

## Reconstructing the Protections of Women's Rights Under Islamic Law in the Context of Contemporary Challenges to Gender Equality

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### ABSTRACT

Recent developments in the discussion of gender equality have presented substantial challenges to the understanding and implementation of the Islamic legal protection of women's rights. The purpose of this study is to study the notion of women's rights protection in Islamic law and to reconstruct the legal framework of this notion to preserve its application in the resolution of the issues of gender equality in the present time without prejudice to the basic principles of Sharia. The study uses statutory, conceptual, and Islamic legal methods in the context of normative legal research technique. The main legal sources are the Qur'an, Hadith and relevant laws while the secondary sources are scholarly publications, peer-reviewed journal articles and other academic papers. Qualitative analysis of the evidence was performed by legal interpretation and doctrinal analysis. The findings reveal that the preservation of women's rights under Islamic law is based on the concepts of fairness (al-'adl), public interest (maslahah), equality of human dignity, and the protection of fundamental rights. Nevertheless, patriarchal sociocultural notions and textualist readings nevertheless hinder its application, therefore preventing substantive justice. Therefore, the reconstruction of Islamic law requires contextual interpretation, the maqāṣid al-sharī'ah and adaptive ijtihad so as to cope with modern social changes. The study indicates that the protection of women's rights in Islamic law must be reconstructed to promote substantive gender justice and respect for the universal principles of Sharia. Islamic law will so provide flexible, inclusive and equitable legal protection in modern society.

**Keywords:** Women's rights protection; Islamic law; legal reconstruction; gender equality; maqāṣid al-sharī'ah

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## INTRODUCTION

Women and Islamic law is a difficult issue since it is at the crossroads of religious texts, juristic interpretations, societal development and contemporary human rights concerns. At the normative level, Islam recognizes human beings as persons of dignity, moral responsibility, and spiritual equality before God. At the core of recognizing women's rights are the ideas of fairness, public interest, respect for life, protection of property, and the prohibition of oppression. However, in social practice and legal framework, women still face violence, subordination, limited access to school and jobs, unequal familial relationships and obstructions to justice (Charrad, and Stephan, 2020).

Social transformation has also created new challenges, such as online gender-based violence, exploitation in the digital economy, discrimination at work, marginalization of care work and insufficient protection for women's power to decide over their bodies and lives. The Annual Report of the Indonesian National Commission against Violence Against Women 2025 demonstrates that gender-based violence against women is still a serious and multidimensional problem in personal, public and state connected spheres. This situation indicates that normative recognition is not sufficient without a legal and interpretative framework that is able to guarantee effective protection (Dutta, 2021).

It is worsened when some elements of ancient Islamic law are seen as supreme rules and identified straight with sharia. In practice, sharia as a collection of divine ideals must be distinguished from *fiqh* as a product of human interpretation shaped by specific technique, knowledge, social structures and historical circumstances. Many legal constructs male guardianship, wife's obedience, domestic responsibilities, polygamy, divorce, testimony, inheritances, and women's participation in the public sphere are typically construed textually, with little respect to the purposes of the law and the change in social conditions. (Dawood, 2024).

This suggests the perception that Islamic law can allow inequity, despite the fact that the main ethical drive of Islamic law is towards justice and the protection of vulnerable groups. Such interpretations also risk entrenching power relations that see the male experience as the norm, and women's experiences as secondary. The major problem of modern Islamic jurisprudence studies is not to change the essential religious teachings solely to suit the times but to build an interpretive system which can distinguish the universal values of revelation from the legally and historically built products of the period. (Jones, 2020).

'Also, the urgency of reconstruction is linked to the development of national and international legal frameworks. The Indonesian Constitution guarantees equality before the law, legal clarity, protection from discrimination and respect for the rights of every person. Indonesia has ratified the Convention on the Elimination of All forms of Discrimination Against Women by Law Number 7 of 1984. CEDAW mandates nations to eliminate discrimination against women and to ensure women's equality with men before the law.

However, CEDAW Committee still identifies a number of difficulties in Indonesia, such as discriminatory norms, harmful practices, underage marriage, limited access to services for victims of violence and the role of patriarchal frameworks in family and social life. These conditions demonstrate a gap between legislative obligations, religious interpretations and the practical implementation of women's rights protection. Most studies of women in Islamic law employ one or more of the techniques below. First, the textual-normative approach relies on the Qur'anic scriptures, hadith and the opinions of traditional jurists as the basis of the rights and duties of women. Second, the Islamic feminist perspective (Amina

Wadud, Asma Barlas, Ziba Mir-Hosseini) re-interprets the interpretations created by patriarchal social frameworks.

The approach emphasizes the importance of the distinction between revelation and human understanding of revelation. Third, the approach of *maqāṣid al-sharī'ah* judges the Islamic law in terms of its wider aims which are to protect religion, life, intellect, lineage, property, dignity, freedom and human worth. Recent research have proven that the *maqāṣid*-based approach can provide a framework for change, connecting the legitimacy of Islamic law with the requirements of gender justice, particularly in the areas of family law and women's safety. But it is often employed only at a conceptual level and has not been supported by tangible indicators to analyze legal ramifications, division of rewards, threat of violence and women's bargaining power (Ansori, and Juliansyahzen, 2022).

However, the advances have certain gaps in studies. Many studies highlight the fact that Islam recognizes the dignity of women, but do not create operational standards for ascertaining the amount to which a certain legal provision, or a specific interpretation, actually offers substantive protection. Other works criticize *fiqh* based on current criteria of gender equality, but do not describe a clear analytical methodology that is appropriate for the epistemology of Islamic law. Rather, studies geared towards classical jurisprudence are likely to reproduce customary legal provisions without evaluating their impact on women's lived experiences. There is a gap in the integration of normative religious analysis, *maqāṣid al-sharī'ah*, substantive equality and human rights standards in a single systematic paradigm of legal reconstruction (Rehman, 2020).

The novelty of this work is the building of a framework for the restoration of the protection of women's rights that does not merely set Islamic law against gender equality. The reconstruction proceeds in three main steps. It first distinguishes between the universal principles of sharia and the historical and particular formulations of *fiqh*. Secondly, it assesses legal provisions in the light of the aims of justice, public interest, protection of human dignity, prevention of violence and elimination of prejudice. Third, it suggests a concept of substantive equality which takes into consideration the unequal power relations and structural barriers faced by women. So equality does not mean the destruction of all biological differences or the imposition of complete sameness, but the assurance that women shall have the rights, opportunities, protection, and decision-making power on an equal footing (Utsany and Khamim, 2022.).

The above discussion leads to the objective of this research to analyse the construction of women's rights protection in Islamic law, identify tensions between certain *fiqh* formulations and contemporary demands for gender equality, and formulate a model of legal reconstruction based on *maqāṣid al-sharī'ah*, substantive justice and respect for human rights. This research is expected to serve as a conceptual basis for the creation of Islamic law that is sensitive to social change without losing its normative orientation and at the same time increasing the protection of women in the home, community and legal system.

## METHODS OF RESEARCH

This study employs normative legal research with a qualitative approach to analyze, interpret, and reconstruct Islamic legal norms concerning the protection of women's rights in response to contemporary demands for gender equality. The research integrates conceptual, historical, statutory, and *maqāṣid al-sharī'ah* approaches. The conceptual approach examines the

principles of justice, equality, women's rights, and legal protection, while the historical approach explores the socio-historical contexts that have influenced the development and interpretation of Islamic legal thought (Disemadi, 2022). The statutory approach examines relevant national legislation and international legal instruments concerning women's rights. Meanwhile, the *maqāṣid al-sharī'ah* approach provides a normative framework for assessing whether existing legal interpretations are consistent with the objectives of Islamic law, particularly justice, public interest (*maṣlahah*), and the protection of human dignity.

The research data are collected through library research involving systematic examination of primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an, hadith, classical Islamic jurisprudential sources, the Compilation of Islamic Law, relevant national legislation, and international legal instruments related to women's rights. Secondary legal materials consist of scholarly books, peer-reviewed journal articles, legal commentaries, and previous studies addressing Islamic law, gender equality, and the protection of women's rights. Tertiary legal materials, including legal dictionaries, encyclopedias, and other reference works, are used to clarify legal concepts and terminology. These materials are selected based on their relevance to the research problem and their capacity to support a comprehensive examination of the relationship between Islamic legal norms and contemporary principles of gender justice.

The collected legal materials are analyzed using descriptive-analytical, comparative, and prescriptive techniques. The analysis begins with the reduction and classification of materials according to the major themes of justice, equality, legal protection, and women's rights, followed by comparison among classical Islamic jurisprudential interpretations, contemporary Islamic legal perspectives, and applicable legal frameworks. The materials are subsequently interpreted through systematic, historical, and teleological methods to identify areas of continuity, tension, and potential reinterpretation. Based on this analysis, the study formulates a reconstruction of Islamic legal norms that is more responsive to contemporary social realities while remaining grounded in the objectives of *maqāṣid al-sharī'ah*. The credibility of the legal arguments is maintained through source triangulation and interpretive consistency across the legal materials examined (Negara, 2023).

## RESULT AND DISCUSSION

### The Reconstruction of Islamic Law Should Be Directed towards Substantive Justice

The protection of women's rights in Islamic law should be viewed in the context of the primary objectives of Islamic law, *Maqāṣid al-sharī'ah*. This perspective sees the law not just as a set of formal regulations, but as a tool for the realization of justice, public welfare, respect for human dignity and the prevention of prejudice and violence. So the legal rule should not be examined only in terms of its exact conformance with religious teachings, but in terms of its impact on the lives of women. The provision should be examined in light of the ethical aims of Islamic law, if its application leads to injustice, subordination or deprivation of women's fundamental rights (Afrianty, 2020).

Substantive justice is not the same as formal justice. Formal justice is simply concerned with applying regulations equally, but substantive justice takes into account social context, power relations and

the actual obstacles women face. In many contexts women still have limited access to education, work, economic ownership, decision-making and legal protection. Thus, normative acknowledgment of equal rights does not automatically translate into real justice. Islamic law based on *maqāṣid al-sharī'ah* must not only recognize women as rights holders, but also as people who can enjoy and exercise their rights equally and safely (Ansori, and Juliansyahzen, 2022).

Some elements of *fiqh* relating to the relations between men and women were elaborated in various social and cultural situations. The development of legal formulations was impacted by family arrangements, divisions of labour, economic systems and the social position of women in the past. Historical context is not separable from rules about family leadership, obedience of a wife, divorce, polygamy, testifying, inheritance and women's participation in the public realm. There is a possibility that the law may prolong inequality and relegate women to an inferior position if these regulations are administered rigidly without taking social transformation into account (Umami, and Ghofur, 2022).

Therefore, one must distinguish between sharia and *fiqh*. The Sharia is based on global principles of justice, public good, respect for man and prohibition of oppression. *Fiqh*, on the other hand, is a human exercise in the interpretation of Islamic sources and is hence historical, contextual and open to re-examination. This is vital so that the formulations of the *fiqh* are not seen as final and immutable provisions. *Ijtihad* is required when the application of a legal opinion is no longer in accordance with the main objectives of Islamic law (Jaffal, et al., 2022).

The rebuilding of Islamic law is not a change of the basic principles of Islam or a free adaptation of the religion to present day requirements. Reconstruction is a systematic attempt to study religious texts in situ considering the conditions of the genesis of a provision, the aims of legal formation, social transformation and specific experiences of women. And hence, for the purposes of contextual interpretation, the over-textual application of the law should not eclipse the moral message of Islam. Women's experience must be considered an important aspect of legal reasoning in this process, particularly when a provision directly concerns women's safety, independence, dignity and future (Rahmawati, 2020).

Thus, the rebuilding of Islamic law toward substantive justice must take into account the preservation of women's dignity, the prevention of violence, the elimination of discrimination, and access to justice on equal terms as the main principles. Every law must be evaluated in terms of its capacity to generate public welfare and reduce unequal power relations. Islamic law can be responsive to the current gender equality issues but at the same time be consistent with its principles by utilizing the *maqāṣid al-sharī'ah* and contextual interpretation. Such rebuilding reasserts the basic objective of Islamic law which is to realize justice for all human beings.

### **Separating Islamic Teachings from Patriarchal Culture as a Foundation for Protecting Women's Rights**

Injustice to women is not necessarily from Islamic principles, but rather from religious interpretations affected by patriarchal culture. In civilizations where patriarchy is predominant, men are placed in higher status in the family, community and decision making process, while women are regarded as a party that must be submissive, dependent and constrained within their social responsibilities. When cultural patterns affect the interpretation of religion, the interpretations that arise may be seen as absolute Islamic precepts (Hossain and Jamil, 2023).

It is therefore vital to separate the fundamental ideals of Islam drawn from the Qur'an and the Sunnah from societal ideas evolved in certain historical situations. Islam, normatively, acknowledges that both men and women are human beings with dignity and moral responsibility and equal spiritual standing before God. Biological differences must not be a ground for devaluing human worth, for limiting fundamental rights or for justifying discriminatory treatment against women. The main criteria for understanding the Islamic legal rules must be the principles of justice, public welfare, respect for human dignity and prohibition of oppression. Thus, the religious views that lead to subjugation, violence or restriction of rights of women should be reviewed in the light of these principles (Jaffal, et al., 2022).

Restrictions on women's education are incompatible with Islamic beliefs, which see the pursuit of knowledge as a human obligation and necessity. Education helps women to develop their minds and capacities and independence. Similarly, limits on women's work or their participation in social life cannot be justified on the mere notion that the public realm is the preserve of men. Women have the right to participate in economic, social, political and intellectual life, provided that such work and participation is done responsibly and does not cause *harm* (Jones, 2020).

The respect of human will and dignity, also includes the right of a woman to choose her partner. A marriage contracted by force is against the idea of consent and may result in unfairness in the family. Women should not be viewed as objects of family decisions; they should be legal subjects who have the ability to accept or refuse marriage. In the home, decisions should be made by consultation and mutual consideration rather than by the unilateral authority of men over women (Rinaldo and Fehr, 2026).

There is a need, therefore, to re-read the sources of Islamic law in order to demarcate Islamic teachings from patriarchal culture. Such a reading will need to be contextualized in the historical context in which some Qur'anic passages, hadiths or juristic judgments developed. In the social structures of the past legal laws have been created which are not always applicable without regard to the social transition. Also, the experiences of women should be included in the process of legal reasoning since women are directly affected by the application of such regulations. The law may appear formally just, yet deliver injustice in practice if women's experiences are ignored (Sharifnia, et al., 2025).

The notion of reciprocity between men and women is equally important in rebuilding the protection of women's rights. Reciprocity makes both sides partners with rights, duties, and responsibilities. In a family the husband and the wife should respect each other, cooperate with each other, love each other and protect each other. Therefore, the separation of Islamic teachings from patriarchal culture is a vital basis in preventing religion from being used to legitimize discrimination. Islamic law can be utilized to better defend women's rights through historical, contextual and reciprocal interpretation, while maintaining justice and human dignity as the basic purposes of the law (Nasution and Muchtar, 2020).

### **The protection of women's rights has to be embodied in the form of legal reform and Institutional Implementation**

The reconstruction of the protection of women's rights in Islamic law must no longer be limited to the level of ideas, discourse or interpretation. These principles must be turned into legal norms and practices that give women with tangible guarantees, such as justice, public welfare, equal human dignity and protection from discrimination. In the absence of legislative reform and institutional backing, progressive

interpretations of Islamic law risk lingering as normative conceptions that do not translate into immediate changes in women's lives (Devy and Suci, 2020).

The law needs change on a number of issues which are intimately linked to women's rights. Married women should have the right to provide their consent, to choose their husbands, to be treated equally and to be safeguarded from forced marriage. Women seeking divorce deserve equal access to the legal process, financial certainty, a fair split of marital assets, and protection from dangerous conduct. The right to maintenance is not to be considered a mere formal obligation but is to be effectively realised according to the needs and capacities of the parties concerned (Hidayah, 2023).

The issue of custody of the child should be based on the best interests of the child and not on the basis of the parent's gender. Women should not be denied their rights to custody on the basis of social stereotypes that undermine their competence or position. In the same way, when it comes to inheritance, the application of Islamic law should take into account economic responsibilities, family circumstances and the objective of justice so that the distribution of property does not lead to harm. Women should have equal access to education and employment in order to develop their potential, become economically independent and participate in public life (Juliansyahzen, et al., 2024).

The protection from violence must therefore be a major part of the execution of Islamic law. Violence against women and girls, including domestic violence, sexual violence, forced marriage and economic exploitation, cannot be justified in the name of obedience, family leadership or tradition. All violence is contrary to the ideals of protection of life, honour and human dignity. Therefore, legal institutions should provide accessible channels for complaint, victim protection, legal support, recovery services and effective sanctions (Sezgin, 2023).

It is the role of the state to remove discriminatory legislation and to implement regulations that safeguard the rights of women. When applying the law, religious courts need to be sensitive to women's experiences, unequal power relations and the ramifications of judicial decisions for victims. Judges should not just read the provisions of the law in a linguistic way, but should also think about substantive justice, public welfare and protection of vulnerable parties. Thus, enhancing the capacity of judges, legal officers, mediators and victim support professionals is a vital component of institutional reform. The role of religious leaders is vital in promoting religious understandings that are just and do not exploit religion to legitimise male rule. Families and communities need to change relational patterns that invariably place women under male leadership. Religious education should aim at promoting the concepts of reciprocity, consultation, shared responsibility and respect for the rights of every member of the family (Mun'im, et al., 2024).

Thus, protecting women's rights entails the interweaving of legal reform, religious interpretation and institutional execution. Islamic law must function as a system that provides actual protection rather than mere normative recognition. The state, religious courts, religious leaders, families and communities may work together to enable Islamic law to respond to current difficulties of gender equality in an equitable and adaptable way that does not undermine its fundamental ideals and Islamic character.

## CONCLUSION

The protection of women's rights under Islamic law needs to be reconstructed with an orientation towards *maqāṣid al-sharī'ah*, substantive justice, respect for human dignity, public welfare and the prevention of discrimination and violence. The injustices that women suffer are not necessarily based on the basic principles of Islam, but on interpretations and legal practices shaped by social realities, historical trends and patriarchal culture. It is therefore important to distinguish between the sharia as a collection of universal values and the *fiqh* as a product of human reasoning that is contextual and open to re-examination. The reconstruction of women's rights protection can be achieved by contextual interpretation of the sources of Islamic law to answer the research questions, with the objectives of sharia, women's lived experiences, social change, and the principle of reciprocity between men and women in mind. Such reconstruction has to be made to marriage, divorce, support, child custody, inheritance, education, work, social involvement and protection from various forms of abuse. This would not only offer normative acceptance by Islamic law but also will ensure effective implementation of women's rights in practice. The results of this study underscore the importance of a paradigm shift in the formation of Islamic law from an exclusively textual orientation to a more substantive justice-sensitive orientation. Such reform does not negate Islamic identity. Instead, it underscores the fundamental purpose of Islamic law as a tool of achieving justice and public welfare. This research points to the need to modify the regulation, strengthen the gender view in religious courts, capacity building of judges and religious leaders, and public education on just and equitable interactions. Further studies are also needed to explore the use of this reconstructive framework in the many judicial decisions and practices of Islamic family law.

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