundamental principles of the Sharia from ijtihad-based opinions open to reconsideration. Without that distinction, rigid application of legal opinions can obstruct reform, or reform can lose a strong normative foundation for its arguments.

Institutional challenges concern the relationship among fiqh, legislation, the KHI, and judicial practice. Muslih and Almi (2025) show that the position of the KHI in Indonesia's legal system raises specific issues, in particular about its normative status and the direction of family-law reform. These issues show that written legal provisions leave some problems of legal certainty unsolved. Consistent application, clear legal foundations, and coherent relationships among regulations need continued attention.

Rahmani, Akbarizan, and Nurcahaya (2025) highlight further challenges: differences in legal application, resistance to contextual approaches, and the need to balance the principles of the Sharia with social change. Amending regulations cannot achieve legal reform alone. Reform also requires consistent reasoning, an understanding of legal objectives, and implementation that safeguards the rights of family members.

A further challenge is the risk of oversimplifying the relationship between Islamic law and human rights. Analysis should start from concrete legal issues and avoid assuming that the two conflict or align by default. In family law, analysis must weigh normative foundations, regulatory objectives, legal consequences, and mechanisms for protecting rights. This approach keeps reform critical and respectful of the diversity of Islamic legal thought.

The findings show that transforming Islamic family law requires contextual interpretation, clarity about the status of legal norms, consistent implementation, and careful assessment of public benefit and justice. Legal reform is an ongoing process with scholarly, legislative, and institutional dimensions.

Discussion

Continuity and Change in the Transformation of Islamic Family Law

The findings support the central argument of this study: the transformation of Islamic family law combines continuity and change, and it does not break with the fiqh tradition. Hallaq (1984) offers a historical basis for this reading. He argued that jurists capable of ijtihad existed at nearly all times and that ijtihad continued to shape legal doctrine. If reasoning never stopped, modern reform is a later stage of the same reasoning, now carried out by legislators and judges as well as jurists. The four characteristics of classical fiqh identified in this study explain why that is possible. The diversity of opinions gives reformers several positions to choose from, and the influence of social context gives them a reason to revisit a ruling when conditions change.

The three processes identified in the findings add an institutional dimension to the methods that earlier scholars have described. Nasution (2007) distinguishes intra-doctrinal reform, which selects among or combines existing opinions, from extra-doctrinal reform, which reinterprets the sources with attention to justice and public benefit. Those categories answer the question of method. The processes of reinterpretation, legislation, and application answer a different question: who carries out the reform, and in what legal form. The same method can travel through different channels. A scholar can propose a reinterpretation in an article, a legislature can enact it in a statute, and a court can apply it in a judgment. Ulfazah et al. (2025) show a parallel case in marriage agreements, where the idea that fatwas may change under new conditions supports a revised regulation. Treating method and channel as separate questions helps address the gap described in the Introduction, because earlier studies tend to take up one of them at a time.

The Marriage-Age Reform as an Illustration

The change in the minimum marriage age shows the three processes in one provision. Law No. 1 of 1974 set the minimum age at 19 for men and 16 for women (Cammack, Young, and Heaton, 1996). In Decision No. 22/PUU-XV/2017, issued on 13 December 2018, the Constitutional Court held that the lower age for women was discriminatory and gave lawmakers three years to revise the law (Constitutional Court of the Republic of Indonesia, 2018). Law No. 16 of 2019 then set the minimum age at 19 for both sexes (Republic of Indonesia, 2019). The Qur'an and the Sunna do not fix an age for marriage, and one Indonesian commentary

reports that Abu Hanifa placed adulthood at 18 for men and 17 for women (Septarini, 2019). The figure of 19 therefore reflects regulatory judgment rather than a classical ruling. In this reading, reform fills a space that fiqh leaves open, with reasons that the tradition can recognize. This is an interpretation, and other scholars may classify the change differently.

Maqāṣid al-sharīʿah offers a way to assess the change. Al-Shāṭibī's framework of necessities includes the protection of life, intellect, and lineage, and Auda (2008) presents maqāṣid as the philosophy of Islamic law in a systems approach that treats law as open and purposeful. The official explanation of Law No. 16 of 2019 gives child protection, access to education, and lower maternal and child mortality as reasons for the change, and these aims align with the purposes that the maqāṣid framework protects. In the portions of the explanation reviewed for this study, however, the legislators use constitutional, child-protection, health, and education arguments and do not use maqāṣid vocabulary. The maqāṣid reading is therefore an analytical lens, not the legislators' stated reasoning. This caution supports the finding that maṣlaḥah cannot serve as a general justification for change. An argument from maṣlaḥah must name the interest at stake, offer evidence that the rule serves it, and weigh competing interests.

Institutions and the Problem of Application

The challenges identified in this study show why a change in the text of the law does not finish a reform. The KHI illustrates the point. Presidential Instruction No. 1 of 1991, issued on 10 June 1991, disseminated the Compilation as a guide for government bodies and the public, and the normative status of an instrument that is not a statute remains a subject of debate (Muslih and Almi, 2025). Nurlaelawati (2010) examines how far judges of the Religious Courts treat the KHI as a closed, legislated code and how they move between it, the fiqh texts, and the legal practices of society. Her study directs attention to judges as well as legislators when one asks what a rule means in practice.

The dispensation provision in Article 7(2) of Law No. 16 of 2019 shows the same point. It allows parents to ask the court for an exception to the minimum age, and the Supreme Court issued Regulation No. 5 of 2019 on 20 November 2019 to guide judges who hear these applications. The Supreme Court reported 23,126 decided dispensation cases in 2019 and 35,441 in 2020 (Hukumonline, 2020). Over a longer period, the BPS indicator for women aged 20 to 24 who were married or living together before age 18 fell from 11.21% in 2018 to 5.9% in 2024 (Badan Pusat Statistik, n.d.; GoodStats, n.d.). The two trends measure different things, and these aggregate figures cannot separate the effect of the law from other influences such as schooling and income. They do support the finding that amending a regulation cannot achieve reform alone. Courts now decide how far the exception reaches, so consistent application depends on judicial practice as much as on the statute.

Implications and Limitations

Four implications follow for scholars and policymakers in Islamic family law. First, reform arguments should state their method, their sources, and their aims, so that readers can see whether a change selects among opinions, reinterprets a text, or fills a gap. Second, each instrument that carries a family-law rule should have a clear place in the hierarchy of norms. Third, researchers need court-level data on how often exceptions such as dispensation are granted and on what grounds, because aggregate case counts cannot show how a rule works. Fourth, programs in Islamic family law should teach classical fiqh together with legislation and court practice, since graduates will work across all three.

This study has limits. It rests on literature and legal documents, and it reads classical

fiqh through secondary scholarship, so future work should examine primary fiqh manuals across the schools. The marriage-age reform illustrates the framework, but one provision cannot represent the whole of family law, and the framework needs testing on divorce, child custody, and inheritance. The statistics come from different agencies with different definitions and do not support causal claims. Future research could combine national figures with court-level data and with interviews of judges.

Conclusion

The transformation of Islamic family law from the classical fiqh tradition to contemporary family law connects the Islamic scholarly tradition with the needs of modern society. Classical fiqh remains an important foundation because it holds sources of legal thought, methods of ijtihad, and a diversity of scholarly opinions. Applying it requires an understanding of social context and legal objectives so that it can address evolving family issues. In Indonesia, this transformation runs through legal interpretation, legislation, the Compilation of Islamic Law, and the practice of the Religious Courts. Ijtihad, maqāṣid al-sharīʿah, and maṣlaḥah guide reform and keep attention on the principles of the Sharia, the protection of rights, legal certainty, and justice. Reform of Islamic family law should be systematic, critical, and responsible so that the fiqh tradition stays relevant to the needs of contemporary society.

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