

The Dialectics of CEDAW and Islamic Family Law: Reconstructing Gender Justice through Maqāṣid al-Syarī'ah

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ABSTRAK

Perdebatan mengenai hubungan antara instrumen hak asasi perempuan dan norma-norma keluarga dalam Islam sering ditempatkan dalam posisi yang saling bertentangan. Perbedaan tersebut terutama terlihat pada persoalan otoritas dalam rumah tangga, pembagian hak dan kewajiban suami istri, poligami, perceraian, hak ekonomi, serta perlindungan perempuan dari kekerasan. Penelitian ini bertujuan menganalisis titik temu dan ketegangan antara prinsip penghapusan diskriminasi terhadap perempuan dan konstruksi fikih keluarga, sekaligus merumuskan kerangka pembaruan yang tetap berpijak pada sumber-sumber normatif Islam. Penelitian menggunakan metode kepustakaan dengan pendekatan normatif-konseptual dan komparatif. Data bersumber dari instrumen internasional, ketentuan hukum nasional, literatur fikih, serta artikel jurnal bereputasi yang diterbitkan pada 2021–2026. Data dianalisis melalui analisis isi dan analisis komparatif-kritis dengan memetakan prinsip nondiskriminasi, martabat manusia, kesalingan, kemaslahatan, dan pencegahan kemudharatan. Hasil penelitian menunjukkan bahwa ketegangan antara kedua sistem normatif tidak selalu bersumber dari pertentangan nilai, tetapi lebih sering muncul akibat perbedaan epistemologi, metode penafsiran, dan penerapan norma dalam konteks sosial yang patriarkal. Keduanya memiliki titik temu dalam perlindungan martabat perempuan, pencegahan kekerasan, jaminan hak ekonomi, dan akses terhadap keadilan. Artikel ini menawarkan model pembaruan berbasis tiga prinsip, yaitu kesalingan dalam relasi perkawinan, perlindungan terhadap pihak rentan, dan penilaian substantif terhadap akibat hukum. Model tersebut menempatkan tujuan syariat sebagai instrumen evaluasi kritis terhadap produk fikih dan kebijakan keluarga kontemporer.

ABSTRACT

Debates over the relationship between international women's rights instruments and Islamic family norms are often framed as irreconcilable. These tensions are particularly evident in marital authority, spousal rights and obligations, polygamy, divorce, economic entitlements, and the protection of women from violence. This study analyzes the convergences and tensions between the principle of eliminating discrimination against women and the construction of Islamic family jurisprudence, while formulating a reform framework grounded in Islamic normative sources. It employs normative legal research based on library research, using conceptual and comparative approaches. The sources comprise international instruments, Indonesian legislation, classical and contemporary

fiqh literature, and reputable journal articles published between 2021 and 2026. The materials are examined through qualitative content analysis and critical-comparative analysis, focusing on non-discrimination, human dignity, reciprocity, public welfare, and the prevention of harm. The findings show that tensions between the two normative systems do not necessarily arise from conflicting values, but more often from differences in epistemology, interpretive methodology, and the application of norms within patriarchal social contexts. The two frameworks converge in protecting women's dignity, preventing violence, guaranteeing economic rights, and expanding access to justice. This article proposes a reform model based on reciprocity in marital relations, protection of vulnerable parties, and substantive evaluation of legal consequences. The model positions *maqāṣid al-syarī'ah* as a critical instrument for assessing *fiqh* doctrines and contemporary family policies.

INTRODUCTION

Gender justice has become a central issue in the contemporary development of Islamic family law. The debate is no longer confined to the division of domestic roles between husband and wife, but extends to decision-making authority, access to economic resources, polygamy, divorce, the fulfillment of post-divorce rights, and the protection of women from various forms of violence. At the international level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) establishes the elimination of discrimination, including discrimination occurring within marriage and the family, as a state obligation. In Muslim societies, however, the application of this principle presents particular challenges because family law is shaped not only by state law but also by *fiqh*, religious interpretation, customary norms, and diverse social structures. This situation places the relationship between CEDAW and Islamic family law within a dialectical space involving demands for equality, the normative authority of religion, and the need for legal reform that remains responsive to social realities ([July Wiarti et al., 2025](#); [Salam et al., 2024](#)).

A gap between normative guarantees and women's lived experiences remains evident in the practice of family law in Indonesia. Although women formally enjoy equal access to initiate divorce proceedings and claim economic rights, the effective realization of those rights is not always assured. Fadil's study demonstrates that post-divorce maintenance during the waiting period (*nafkah idah*), consolatory gifts (*mut'ah*), and arrears of maintenance, despite having been recognized in judicial policy, are not always fully received by women because of limited legal awareness, cultural constraints, pressure from former husbands, and a preference for resolving cases as quickly as possible ([Fadil et al., 2024](#)). In Aceh, the high number of divorces initiated by wives is also associated with unequal family responsibilities, economic hardship, violence, and asymmetrical communication. Premarital and marital guidance programs may even perpetuate patriarchal role divisions when their content is not designed from a gender-sensitive perspective ([Hanapi et al., 2025](#)). These findings indicate that formal equality does not necessarily produce substantive justice for women.

Similar concerns arise in cases of domestic violence and unequal marital authority. Violence within the family is not limited to physical assault but also includes threats, humiliation, excessive control, neglect, sexual coercion, restrictions on economic access, and other acts that cause psychological suffering. Divergent understandings between positive law and certain interpretations of Islamic law have resulted in some forms of psychological violence not being adequately recognized as violations of women's rights ([Nasyiah, 2024](#)). Family protection therefore cannot be understood merely as an effort to preserve marriage; it must also encompass the protection of life, dignity, security, and victims' access to information and legal assistance. Community-based assistance integrating education, counseling, mediation, and advocacy has been shown to improve the legal awareness of women experiencing violence, although the effectiveness of such programs ultimately depends on prioritizing victims' safety ([Cholil et al.,](#)

[2025](#)).

Gender inequality is also reproduced through religious interpretation and its circulation in digital spaces. Fatwas and religious sermons disseminated through social media provide broad access to Islamic legal knowledge, yet some content continues to place wives in economic and domestic dependency and to interpret *qiwāmah* as the husband's unilateral authority. Studies of YouTube fatwas show that narratives of marital relations frequently emphasize women's obedience, the fulfillment of husbands' domestic and sexual needs, and male superiority as head of the household ([Falah & Riyanta, 2025](#)). In discussions of polygamy, some preachers likewise foreground its normative permissibility and wives' patience rather than addressing legal requirements, the harms experienced by women, and the protection of their economic and psychological rights ([Yazid, 2026](#)). This demonstrates that gender injustice does not always originate in religious texts themselves, but may arise from how those texts are selected, interpreted, and disseminated within patriarchal social structures.

Nevertheless, Islamic law possesses conceptual resources that make reform possible. A Qur'anic rhetorical reading indicates that verses concerning women need not be understood through a hierarchy of the sexes. The concept of *qiwāmah*, for example, may be interpreted as a contextual and functional responsibility rather than as legitimization of absolute male authority ([Yasmar et al., 2025](#)). Research on Indonesian Muslim families in Sydney also identifies a range of relational patterns, from hierarchical arrangements to partnerships emphasizing consultation, reciprocity, and shared responsibility. These findings suggest that family leadership may be renegotiated on the basis of justice, public welfare, and changing social conditions without abandoning the normative identity of Islamic law ([Zumrotun et al., 2026](#)).

Within the current state of the art, research on gender and Islamic family law can be grouped into several major trends. First, studies examining the relationship between Islamic law and human rights emphasize the need for harmonious, contextual, and intersectional approaches to women's protection ([Insani et al., 2024](#); [Salam et al., 2024](#)). Second, a growing body of scholarship critiques gender bias in religious interpretation, digital fatwas, and constructions of women's piety ([Falah & Riyanta, 2025](#); [Putri & Poerwandari, 2024](#); [Yasmar et al., 2025](#)). Third, several studies focus on specific family-law issues, including polygamy, post-divorce economic rights, domestic violence, marital guidance, and court mediation ([Aziz et al., 2025](#); [Fadil et al., 2024](#); [Hanapi et al., 2025](#); [Yazid, 2023](#)). Fourth, recent research has begun to employ *maqāṣid al-syarī'ah* or *maqāṣid al-usrah* to address women's marginalization and strengthen family protection ([Cholil et al., 2025](#); [Wibowo & Fathiyaturrahmah, 2025](#)).

Although these studies make important contributions, a significant research gap remains. Research on CEDAW generally employs it as an external standard for evaluating state regulation and action, whereas studies of *maqāṣid al-syarī'ah* more often position it as an internal normative foundation for addressing particular problems. The two frameworks have rarely been placed in systematic dialogue to formulate integrated parameters for reforming Islamic family law. Moreover, previous studies tend to be fragmented across issues such as polygamy, divorce, violence, mediation, or husbands' authority, and therefore have not yet produced a framework capable of evaluating multiple family-law problems simultaneously.

In response to this gap, the novelty of the present study lies in developing a dialogical-integrative model for reconstructing gender justice between CEDAW and Islamic family law through the framework of *maqāṣid al-syarī'ah*. CEDAW is not treated as an external norm that must be accepted uncritically, while family *fiqh* is not regarded as a closed product immune from evaluation. CEDAW is used to identify discrimination, subordination, violence, and unequal access to rights, whereas *maqāṣid al-syarī'ah* is employed to assess public welfare, the protection of human dignity, and the consequences of applying particular legal provisions. The model is constructed through three parameters: reciprocity in marital relations, protection of vulnerable parties, and substantive evaluation of legal consequences.

Accordingly, this study aims to analyze the construction of gender justice within CEDAW and Islamic family law, identify their areas of convergence and tension, and formulate a *maqāṣid al-syarī'ah*-based model for reconstructing gender justice. The analysis focuses on spousal relations, *qiwāmah*, polygamy, divorce, economic rights, and the protection of women from violence. Theoretically, the study is expected to strengthen dialogue among Islamic legal studies, gender studies, and human rights scholarship. Practically, the proposed model may serve as an evaluative framework for *fiqh* interpretation, marriage regulation, religious court practice, and policies concerning the protection of women within the family.

METHOD

This study constitutes normative legal research based on library research and employs conceptual and comparative approaches. The normative approach is used to examine the principles, norms, and legal arguments contained in CEDAW, Islamic family law, and Indonesian regulations concerning marriage and the protection of women's rights. The conceptual approach is used to analyze constructions of gender justice, non-discrimination, *qiwāmah*, reciprocity, public welfare, and the prevention of harm. The comparative approach is employed to map similarities, differences, and possibilities for harmonization between CEDAW principles and Islamic family law through the framework of *maqāṣid al-syarī'ah*.

The research materials consist of primary and secondary legal sources. Primary legal materials include CEDAW, Indonesian legislation on marriage, domestic violence, sexual violence, and the provisions of Islamic family law applicable in Indonesia. Qur'anic verses, hadith, and family-*fiqh* concepts relating to spousal relations, *qiwāmah*, maintenance, polygamy, divorce, economic rights, and protection from violence are also treated as principal normative sources. Secondary legal materials comprise 27 articles published in Sinta 1–4 accredited journals between 2023 and 2026, selected on the basis of thematic relevance, clear publication identity, full-text availability, and traceable DOIs. These articles address CEDAW, women's human rights, Islamic family law, gender interpretation, polygamy, divorce, domestic violence, mediation, women's agency, and *maqāṣid al-syarī'ah*.

The materials were collected through documentation involving inventory, selection, classification, and recording. During the inventory stage, all sources were organized according to bibliographic identity, year of publication, object of study, approach, and principal findings. The selection stage included sources directly related to the dialectic between women's rights and Islamic law and excluded those without substantive relevance to the research focus. The selected sources were subsequently classified into five groups: studies of CEDAW and women's human rights; gender interpretation in Islam; spousal relations and marital authority; polygamy, divorce, and economic rights; and domestic violence and women's protection. This classification was used to map the development of previous scholarship and to identify gaps in the existing literature.

The data were analyzed through qualitative content analysis and critical-comparative analysis. Content analysis was used to identify recurring concepts, arguments, interpretive patterns, and findings across the research sources. Critical-comparative analysis compared the construction of gender justice in CEDAW with the principles and provisions of Islamic family law. The comparison was directed not only toward formal compatibility or contradiction, but also toward the epistemological foundations, normative objectives, contexts of formation, and consequences of implementation for women. The analysis therefore extended beyond textual reading to consider the social, economic, psychological, and legal impacts generated by particular family-law interpretations or policies.

The analytical process comprised three stages. The first stage involved normative mapping to identify the principal CEDAW principles, particularly non-discrimination, substantive equality, the elimination of gender stereotypes, protection from violence, and equal rights within marriage. At the same stage, relevant principles of Islamic family law were mapped, including

justice, *mu'āsyarah bi al-ma'rūf*, consultation, responsibility, public welfare, and the prohibition against causing harm. The second stage consisted of dialectical analysis to identify convergences and tensions between the two frameworks in relation to *qiwāmah*, the distribution of rights and obligations, polygamy, divorce, economic rights, and domestic violence. The third stage involved conceptual reconstruction by employing *maqāṣid al-syarī'ah* as an evaluative instrument for family-law norms and interpretations.

The reconstruction was operationalized through three analytical parameters. First, the principle of reciprocity was used to assess whether marital relations enable participation, consultation, and a balanced distribution of responsibilities between husband and wife. Second, the protection of vulnerable parties was used to evaluate the capacity of legal norms to prevent violence, subordination, neglect, and women's economic loss. Third, substantive evaluation of legal consequences was used to determine whether a provision promotes public welfare, safeguards human dignity, protects life and property, and expands access to justice. Analytical validity was maintained through cross-source comparison, consistency between normative propositions and previous research findings, and repeated verification of the original sources underlying each argument. The findings were then presented descriptively and analytically to produce a dialogical, contextual, and gender-responsive model for reconstructing Islamic family law.

RESULTS AND DISCUSSION

Results

1. Convergences between CEDAW and Islamic Family Law in Substantive Justice

The findings indicate that CEDAW and Islamic family law converge in their objectives of protecting human dignity, preventing violence, fulfilling economic rights, and guaranteeing access to justice. CEDAW emphasizes the elimination of discrimination, substantive equality, and the state's obligation to reform rules and social practices that disadvantage women. Comparable objectives can be identified in Islamic law through the principles of justice, public welfare, *mu'āsyarah bi al-ma'rūf*, the prohibition against causing harm, and the protection of life and property. The distinction between the two frameworks therefore does not always lie in their ultimate objectives, but rather in their epistemological foundations and methods of norm formulation.

Studies of Islamic law and human rights demonstrate that a *maqāṣid al-syarī'ah* approach can bridge the theocentric orientation of Islamic law and the human-rights concern for human dignity and welfare (Salam et al., 2024). This convergence is also evident in efforts to protect women from sexual and domestic violence. CEDAW requires protection centered on victims' experiences, while *maqāṣid al-syarī'ah* provides an internal normative foundation for preventing physical, psychological, sexual, and economic harm (Cholil et al., 2025; Joly Wiarti et al., 2025).

Convergence is likewise evident in the fulfillment of women's post-divorce rights. Entitlements to maintenance during the waiting period, *mut'ah*, arrears of maintenance, and economic protection demonstrate that Islamic family law contains normative mechanisms for preventing women's vulnerability after the dissolution of marriage. Their effectiveness, however, depends on legal knowledge, access to judicial institutions, and mechanisms for enforcing judgments (Fadil et al., 2024). Substantive equality therefore cannot be achieved through normative recognition alone; it must also ensure that women are able to enjoy those rights in practice.

These findings confirm that CEDAW need not be positioned as an instrument wholly opposed to Islamic law. The principle of non-discrimination can be placed in dialogue with justice and public welfare, while the protection of women may be understood as part of realizing the objectives of the *Sharī'ah*. The dialectic becomes productive when legal assessment is directed toward dignity, safety, and the actual consequences of a norm for women.

2. Tensions in Marital Authority, Polygamy, Divorce, and Violence

Despite their overlapping objectives, the study identifies tensions in several family-law provisions and practices. The first concerns the interpretation of *qiwāmah*. In certain readings, *qiwāmah* is understood as permanent male superiority and as the basis for a wife's absolute duty of obedience. Such an understanding may generate inequalities in decision-making, the division of domestic labor, control over economic resources, and women's freedom. Digital fatwas and religious sermons demonstrate that religious authority continues to reproduce the wife's position as economically dependent and obliged to fulfill her husband's domestic and sexual needs ([Falah & Riyanta, 2025](#); [Yazid, 2023](#)).

A second tension arises in the practice of polygamy. Normatively, polygamy is associated with the requirement of justice, yet its implementation often emphasizes formal compliance rather than examining the psychological, social, and economic consequences for wives and children. Studies of the concept of *ḍarar* indicate that judicial authorization of polygamy should consider not only the husband's material capacity but also the potential harm to all family members ([Aziz et al., 2025](#)). Within the CEDAW framework, practices that produce women's subordination or systematic disadvantage may constitute substantive discrimination.

Further tension is apparent in divorce and mediation. Women formally possess the right to initiate divorce, yet they continue to encounter obstacles in obtaining economic rights and post-divorce protection. At the same time, court mediation is often oriented more toward reconciliation and preserving the marriage than toward women's safety and justice. In cases involving violence or unequal power relations, pressure to reconcile may return women to harmful relationships when mediators lack gender sensitivity ([Yazid, 2023](#)).

The source of tension therefore lies not only in legal texts, but also in the interpretations, institutions, and patriarchal cultures that shape their implementation. Norms formally intended to preserve the family may lose their ethical purpose when they are used to legitimize domination, perpetuate violence, or disregard women's rights.

3. A Reconstruction Model Based on Reciprocity, Protection, and Legal Consequences

Based on the synthesis of the findings, this study formulates a dialogical-integrative reconstruction model grounded in *maqāṣid al-syarī'ah*. The model connects CEDAW's principle of non-discrimination with the internal objectives of Islamic law through three parameters: reciprocity, protection of vulnerable parties, and substantive evaluation of legal consequences.

First, reciprocity positions marriage as a moral partnership between husband and wife. Rights and obligations are not founded on gender superiority, but on capacity, need, agreement, and shared responsibility. Within this framework, *qiwāmah* is reconstructed as a functional responsibility to protect and promote family welfare, rather than as a right to control the wife. Relational patterns among Muslim families in diaspora contexts demonstrate that consultation, flexible role distribution, and shared responsibility can be realized without erasing Islamic identity ([Zumrotun et al., 2026](#)).

Second, the protection of vulnerable parties requires every family-law norm and practice to be evaluated according to its capacity to prevent violence, neglect, economic loss, and subordination. Family protection cannot be reduced to preserving the marital bond; it must guarantee the safety and dignity of every family member. In cases of violence, legal priority must therefore be given to victims' safety, access to assistance, recovery, and the fulfillment of rights, rather than to reconciliation alone.

Third, substantive evaluation of legal consequences requires that the validity of a provision not be assessed solely on the basis of procedure and formal structure. A practice must be evaluated in terms of its impact on life, dignity, property, welfare, and women's access to justice. Polygamy, mediation, divorce, maintenance, and role distribution must be assessed

according to their actual consequences. Where implementation produces dominant harm, injustice, or the loss of fundamental rights, it requires restriction, reinterpretation, or reformulation.

This model demonstrates that *maqāṣid al-syarī'ah* can be developed beyond a basis of legitimation into an instrument for critically evaluating *fiqh* doctrines and family policies. Through dialogue with CEDAW, reform of Islamic family law is directed not toward uniformity of norms, but toward substantive justice that preserves the normative identity of Islam while protecting women's rights and dignity.

Discussion

1. Convergence between CEDAW and Islamic Family Law: From Formal Equality to Substantive Justice

The findings show that CEDAW and Islamic family law are not necessarily mutually negating frameworks. They are indeed constructed upon different epistemological foundations. CEDAW originates in a human-rights paradigm that recognizes women as legal subjects entitled to equal rights, whereas Islamic family law derives legitimacy from the Qur'an, hadith, *fiqh*, and the traditions of Islamic legal reasoning. Nevertheless, the two frameworks share overlapping orientations, particularly the protection of human dignity, the prevention of violence, the fulfillment of economic rights, and the provision of access to justice.

The distinction between Islamic law and human rights is often described as a difference between theocentric and anthropocentric paradigms. Islamic law places the divine will at the center of normativity, while human rights place considerable emphasis on individual freedom and dignity. Salam, however, demonstrates that a shift from formalistic legal reading toward a *maqāṣid al-syarī'ah* approach creates a point of convergence between these paradigms. Within this approach, compliance with religious norms is inseparable from the protection of life, honor, freedom, and human welfare (Salam et al., 2024).

This finding is consistent with Insani's argument that harmonizing Islamic law and human rights requires a dialogical, inclusive, and socially adaptive approach. Harmonization does not mean standardizing all legal principles, but identifying shared foundations capable of protecting vulnerable groups and reducing gender-based inequality. Such an approach also requires women's participation in interpretation, decision-making, and policy formation concerning matters that affect their lives (Insani et al., 2024).

Within the CEDAW framework, discrimination is not limited to distinctions that explicitly disadvantage women. An apparently neutral norm may also be discriminatory when its application diminishes or eliminates women's ability to enjoy their rights. Wiarti demonstrates that regulations on women's protection in Indonesia remain affected by fragmentation, inconsistent definitions, and insufficient attention to victims' experiences. Commitment to CEDAW must therefore be translated into more coherent, victim-centered regulations capable of addressing forms of violence that are not always physically visible (July Wiarti et al., 2025).

This principle corresponds with the prevention of harm in Islamic law. The prohibition against causing harm, the protection of life, the preservation of property, and the safeguarding of dignity are central elements of *maqāṣid al-syarī'ah*. Protecting women from violence is therefore grounded not only in the state's obligations under international conventions, but also in arguments internal to Islamic law. Cholil demonstrates that improving legal awareness through education, counseling, mediation, and community-based advocacy can assist women in recognizing physical, psychological, sexual, and economic violence as violations of their rights and dignity (Cholil et al., 2025).

Convergence is also apparent in the protection of economic rights. Islamic family law recognizes women's rights to dower, marital maintenance, maintenance during the waiting period, *mut'ah*, and certain economic entitlements following divorce. Fadil emphasizes that these

obligations are grounded in both the Qur'an and national law. Normative recognition, however, is not always followed by effective implementation. Rights established in regulations or judicial decisions may lose practical meaning when women lack legal knowledge, access to assistance, or adequate enforcement mechanisms ([Fadil et al., 2024](#)).

These conditions illustrate the distinction between formal equality and substantive justice. Formal equality ends with the recognition that men and women possess rights before the law. Substantive justice requires the removal of social, economic, cultural, and institutional barriers preventing women from realizing those rights. Equal treatment is not necessarily just when the parties begin from unequal positions. Women experiencing economic dependency, violence, limited information, or family pressure require stronger protective mechanisms in order to enjoy their rights in practice.

Jafar demonstrates that dialogue among Islamic values, human rights, and local culture can produce marital practices emphasizing consultation, respect, voluntary consent, and public welfare. Local traditions need not be rejected in their entirety, but they must be continuously evaluated to prevent economic burdens, coercion, or inequality for either party. This demonstrates that Islamic family law can develop through interaction with custom and human-rights principles, provided that the assessment is oriented toward justice and the welfare of all parties ([Jafar et al., 2024](#)).

Accordingly, the convergence between CEDAW and Islamic family law lies in their substantive orientation. CEDAW provides instruments for detecting discrimination, while *maqāṣid al-syarī'ah* supplies a normative foundation for protecting life, dignity, property, and family continuity. Their interaction becomes productive when law is evaluated not merely through formal conformity with textual sources, but also through its consequences for women's lives.

2. Tensions in the Interpretation of Qiwāmah, Polygamy, Divorce, Mediation, and Violence

Despite these convergences, tensions between CEDAW and Islamic family law emerge when *fiqh* concepts are applied hierarchically and detached from their ethical objectives. The findings indicate that such tensions operate primarily at three levels: religious interpretation, social practice, and institutional implementation. The issue therefore lies not only in the existence of a norm, but also in who interprets it, the context in which it is applied, and the consequences it produces.

One of the most frequently contested concepts is *qiwāmah*. In certain classical interpretations, *qiwāmah* is understood as the basis of male superiority and the wife's obligation to submit to her husband's authority. This meaning may shape the division of domestic labor, decision-making, economic access, and women's freedom. Yasmar demonstrates that a literal reading of Q.S. al-Nisā' [4]: 34 often overlooks the rhetorical structure and linguistic context of the Qur'an. Through *balāghah* analysis, *qiwāmah* can be understood as a contextual responsibility rather than an absolute authority permanently attached to the male sex ([Yasmar et al., 2025](#)).

This finding is reinforced by Zumrotun's study of Indonesian Muslim families in Sydney. Marital relations within the community do not conform to a single model, but range from hierarchical arrangements to reciprocal partnerships. Some couples interpret family leadership as a functional responsibility that can be negotiated according to education, economic circumstances, and the distribution of roles. This indicates that migration and changes in social context open spaces for *ijtihād* in which justice, public welfare, and reciprocity can serve as the foundations of family relations ([Zumrotun et al., 2026](#)).

Although reinterpretation has developed, hierarchical meanings remain influential in digital religious spaces. Falah and Riyanta found that several YouTube fatwas reproduce inequality by emphasizing wives' obedience, domestic duties, economic dependency, and

responsibility for meeting husbands' sexual needs. Such discourse not only reflects patriarchy but also shapes public understandings of ideal marital relations (Falah & Riyanta, 2025). In a broader context, Nugroho likewise demonstrates that *Shari'ah* may be selectively framed and constructed in media discourse to preserve or challenge gendered authority. Media therefore function not merely as channels of information, but as arenas for producing religious legitimacy and gender politics (Nugroho et al., 2025).

Constructions of piety may further reinforce subordination when women are considered pious only insofar as they obey their husbands, prioritize domestic labor, and limit their agency in public life. Putri and Poerwandari demonstrate that hegemonic constructions of piety can lead unequal role distributions to be accepted as natural. Piety, however, can also become a source of agency when women employ religious knowledge to interpret, negotiate, and improve their living conditions. Within this framework, Muslim women's agency is not always expressed through rejection of religion, but may also be realized through reinterpretation from within the religious tradition (Putri & Poerwandari, 2024).

More concrete tensions arise in relation to polygamy. Yazid shows that YouTube preachers' narratives of polygamy are more frequently directed toward men's interests and women's obligation to remain patient. National legal requirements, wives' positions, and the consequences for women and children receive comparatively little attention. Objections to polygamy may even be constructed as opposition to *Shari'ah*, thereby subordinating women's experiences of suffering to male normative authority (Yazid, 2023).

Yet the permissibility of polygamy in Islamic law cannot be separated from the obligation to act justly and prevent harm. Abdul Aziz demonstrate that the assessment of *ḍarar shar'ī* in polygamy applications should encompass economic capacity, the distribution of attention, the wife's psychological condition, children's needs, family honor, and potential future harm. The principle that preventing harm takes precedence over obtaining benefit provides a basis for courts to reject applications when the risk of harm is more dominant (Aziz et al., 2025).

Justice in polygamy therefore cannot be measured solely through financial capacity or compliance with administrative procedures. Substantive assessment must consider power relations, psychological health, economic security, and children's welfare. The dialectic of polygamy is also shaped by cultural structures. Armi and Azhari, for example, show that the practice and contestation of polygamy in Minangkabau cannot be separated from the matrilineal kinship system, social change, and negotiations between *fiqh* and custom. This confirms that the implementation of family law always occurs within a specific social setting and is never entirely independent of cultural structures (Armi & Azhari, 2025).

A further tension arises in divorce. Women's access to initiating divorce constitutes an important development in Indonesian family law. Formal access to divorce, however, does not automatically guarantee the fulfillment of women's rights. Al Farabi demonstrates that the use of broken marriage as a ground for divorce expands the no-fault divorce approach. Although this approach can facilitate the dissolution of marriages that can no longer be sustained, considerations of fault remain relevant when determining post-divorce entitlements (Farabi, 2025).

Post-divorce rights also involve maintenance, *mut'ah*, jointly acquired property, and responsibilities toward children. Fadil emphasize that women's rights already possess a normative foundation, yet their implementation remains dependent on the effectiveness of legal institutions (Fadil et al., 2024). Aini and Hidayati show that the settlement of jointly acquired property among migrant-worker families may be shaped by economic rationalities, marital conflict, and unequal positions after divorce. Case resolution must therefore extend beyond terminating the marriage and must ensure the equitable distribution of assets and responsibilities (Aini & Hidayati, 2025).

A similar problem is found in mediation. Yazid reports that some mediators understand reconciliation as the primary objective, while gender justice has not consistently become a

substantive standard. This view may disadvantage women when mediation takes place within unequal relationships or cases involving violence. The success of mediation cannot be measured solely by the withdrawal of a claim or the couple's return to the household, because reconciliation produced through pressure, fear, or economic dependency does not constitute free consent (Yazid, 2023).

Wirdyaningsih likewise demonstrate that mediation in religious courts combines Islamic principles with Asian values of family harmony. This model has strengths because it creates space for advice and reconciliation, but it also risks reproducing patriarchal narratives when family harmony is prioritized over women's safety. Outcome-oriented mediation also tends to overlook custody, child maintenance, wives' economic rights, and post-divorce relationships. Mediation must therefore shift toward an empowering process that provides balanced opportunities to speak and addresses all rights arising after divorce (Wirdyaningsih et al., 2026).

In cases of domestic violence, an emphasis on preserving the family becomes increasingly problematic. Nasyiah stresses that psychological violence often remains unrecognized because it leaves no physical injuries, even though neglect, humiliation, threats, restrictions, and controlling behavior can damage women's mental health and dignity (Nasyiah, 2024). Thahir and Al-Fatih also highlight the importance of protecting wives' health rights, particularly when women face risks of disease transmission as a consequence of their partners' behavior. Both studies affirm that the obligation to preserve the family cannot be used to justify conduct that threatens women's life, health, and honor (Thahir & Al-Fatih, 2024).

The tensions between CEDAW and Islamic family law therefore arise not merely from differences in norms, but from patriarchal interpretations, unequal power relations, and institutional practices that privilege formalism or superficial harmony. Reform must address not only legal texts, but also the ways in which judges, mediators, counselors, preachers, and communities understand the objectives of marriage.

3. A Dialogical-Integrative Reconstruction Based on Maqāṣid al-Syarī'ah

The third finding proposes a dialogical-integrative reconstruction model that employs CEDAW as a diagnostic instrument for discrimination and *maqāṣid al-syarī'ah* as an internal normative basis for evaluation within the Islamic tradition. The model is not intended to subordinate Islamic law to an international instrument or to reject CEDAW on the basis of religious difference. Instead, the two are placed in critical dialogue through their shared objective of human protection.

CEDAW functions to identify distinctions, restrictions, violence, stereotypes, and practices that diminish women's ability to enjoy their rights. Maqāṣid al-syarī'ah, meanwhile, evaluates whether a norm or interpretation protects life, intellect, dignity, lineage, property, and family continuity. This framework transforms maqāṣid from a mere argument for validating existing legal provisions into a critical instrument for examining *fiqh* doctrines, policies, and social practices.

The first parameter is reciprocity in marital relations. Reciprocity positions husband and wife as moral partners who have the right to be heard, participate, and make decisions together. Roles may differ, but their distribution must be based on consultation, capacity, need, and consent. Difference must not become a basis for subordination. Within this framework, *qiwāmah* is understood as responsibility rather than a privilege of power.

The reciprocity model is supported by studies of Muslim families in diaspora settings that identify partnership patterns based on justice, public welfare, and reciprocal relations (Zumrotun et al., 2026). It is also consistent with Jafar findings concerning the importance of consultation, respect, and commitment in marital traditions. Flexibility in the division of roles therefore need not be interpreted as Westernization, but can be grounded in the values of *mu'āsyarah bi al-ma'rūf* and consultation (Jafar et al., 2024).

Reciprocity also requires women's participation in the production of religious knowledge.

Syamsiyatun demonstrates that the middle-path feminism developed by 'Aisyiyah does not construct a simplistic opposition between Islam and feminism, but negotiates equality through religious language, education, and social reform. This approach is important because legal reform will struggle to achieve justice when interpretation continues to be dominated by male experience ([Syamsiyatun, 2023](#)).

The second parameter is the protection of vulnerable parties. Vulnerability may arise from violence, economic dependency, pregnancy, childcare responsibilities, disability, divorce, limited access to information, or a disadvantaged social position. This principle requires the law to provide additional protection to parties exposed to greater risks. Identical treatment is not always just when the capacities and positions of the parties differ substantially.

In cases of domestic violence, protection must take precedence over reconciliation. Community-based programs can play an important role in expanding legal awareness and access to assistance ([Cholil et al., 2025](#)). Every program, however, must ensure that the objective of preserving the family does not override the victim's safety. Hanapi further demonstrate that marital guidance should be transformed from a process merely conveying traditional role divisions into education on communication, equal responsibility, conflict resolution, and violence prevention ([Hanapi et al., 2025](#)).

Protecting vulnerable parties also requires recognition of women's agency. Duereh found that Muslim women can establish authority as mediators by integrating *fiqh*, state law, and local norms. Agency does not always emerge through rejection of tradition, but may develop through reinterpretation of religious concepts and strengthened professional capacity. These findings demonstrate the importance of involving women as judges, mediators, counselors, religious scholars, and policymakers, rather than treating them solely as recipients of protection ([Duereh et al., 2026](#)).

The third parameter is the substantive evaluation of legal consequences. Every norm must be assessed according to its social, economic, psychological, and legal effects. Formal legality is insufficient when implementation produces dominant harm. This parameter may be applied to polygamy, divorce, mediation, property distribution, maintenance, and the allocation of family roles.

In polygamy, substantive evaluation includes financial capacity, the wife's mental health, children's needs, a history of violence, and the possible loss of economic rights. In divorce, it includes the effectiveness of maintenance payments, the distribution of jointly acquired property, childcare arrangements, and post-divorce safety. In mediation, assessment concerns freedom of consent, equality of information, and assurances that women will not be compelled to return to dangerous relationships.

This framework is also relevant in legally plural societies. Aristeus identify tensions between local beliefs and international norms in the experiences of Marapu women ([Aristeus et al., 2025](#)). Muchimah demonstrate that cultural pluralism and Islamic legal ethics require contextual approaches to family-law disputes. Both studies confirm that family-law reform cannot rely on a single uniform formulation, but must nevertheless maintain minimum standards of voluntary consent, protection of dignity, prevention of violence, and equal access to justice ([Muchimah et al., 2026](#)).

On this basis, dialogical-integrative reconstruction has several practical implications. First, polygamy proceedings must employ a measurable assessment of *qarar* and should not be limited to examining economic capacity. Second, mediation should include screening for domestic violence and allow exceptions to mandatory mediation where necessary. Third, divorce judgments should be accompanied by effective mechanisms for enforcing maintenance and protecting property rights. Fourth, marital guidance should integrate reciprocity, reproductive health, economic management, and violence prevention. Fifth, digital religious education should provide greater space for female religious scholars and academics.

The principal contribution of this study therefore lies in shifting the orientation from formal conformity with norms toward substantive examination of legal purposes and consequences. CEDAW provides instruments for identifying discrimination concealed within norms and practices, while *maqāṣid al-syarī'ah* offers internal legitimacy for reform. Through reciprocity, protection of vulnerable parties, and evaluation of legal consequences, Islamic family law can retain its religious normative foundation while advancing toward a more contextual and substantive form of gender justice.

LIMITATIONS AND FUTURE RESEARCH

This study is limited by its normative and library-based design, which relies on a selected corpus of international instruments, Indonesian legislation, fiqh literature, and recent scholarly articles; consequently, the proposed dialogical-integrative model has not yet been empirically tested against women's lived experiences, judicial practices, mediation processes, or the institutional implementation of family law. Its thematic focus on *qiwāmah*, polygamy, divorce, economic rights, and violence, together with its primary emphasis on the Indonesian context, also limits the broader generalizability of the findings. Future research should therefore employ qualitative fieldwork, socio-legal case studies, or mixed-method designs involving women, survivors of violence, judges, mediators, religious scholars, and family-counselling practitioners, while also conducting comparative studies across Muslim-majority jurisdictions and legally plural societies. Such research could operationalize and evaluate the proposed parameters of reciprocity, protection of vulnerable parties, and substantive legal consequences in court decisions, marital guidance, digital religious discourse, and family-law reform.

CONCLUSION

This study demonstrates that CEDAW and Islamic family law need not be positioned as mutually contradictory frameworks. Although they rest on different epistemological foundations, they converge in protecting human dignity, preventing violence, fulfilling economic rights, and expanding women's access to justice. CEDAW provides a framework for identifying both direct and indirect discrimination, while Islamic law contains principles of justice, public welfare, *mu'āsyaarah bi al-ma'rūf*, and the prohibition against causing harm. This convergence indicates that the protection of women's rights may be understood not only as a human-rights demand, but also as part of realizing the objectives of the *Shari'ah*.

Tensions between the two frameworks arise primarily at the levels of legal interpretation and implementation. Hierarchical interpretations of *qiwāmah*, wives' obedience, polygamy, the division of domestic roles, divorce mediation, and the preservation of family unity may perpetuate women's subordination when detached from the ethical objectives of Islamic law. These tensions are further reinforced by patriarchal culture, unequal power relations, the dissemination of gender-biased digital fatwas, and institutional practices that prioritize formal compliance or reconciliation over safety and substantive justice. Injustice in family law therefore does not always originate in religious texts, but may emerge through the interpretation, institutionalization, and application of norms within particular social contexts.

The novelty of this study lies in its dialogical-integrative reconstruction model, which brings CEDAW's principle of non-discrimination into dialogue with *maqāṣid al-syarī'ah* through three parameters. First, reciprocity positions husband and wife as moral partners whose relationship is founded on consultation, respect, and shared responsibility. Second, the protection of vulnerable parties requires the law to devote greater attention to women experiencing violence, economic dependency, divorce, or unequal access to information and justice. Third,

substantive evaluation of legal consequences requires that the validity of a norm be assessed not merely through its formal structure, but also through its effects on dignity, safety, psychological health, economic welfare, and the continuity of family life.

The model positions *maqāṣid al-syarī'ah* not merely as a basis for legitimizing existing provisions, but as a critical instrument for evaluating *fiqh* doctrines, regulations, and family-law practices. Its implications include the need for polygamy proceedings to incorporate comprehensive assessments of harm; mediation to include screening for violence and unequal power relations; post-divorce economic rights to be supported by effective enforcement mechanisms; and marital guidance to integrate reciprocity, communication, economic management, and violence prevention. The reconstruction of gender justice therefore does not remove the normative foundations of Islamic law, but restores its ethical objectives of justice, public welfare, protection of dignity, and prevention of harm.

AUTHOR CONTRIBUTIONS AND RESPONSIBILITIES

Author 1: Initiated and formulated the research idea, developed the research design and methodology, conducted data collection, prepared the initial draft of the article, and assumed responsibility for the overall substance of the study.

Author 2: Contributed to data analysis and interpretation, developed the theoretical framework, strengthened the literature review, and revised the substantive content of the article to ensure compliance with academic standards. The author also edited the language and formatting in accordance with the journal template, verified the completeness of citations and references, conducted the final proofreading, and ensured adherence to the principles of research and publication ethics.

DECLARATION OF AI USE

During the preparation of this manuscript, the authors made limited use of ChatGPT, developed by OpenAI, to improve linguistic quality, readability, and clarity of presentation. All AI-generated outputs were critically reviewed, verified, and revised by the authors. The authors assume full responsibility for the accuracy, originality, scholarly integrity, and entire content of this manuscript.

REFERENCES

- Aini, S., & Hidayati, N. (2025). (Ir)Rationality among Migrant Worker Families in Ponorogo: The Demolition of Joint Property after Divorce. *Al-Ahwal*, 18(2), 275–290. <https://doi.org/10.14421/ahwal.2025.18206>
- Aristeus, S., Firdaus, Utami, P. N., Shahrullah, R. S., Baskoro, A., & Saadah, C. (2025). Between Local Belief and International Norms: Gender Inequality among Marapu Women in Sumba. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 18(1), 139–154. <https://doi.org/10.14421/ahwal.2025.18108>
- Armi, M. I., & Azhari, S. (2025). The Dialectics of Polygamy in the Matrilineal System of 20th Century Minangkabau. *Al-Ahwal*, 18(2), 291–324. <https://doi.org/10.14421/ahwal.2025.18207>
- Aziz, N. A., Abdullah, R., Roro, F. S. R., & Hussin, M. N. M. (2025). Harm 'Darar' in Polygamous Marriage: Analyzing The Legal Framework in Malaysia and Indonesia. *Ahkam: Jurnal Ilmu Syariah*, 25(1), 53–70. <https://doi.org/10.15408/ajis.v25i1.32068>
- Cholil, M., Rouf, A., Rahmatullah, P., & Ni'ami, M. F. (2025). Domestic Violence and Women's Legal Awareness: The Family Corner Programmes Interventions through the Perspective of Maqāṣid al-Usrah. *De Jure: Jurnal Hukum Dan Syar'iah*, 17(2), 649–674. <https://doi.org/10.18860/j-fsh.v17i2.30101>

- Duereh, S., Noipom, T., & Hassama, A. (2026). Agency Within Tradition: How Muslim Women Become Mediators in Thailand's Southern Border Provinces. *Journal of Islamic Law*, 7(1), 113–141. <https://doi.org/10.24260/jil.v7i1.4998>
- Fadil, Mazidah, Z., & Mahmudi, Z. (2024). Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey. *De Jure: Jurnal Hukum Dan Syar'iah*, 16(1), 1–20. <https://doi.org/10.18860/j-fsh.v16i1.25713>
- Falah, M. B., & Riyanta, R. (2025). Digital Patriarchy: How Indonesian Islamic Preachers Construct Gender Asymmetry through YouTube Fatwas. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 18(1), 103–122. <https://doi.org/10.14421/ahwal.2025.18106>
- Farabi, A. (2025). The Autonomy of Indonesian Islamic Court: Inventing and Refining 'Broken Marriage' as a Unilateral and No-Fault Divorce Ground. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 18(2), 155–174. <https://doi.org/10.14421/ahwal.2025.18201>
- Hanapi, A., Husnul, M., Wahyuni, Y. S., & Muqaddas, A. Y. (2025). Addressing Gender Imbalance in Marriage and Wife-Initiated Divorce in Aceh: Rethinking the Role of Premarital Counselling. *De Jure: Jurnal Hukum Dan Syar'iah*, 17(2), 479–508. <https://doi.org/10.18860/j-fsh.v17i2.29131>
- Insani, N., Ibrahim, Z. S., Karimullah, S. S., Gönan, Y., & Sulastri. (2024). Empowering Muslim Women: Bridging Islamic Law and Human Rights with Islamic Economics. *De Jure: Jurnal Hukum Dan Syar'iah*, 16(1), 88–117. <https://doi.org/10.18860/j-fsh.v16i1.26159>
- Jafar, W. A., Asmara, M., Faizin, M., Octavianne, H., & Kisworo, B. (2024). Philosophical Foundations and Human Rights in the Bajapuik Tradition: Bridging Local Wisdom and Islamic Law in Minangkabau Marriage Practices. *De Jure: Jurnal Hukum Dan Syar'iah*, 16(1), 212–233. <https://doi.org/10.18860/j-fsh.v16i1.27681>
- July Wiarti, Wening Udasmoro, & Supriyad. (2025). *Regulation of Criminal Acts of Sexual Violence in Indonesia from the Perspective of CEDAW: Protection of Women's Human Rights*. <https://doi.org/10.24042/as-siyasi.v5i2.28587>
- Muchimah, Komalasari, N., Fadhil, R., Milki Aan, & Humaira Ahmad. (2026). Cultural Pluralism and Islamic Legal Ethics: Reimagining Family Law for Interreligious Marriages in Banyumas. *Al-Istinbath: Jurnal Hukum Islam*, 11(1), 67–85. <https://doi.org/10.29240/jhi.v11i1.14442>
- Nasyiah, I. (2024). Urgency of Fatwa on Domestic Psychological Violence in Indonesia as an Effort to Protect Women's Rights. *De Jure: Jurnal Hukum Dan Syar'iah*, 16(1), 118–140. <https://doi.org/10.18860/j-fsh.v16i1.26403>
- Nugroho, C., Huda, M. C., Wulandari, A., Nastain, M., & Malau, R. M. U. (2025). Sharia, Gender Politics, and Public Discourse: Media Representation of Female Royal Leadership in Yogyakarta. *De Jure: Jurnal Hukum Dan Syar'iah*, 17(2), 599–623. <https://doi.org/10.18860/j-fsh.v17i2.33150>
- Putri, F. D., & Poerwandari, E. K. (2024). Konstruksi Kesalehan, Posisi dan Agensi Perempuan dalam Wacana Keagamaan. *Musāwa Jurnal Studi Gender Dan Islam*, 22(2), 193–209. <https://doi.org/10.14421/musawa.2023.222.193-209>
- Salam, N., Purnomo, A., Saifullah, S., & Ahmad, S. (2024). Interfaith Marriage from the Perspective of Rationality: Theocentrism in Islamic Law and Anthropocentrism in Human Rights Law. *De Jure: Jurnal Hukum Dan Syar'iah*, 16(1), 179–196. <https://doi.org/10.18860/j-fsh.v16i1.23989>
- Syamsiyatun, S. (2023). Rowing Between the Currents: 'Aisyyah Strategies for Middle Path Feminism. *Musāwa Jurnal Studi Gender Dan Islam*, 22(1), 41–56. <https://doi.org/10.14421/musawa.2023.2201.41-56>
- Thahir, P. S., & Al-Fatih, S. (2024). Islamic Law View on Protecting the Rights of

- Housewives at Risk of Contracting HIV/AIDS. *De Jure: Jurnal Hukum Dan Syar'iah*, 16(1), 21–36. <https://doi.org/10.18860/j-fsh.v16i1.26499>
- Wibowo, S. E., & Fathiyaturrahmah. (2025). Women and the Transmission of the Quran: Marginalization, Legal Strategies, and Maqāṣid al-Sharī'ah-Based Resolution. *Ahkam: Jurnal Ilmu Syariah*, 25(1), 19–36. <https://doi.org/10.15408/ajis.v25i1.37944>
- Wirdyaningsih, Maryam, R., Ayuni, Q., & Abdullah, R. (2026). Fusion Approach in Indonesia's Islamic Courts: Blending Islamic Principles with Asian Family-Mediation Practices in Divorce Cases. *Al-Istinbath: Jurnal Hukum Islam*, 11(1), 86–112. <https://doi.org/10.29240/jhi.v11i1.14848>
- Yasmar, R., Nurmala, M., Nurbayan, Y., Erlina, & Atikah, T. (2025). A Rhetorical-Legal Hermeneutic: Representations of Women in the Qur'an through Balaghah and Their Implications for Islamic Law. *Al-Istinbath: Jurnal Hukum Islam*, 10(2), 731–760. <https://doi.org/10.29240/jhi.v10i2.11132>
- Yazid, M. (2023). NEGLECTING WOMEN'S RIGHTS: Indonesian YouTube Preachers' Legal Opinion on Polygamy. *Al-Ahwal*, 16(1), 69–88. <https://doi.org/10.14421/ahwal.2023.16104>
- Yazid, M. (2026). Between Peace and Gender Justice: Islamic Court Mediators' Perspectives in Divorce Mediation in West Sumatra. *Journal of Islamic Law*, 7(1), 168–192. <https://doi.org/10.24260/jil.v7i1.2644>
- Zumrotun, S., Muhsin, I., Kuswaya, A., & Ma'mun, S. (2026). Islamic Family Law in Diaspora: Negotiating Gender and Marital Authority among Indonesian Muslim Immigrants in Sydney. *Journal of Islamic Law*, 7(1), 193–221. <https://doi.org/10.24260/jil.v7i1.5687>

