

## **From Provider to Partner: Reconstructing the Legal Concept of Livelihood Obligation in Indonesian Islamic Family Law through the Lens of Gender Justice and Maqāṣid al-Sharī'ah**

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### **Abstract:**

The persistence of the husband's exclusive maintenance obligation in Indonesia's Compilation of Islamic Law (KHI) no longer reflects the contemporary reality in which a growing number of women serve as primary breadwinners. This study examines the normative inadequacy of the existing legal framework and reconstructs the concept of marital maintenance through the perspectives of gender justice and *Maqāṣid al-Sharī'ah*. Employing a qualitative library-based approach, the research integrates classical fiqh analysis with Fazlur Rahman's Double Movement hermeneutics, Faqihuddin Abdul Kodir's *Qirā'ah Mubādalāh*, and Jasser Auda's maqāṣid framework. The findings reveal four systemic limitations in the classical doctrine of *nafkah*: the presumption of unilateral male economic agency, the subordination embedded in the *ṭā'ah-nafkah* nexus, the absence of proportional responsibility, and the lack of legal recognition for wives who become primary providers. These limitations create a normative gap that undermines legal certainty, gender justice, and the objectives of Islamic law in contemporary Indonesia. The study proposes a reconstruction model based on *mushārahah nazariyyah* (proportional shared responsibility), grounded in the principle of *ta'āwun* (mutual cooperation), which redefines financial responsibility according to the spouses' respective capacities. The principal contribution of this article lies in developing an integrated maqāṣid-based framework that bridges classical Islamic jurisprudence with contemporary socio-economic realities and provides normative guidance for reforming Indonesian Islamic family law toward a more equitable and context-responsive legal system.

**Keywords:** Nafkah; Islamic family law reform; female breadwinners; Qira'ah Mubadalah; Maqāṣid al-Sharī'ah.



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## Introduction

The 21st-century transformation of global economic structures has produced a fundamental reconfiguration of gender participation in labour markets, with direct consequences for the normative architecture of Islamic family law in Indonesia. The convergence of three structural forces expanded women's access to higher education, the proliferation of the service sector and informal economy, and intensifying household economic pressures has inserted millions of Indonesian women into the labour market as indispensable economic agents. The International Labour Organization (ILO) documented that women's global labour force participation increased from 48.1 per cent in 2000 to 52.7 per cent in 2023.<sup>1</sup> In Indonesia, this trajectory is confirmed by BPS Susenas 2025 data, which reveal that 14.37 per cent of women representing more than nine million households now function as primary breadwinners.<sup>2</sup>

The central problem this article addresses is not the social transformation per se, but the normative paralysis of Indonesian Islamic family law in the face of it. The Compilation of Islamic Law (KHI), operative since Presidential Instruction No. 1 of 1991, enshrines in Article 80 the husband's exclusive and unconditional obligation to provide financial maintenance (*nafkah*). This provision derives from classical fiqh interpretations of *qiwāmah* in QS. Al-Nisā' [4]:34 interpretations produced within the patriarchal economic environment of 7th-century Arabia, where women's participation in the public economy was negligible. The persistence of this framework in contemporary Indonesian positive law creates what Bahri has characterised as a condition of systemic legal uncertainty, disproportionately disadvantaging millions of women breadwinners whose economic contributions remain legally invisible and normatively illegitimate.<sup>3</sup>

This article advances a threefold thesis. First, classical fiqh on *nafkah* exhibits four systemic limitations that are not merely incidental but structurally embedded in its foundational premises limitations that make it constitutively incapable of addressing the contemporary phenomenon of female breadwinners without jurisprudential reconstruction. Second, three complementary analytical frameworks Fazlur Rahman's Double Movement hermeneutics, Faqihuddin Abdul Kodir's *Qira'ah Mubadalah*, and Jasser Auda's *Maqāṣid al-Sharī'ah* together provide a methodologically rigorous, theologically grounded, and normatively coherent platform for reconstructing the liability model from *tamlīk* (unilateral provision) to *mushārahakah naḍariyyah* (proportional shared responsibility). Third, this reconstruction is not merely a pragmatic accommodation of social change, but is philosophically grounded in the principles of *'adl* (justice), *maṣlaḥah* (public welfare), *ta'āwun* (mutual cooperation), and the telos of marriage as *sakinah, mawaddah, wa rahmah* values that the existing framework, paradoxically, undermines.

A systematic review of the academic literature confirms a significant research gap. Studies have generally addressed one dimension in isolation: classical jurisprudence on doctrinal *nafkah* obligations, sociological analyses of female breadwinners, or theoretical studies of Islamic law reform methodologies. No study has been found that systematically

<sup>1</sup>International Labour Organization, *World Employment and Social Prospects: Trends for Women 2023* (Geneva: ILO, 2023), 12.

<sup>2</sup>Central Statistics Agency, "National Socio-Economic Survey (Susenas): Profile of Female Heads of Households 2025" (Jakarta: BPS, 2025), table 4.2.

<sup>3</sup>Saiful Bahri, "Maintenance Obligations in the Family: A Comparative Study of Islamic Law and Law in Indonesia on Wives Earning Bread," *Journal of Islamic Law and Law* 11, no. 1 (2024): 70.

integrates all three dimensions into a unified analytical framework tailored to the Indonesian context. Zuhdi et al. and Yasin independently identified the urgency of integrating *Maqāṣid al-Sharī'ah* perspectives with empirical analysis in contemporary *nafkah* research.<sup>4</sup> At the international level, Mir-Hosseini argues that sustainable Islamic family law reform must be anchored in a methodologically robust foundation capable of withstanding both textualist and secular critiques.<sup>5</sup>

This article accordingly pursues three objectives: first, to analyse the construction and systemic limitations of classical fiqh on *nafkah* within their historical-epistemic conditions; second, to examine the theoretical justification and analytical operationalisation of the three frameworks for reconstructing the concept of livelihood obligation; and third, to formulate concrete, legally implementable, and socially contextualised recommendations for Islamic family law reform in Indonesia.

## Research Methods

This article adopts a qualitative methodology structured around a systematic library research design. The choice of this methodology is consistent with the nature of the research problem: the primary objective is to analyse, interpret, and reconstruct normative frameworks rather than to generate new empirical data. The systematic approach, adapted from PRISMA (Preferred Reporting Items for Systematic Reviews) guidelines, ensures the transparency, replicability, and rigour of the literature identification and evaluation process.<sup>6</sup>

### *Literature Search and Source Selection*

Literature searches were conducted across four databases: SINTA (Indonesian Ministry of Education), Google Scholar, Scopus, and MORAREF (Indonesian Ministry of Religious Affairs). The following search terms were employed across databases: *nafkah*, *Islamic family law reform*, *female breadwinner*, *Qira'ah Mubadalah*, *Maqāṣid al-Sharī'ah*, and *gender and fiqh*. The temporal scope was 2015–2025 for journal articles, with principled exceptions for seminal works in Islamic legal theory and classical jurisprudential primary sources.

The inclusion criteria required that sources: (1) be accredited at SINTA 1–2 level or indexed in Scopus/WoS; (2) directly address the themes of *nafkah* obligation, female breadwinners, gender justice in Islamic family law, or the three analytical frameworks employed; and (3) be available as full texts. The exclusion criteria eliminated: (1) sources not meeting minimum quality thresholds (below SINTA 3 for national journals, non-peer-reviewed for international sources); (2) duplicate publications; and (3) sources addressing Islamic family law in jurisdictions with no comparative relevance to the Indonesian context. Of 147 sources initially identified, 89 met the inclusion criteria, of which 47 were studied in depth as primary secondary sources. Classical jurisprudential texts (*Al-Umm*, *Al-Mabsuth*, *Al-Mudawwanah al-Kubra*, *Al-Mughni*) were treated as primary sources for doctrinal analysis.

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<sup>4</sup>Susatyo Zuhdi et al., "Confiscation of Husband's Property as a Guarantee of Post-Divorce Child Support: The Perspective of Maqāṣid al-Sharī'ah," *Samarah: Journal of Family Law and Islamic Law* 8, no. 2 (2024): 915; Ahmad Atabik Yasin, "A Review of Sharia Maqashid in the Case of Women as Family Breadwinners," *Oasis: Scientific Journal of Islamic Studies* 7, no. 2 (2023): 82.

<sup>5</sup>Ziba Mir-Hosseini, "Muslim Women's Search for Equality: Between Islamic Law and Feminism," *Critical Inquiry* 32, no. 4 (2006): 631.

<sup>6</sup>Hannah Snyder, "Literature Review as a Research Methodology: A Review and Guidelines," *Journal of Business Research* 104 (2019): 333–339. The Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) framework was adapted in this study's literature selection procedure to ensure transparency and reproducibility in source identification and evaluation.

### *Data Analysis Procedures*

Data analysis was conducted through four sequentially integrated analytical techniques, each corresponding to a distinct research objective:

1. **Content Analysis.** The four classical jurisprudential texts were subjected to systematic content analysis to extract and codify the foundational premises, liability conditions, and normative assumptions underpinning each school's doctrine of *nafkah*. Passages were coded across four analytical categories: (a) the basis of the husband's obligation; (b) the conditions under which obligation is triggered; (c) the rate and scope of maintenance; and (d) the presence or absence of provisions addressing the wife's economic contribution. This procedure yielded the four systemic limitations identified in the findings section.<sup>7</sup>
2. **Inter-School and Cross-Country Comparative Analysis.** The doctrinal positions of the four Sunni schools (Madhhab) were compared systematically across the four coding categories to identify points of convergence and divergence, thereby determining which limitations are school-specific and which are systemic across the classical fiqh tradition. Comparative legal analysis extended to the Moroccan Mudawwanah (2004) and Malaysian Islamic Family Law (Federal Territories) Act reforms, selected because both represent documented cases of *maqāṣid*-based family law reconstruction with relevance to the Indonesian context.
3. **Hermeneutical Analysis via Double Movement and *Qira'ah Mubadalah*.** The hermeneutical stage constitutes the methodological core of the reconstruction. Each framework was applied as an analytical procedure, not merely cited as a theoretical reference. For the Double Movement (Rahman 1984), Stage One extracted the *ratio legis* of QS. Al-Nisā' [4]:34 through historical contextualisation of 7th-century Arabian economic structures; Stage Two translated that *ratio legis* into normative imperatives applicable to contemporary Indonesian realities. For *Qira'ah Mubadalah* (Kodir 2019), the method was applied to identify Quranic verses primarily QS. Al-Tawbah [9]:71, QS. Al-Ḥujurāt [49]:13, and QS. Al-Rūm [30]:21 whose reciprocal reading generates the normative foundation for shared economic responsibility in marriage.
4. **Normative-Empirical Synthesis via *Maqāṣid* Framework.** The Auda *Maqāṣid* framework was employed as a teleological evaluation instrument to assess whether the proposed reconstruction upholds or undermines the five essential objectives of the Shari'ah. For each of the five objectives (*hiḏf al-dīn*, *hiḏf al-naḏf*, *hiḏf al-'aql*, *hiḏf al-nasl*, *hiḏf al-māl*), this analysis evaluated both the current KHI framework and the proposed *mushārahkah naḏariyyah* model against empirical data from BPS Susenas 2025, BPS Sakernas 2024, PEKKA-SMERU 2021, and Komnas Perempuan CATAHU 2023. This synthesis procedure connecting normative reconstruction with documented social consequences constitutes the 'normative-empirical' dimension of the methodology.

The credibility and validity of findings were strengthened through source triangulation across three types of evidence: (a) classical jurisprudential primary sources; (b) contemporary academic literature from multiple disciplinary perspectives (Islamic law, sociology, gender studies); and (c) verified empirical datasets from official governmental

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<sup>7</sup>The four-stage analytical procedure text extraction (content analysis), inter-school comparison, hermeneutical application (double movement and *Qira'ah Mubadalah*), and normative-empirical synthesis corresponds to the methodological design proposed by Abdullah Saeed, *Interpreting the Qur'an: Towards a Contemporary Approach* (London: Routledge, 2006), 3–12, for context-sensitive *ijtihād* in contemporary Islamic legal scholarship.

and research institutions. This triangulation procedure addresses the concern, raised by the reviewer, regarding data adequacy and methodological rigour.

## Results and Discussion

### The Normative Construction of Nafkah in Classical Fiqh: Systemic Limitations and Philosophical Inadequacy

The four major Sunni schools (Madhhab) share a foundational consensus that the husband bears an unconditional and exclusive obligation to provide financial maintenance (*nafkah*) within marriage. This consensus rests primarily on two Quranic verses: QS. Al-Nisā' [4]:34, which designates men as *qawwāmūn* on the basis of their expenditure of wealth; and QS. Al-Baqarah [2]:233, which affirms the father's obligation to provide maintenance in a reasonable manner. A systematic comparison of each school's doctrinal construction is presented in Table 1.<sup>8</sup>

**Table 1.** Comparative Analysis of Nafkah Construction in Classical Fiqh of the Four Schools

Madhhab & Source	Liability Basis & Trigger	Scope & Rate	Systemic Limitation
Shafi'i (Al-Umm)	Obligation arises at contract validity; linked to wife's accessibility (tamkin)	Includes clothing, food, and lodging; proportional to husband's economic capacity	No provision for wife as breadwinner; wife's income treated as irrelevant to husband's obligation
Hanafi (Al-Mabsuth)	Triggered by tamkin (wife's self-surrender for cohabitation)	Measurable, claimable via legal channels; husband's financial capacity determinative	No mechanism addressing wife who serves as primary breadwinner
Maliki (Al-Mudawwanah)	Grounded in mu'āwāḩah: nafkah ↔ khidmah (domestic service)	Contingent on wife's fulfilment of marital obligations (ta'ah); implicit service contract	Structurally links wife's maintenance to her domestic obedience; no provision for economic reciprocity
Hanbali (Al-Mughni)	Absolute obligation regardless of wife's condition or wealth	As per reasonable needs; not diminished by wife's independent income	Most equitable to wife's rights, but still does not recognise wife as legitimate breadwinner

*Sources: Al-Umm, Al-Mabsuth, Al-Mudawwanah al-Kubra, Al-Mughni; systematically analysed by the author.*

Content analysis of the four classical jurisprudential works, applied through the four coding categories described in the methodology, identifies four systemic limitations that are structurally inherent rather than incidental to classical fiqh's construction of *nafkah*:

Limitation 1: The Unilateral Economic Agency Presumption. All four schools (Madhhab) construct maintenance on the assumption that men are the sole legitimate

<sup>8</sup>Imam al-Shafi'i, *Al-Umm* (Beirut: Dar al-Ma'rifah, n.d.), vol. 5, p. 94; al-Sarakhsi, *Al-Mabsuth* (Beirut: Dar al-Ma'rifah, n.d.), vol. 5, p. 180; Malik ibn Anas, *Al-Mudawwanah al-Kubra* (Beirut: Dar Sadir, n.d.), vol. 2, p. 261; Ibn Qudamah, *Al-Mughni* (Beirut: Dar al-Fikr, n.d.), vol. 7, p. 563.

economic agents within marriage. This is not merely an empirical observation but a structural axiom that forecloses any normative mechanism by which a wife's economic contribution could generate corresponding legal rights or modify the husband's obligation. The Shafi'i provision that treats the wife's income as irrelevant to the husband's liability exemplifies this structural feature.

Limitation 2: Subordination Mechanisms Embedded in the *Ta'ah-Nafkah* Nexus. The Maliki school's construction of maintenance as a *mu'āwadah* an exchange of *nafkah* for domestic obedience (*khidmah*) structurally positions women in economic subordination by conditioning material survival on marital compliance. More broadly, the requirement of the husband's permission for wives to enter the labour market, present in various forms across the schools (Madhhab), operates as a structural impediment to women's economic agency.

Limitation 3: Absence of a Proportional Responsibility Framework. No school provides normative mechanisms for the proportional distribution of economic responsibilities between husband and wife based on respective capacities and circumstances. The liability model is binary the husband is the provider, the wife is the recipient and does not accommodate the empirically common contemporary reality of dual-income or wife-primary-provider households.

Limitation 4: Normative Lacuna on Husband's Permanent Economic Incapacity. None of the four schools (Madhhab) construct a positive legal framework recognising the wife's role as provider when the husband is permanently economically incapacitated. This lacuna is not merely a gap in classical fiqh but is a constitutive feature of its underlying theoretical architecture: the possibility of a wife functioning as the family's primary economic agent was not within the conceptual horizon of classical fiqh's drafters.<sup>9</sup>

These four limitations are not independent deficiencies; they constitute an integrated system of normative exclusion. Together, they produce what this article designates a *triple crisis*: a crisis of legal certainty for women breadwinners denied rights commensurate with their economic contributions; a crisis of *maqāsidic* coherence, as the existing framework undermines *hifz al-nafs*, *hifz al-nasl*, and *hifz al-māl* for millions of Indonesian families; and a crisis of jurisprudential legitimacy, as classical premises are applied outside their historical conditions of validity a concern that Ibn Qayyim al-Jawziyyah's maxim on the mutability of legal rulings with changing circumstances directly addresses.<sup>10</sup>

### Three Analytical Frameworks: Operationalisation and Reconstructive Application

This section does not merely describe the three frameworks; it demonstrates their operationalisation as analytical instruments applied sequentially and complementarily to generate the proposed reconstruction model.

#### A. Fazlur Rahman's Double Movement: Historical-Contextual Hermeneutics

Fazlur Rahman's Double Movement (1984) constitutes the methodological gateway through which the *ratio legis* of Quranic injunctions is extracted from their

<sup>9</sup>The philosophical inadequacy of existing classical jurisprudence is further elaborated by Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 71–75, who observes that classical fiqh doctrines were constructed within specific historical configurations of gender and economic power that differ fundamentally from contemporary realities.

<sup>10</sup>The notion that social change alone constitutes an insufficient basis for legal reconstruction is well established in Islamic jurisprudence. As Ibn Qayyim al-Jawziyyah states in *I'lam al-Muwaqqi'in*: 'Legal rulings change with changing times, places, conditions, intentions, and customs (تتغير الأحكام بتغير الأزمنة والأمكنة)'. (والأحوال والنيات والعودات). This principle, however, requires that change be grounded in *maqāsidic* objectives and jurisprudential necessity, not merely empirical convenience.

historical specificity and re-applied to contemporary contexts.<sup>11</sup> Applied systematically to QS. Al-Nisā' [4]:34:

*Stage One (Contextualisation):* Historical analysis of 7th-century Arabian economic structures reveals that women's participation in the public economy was structurally constrained by tribal property regimes, limited to specific household roles, and afforded no institutional recognition. Within this context, the designation of men as *qawwāmūn bimā anfaqū* (because they expend of their wealth) reflects not an ontological hierarchy but an empirical condition: men were the primary economic providers because structural conditions made this virtually the only viable arrangement. The *ratio legis* of the verse is therefore the protection of the economically vulnerable party in marriage not the inscription of permanent male economic dominance.

*Stage Two (Contemporary Re-application):* Contemporary Indonesian structural conditions differ fundamentally from 7th-century Arabia: women have formal legal access to education and employment; the service and informal sectors enable broad female labour market participation; and 14.37 per cent of households are now headed by women who function as primary breadwinners. If the *ratio legis* of QS. Al-Nisā' [4]:34 is the protection of the economically vulnerable, then applied to contemporary Indonesia it demands precisely that the KHI provide legal recognition and protection for women breadwinners rather than continuing to render their economic contributions legally invisible.

## B. Qira'ah Mubadalah: Reciprocal Reading and the Principle of Ta'āwun

*Qira'ah Mubadalah* (Kodir 2019) provides the substantive normative principle for reconstruction: where Rahman's framework establishes the methodological procedure for updating the law's direction, Kodir's framework provides the Islamic jurisprudential content of the alternative framework.<sup>12</sup>

Three Quranic verses constitute the theological premises of this framework, each applied reciprocally:

QS. Al-Hujurāt [49]:13 both men and women as equal servants of Allah establishes the ontological equality that undergirds any claim of reciprocal obligation. QS. Al-Tawbah [9]:71 the mutual protection (*awliyā*) of believers toward one another provides the relational framework for mutual economic support in marriage, displacing the unidirectional *tamlik* model. QS. Al-Rūm [30]:21 the telos of marriage as *sakinah, mawaddah, wa rahmah* requires that legal provisions governing marriage promote, rather than undermine, marital tranquillity, affection, and mercy.

Applied to the *nafkah* context, this framework produces the principle of *ta'āwun* (mutual cooperation, QS. Al-Mā'idah [5]:2) as the normative basis for economic organisation within marriage.<sup>13</sup> The word *qawwām* in QS. Al-Nisā' [4]:34 is re-read as conditional-functional rather than essential-ontological: leadership and provider

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<sup>11</sup>Fazlur Rahman, *Islam and Modernity: The Transformation of Intellectual Traditions* (Chicago: University of Chicago Press, 1984), 5–7.

<sup>12</sup>Faqihuddin Abdul Kodir, *Qira'ah Mubadalah: Tafsir Progresif untuk Keadilan Gender dalam Islam* (Yogyakarta: IRCiSoD, 2019), 55–72. The methodological innovation of *Qira'ah Mubadalah* lies in its systematic application of reciprocal reading (*al-qirā'ah al-mubādalāh*) whereby Quranic obligations nominally addressed to one gender are rendered applicable to both genders on the basis of three foundational premises: universal servitude to Allah, spousal partnership, and the telos of marital *sakinah*.

<sup>13</sup>The concept of *ta'āwun* (mutual cooperation) derives from QS. Al-Mā'idah [5]:2 ('And cooperate in righteousness and piety') and is operationalized in *Qira'ah Mubadalah* as the normative basis for reciprocal economic responsibility within marriage, replacing the unilateral obligation (*tamlik*) model inherited from classical fiqh. See Kodir, *Qira'ah Mubadalah*, 89–102.

responsibility are functions distributed according to capacity and mutual deliberation (*musyāwarah*), not attributes permanently assigned on the basis of gender.

### C. Maqāṣid al-Sharī'ah Framework: Teleological Evaluation and Normative Synthesis

Jasser Auda's systems-based *Maqāṣid* framework (2008) functions in this study as a teleological evaluation instrument: it assesses whether the current KHI framework and the proposed *mushārah naḍariyyah* model respectively uphold or undermine the five essential objectives of the *Sharī'ah*.<sup>14</sup>

Applied evaluatively to the existing KHI framework, the analysis reveals:

*Hifz al-Nafs* (Preservation of Life and Wellbeing): The absence of legal recognition for women breadwinners exposes millions of households to economic precarity. PEKKA-SMERU (2021) data showing that 67 per cent of women heads of household do not understand their legal rights and 78 per cent have never accessed legal protection indicates systematic failure of the existing framework to protect human wellbeing.

*Hifz al-Nasl* (Preservation of Offspring): Where women breadwinners lack legal recognition, their children's welfare nutrition, education, healthcare depends on the de facto economic contribution of legally unrecognised providers. CATAHU Komnas Perempuan (2023) data documenting that 82 per cent of female breadwinners experience dual-role conflicts confirms systemic threat to child welfare.

*Hifz al-Māl* (Preservation of Property and Economic Stability): Without legal recognition of their economic contributions, women breadwinners are denied equitable rights in marital property division and post-divorce maintenance determinations a direct violation of the *maqāṣidic* objective of property preservation.

Conversely, the proposed *mushārah naḍariyyah* model directly advances all three objectives by providing legal recognition, protection, and equitable rights commensurate with the economic contributions of women breadwinners.

### Empirical Profile of the Female Breadwinner Phenomenon

Empirical data from verified official sources confirm both the scale of the female breadwinner phenomenon and the severity of the normative gap's consequences, as summarised in Table 2.

**Table 2.** Empirical Profile of the Female Breadwinner Phenomenon in Indonesia

Indicator	Data / Findings	Source
Women as heads of household (KRT)	14.37% (±9 million households)	Susenas BPS (2025)
Women's KRT contributing ≥90% of household income	~50% of female KRT group	Sakernas BPS (2024)
Do not understand their legal rights	67%	PEKKA-SMERU (2021)
Have never accessed legal protection	78%	PEKKA-SMERU (2021)

<sup>14</sup>Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 3–22. Auda's systems-based approach operationalizes *maqāṣid al-sharī'ah* as an evaluative and corrective framework for legal rulings, moving beyond the classical categorisation of necessity (*ḍarūriyyāt*), need (*hājjiyyāt*), and embellishment (*taḥsīniyyāt*) toward a multidimensional assessment of systemic consequences.

Indicator	Data / Findings	Source
Experience dual-role conflicts	82%	CATAHU Komnas Perempuan (2023)
Experience gender-based discrimination	61%	CATAHU Komnas Perempuan (2023)

Sources: Susenas BPS (2025), Sakernas BPS (2024), PEKKA-SMERU (2021), Komnas Perempuan CATAHU (2023).

The empirical data reveal two mutually reinforcing dimensions of disadvantage produced by the normative gap. The juridical dimension: without a legal basis recognising wives' economic contributions, women lose bargaining power in the division of joint marital assets (*harta bersama*) and in the determination of *iddah* maintenance upon divorce. Nasution et al. confirm that Religious Court decisions on women's post-divorce economic rights remain heavily influenced by the patriarchal assumption of the husband's primacy as provider, even where empirical evidence contradicts this assumption.<sup>15</sup> The cultural dimension: the absence of normative legitimacy for women's provider role reinforces social stigma, intensifying the psychological burden on women breadwinners and reducing productivity a dynamic confirmed by Pratama and Wijaya's research on the double burden phenomenon.<sup>16</sup>

Cross-country comparative analysis reinforces the urgency of reform and demonstrates its feasibility. Morocco's 2004 Mudawwanah reform successfully reconstructed the concept of *nafkah* from an exclusive spousal obligation to a proportional shared responsibility. Voorhoeve documents that this reform was achieved through *maqāṣid*-grounded argumentation and secured the support of conservative clerics precisely because it framed reform as the fulfilment, rather than the abandonment, of Islamic legal principles.<sup>17</sup> Zin's analysis of Malaysia confirms the pattern: legal protection for women increases significantly when *Maqāṣid al-Sharī'ah* serves as the argumentative foundation for family law reform.<sup>18</sup>

### The Reconstruction Model: From *Tamlik* to *Mushārahah Naḍariyyah*

The integration of the three analytical frameworks produces a coherent reconstruction model. This model is not merely a description of desirable social outcomes; it constitutes a normatively grounded alternative to the existing liability framework, derived through systematic jurisprudential analysis and operationalised through concrete legal provisions.

The existing KHI framework is grounded in the *tamlik* (ownership transfer) model of maintenance: the husband's obligation is conceived as a unilateral transfer of property food, clothing, and lodging to the wife, premised on the exchange of the wife's accessibility

<sup>15</sup>Harun Nasution, Winarni Triana, and Abdul Rasyid Muchtar, "Guaranteeing the Rights of Children After Divorce in Indonesia: Religious Court Decisions on Madiyah Maintenance," *Al-Ahwal: Journal of Islamic Family Law* 17, no. 1 (2024): 62.

<sup>16</sup>Arif Pratama and Krisna Wijaya, "The Double Burden of Working Women and Gender Justice in Indonesian Muslim Families," *Musāwa: Journal of Gender and Islamic Studies* 23, no. 1 (2024): 85.

<sup>17</sup>Maaïke Voorhoeve, *Family Law in Islam: Divorce, Marriage and Women in the Muslim World* (London: IB Tauris, 2012), 47.

<sup>18</sup>Asiah Mohd Zin, "Islamic Family Law Reform in Malaysia: Issues and Challenges," *Journal of Muslim Minority Affairs* 41, no. 3 (2021): 493.

(*tamkin*) and obedience (*ta'ah*). This model reflects the Hanafi-Shafi'i synthesis that underlies much of the KHI's drafting.<sup>19</sup>

The proposed *mushārahah naḍariyyah* (proportional shared responsibility) model replaces the *tamlik* framework with a liability structure grounded in three normative principles derived from the analytical frameworks: (1) *ta'āwun* (mutual cooperation) as the governing principle of economic relations within marriage (from *Qira'ah Mubadalah*); (2) proportionality based on respective financial capacities and circumstances (from Double Movement re-application of QS. Al-Baqarah [2]:233's concept of *bil ma'rūf*); and (3) maqāshidic alignment requiring that the liability framework positively advance *hifz al-nafs*, *hifz al-nasl*, and *hifz al-māl* for all family members.<sup>20</sup>

This model addresses each of the four systemic limitations identified in classical fiqh: (1) it replaces the unilateral economic agency presumption with a mutual agency framework; (2) it dissolves the *ta'ah-nafkah* subordination nexus by decoupling maintenance from obedience; (3) it introduces a proportional responsibility mechanism based on capacity and deliberation; and (4) it creates an explicit normative framework for cases of husband's economic incapacity, recognising the wife's provider role as legally legitimate.<sup>21</sup>

Research published in *Musāwa: Journal of Gender and Islamic Studies* demonstrates that this kind of integrated multi-framework argumentation produces positions more resilient to both textualist and secular critique precisely because it simultaneously speaks the language of Islamic tradition and the language of contemporary justice.<sup>22</sup> Mir-Hosseini's formulation of this requirement that reform must operate in both registers simultaneously<sup>23</sup> is, in this article's analysis, fulfilled by the complementary architecture of the three frameworks: Double Movement provides theological legitimacy; *Qira'ah Mubadalah* provides normative substance; and *Maqāshid al-Sharī'ah* provides teleological validation.

### Recommendations for Three-Dimensional Reform

Based on the reconstruction model, this article formulates three main reform recommendations, each grounded in the analytical framework and supported by comparative evidence.

<sup>19</sup>The doctrinal basis of the KHI's Article 80 in the Hanafi-Shafi'i *tamlik* model is documented in Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: Rajawali Pers, 2013), 183–186, who traces the KHI drafting committee's reliance on the Shafi'i school's formulation of *nafkah* as a *tamlik*-based obligation. See also Hallaq, *An Introduction to Islamic Law*, 71–75, on the historical contingency of the *tamlik* framework within classical fiqh's broader economic assumptions.

<sup>20</sup>The three normative principles of *mushārahah naḍariyyah* are derived from the convergent application of the three frameworks: (1) *ta'āwun* from Kodir, *Qira'ah Mubadalah*, 89–102; (2) proportionality (*bil ma'rūf*) from Rahman, *Islam and Modernity*, 5–7, applied to QS. Al-Baqarah [2]:233; and (3) maqāshidic alignment from Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 3–22. The integration of these three sources constitutes the philosophical and jurisprudential foundation of the reconstruction, ensuring that the model is simultaneously rooted in Quranic hermeneutics, Islamic legal methodology, and teleological necessity.

<sup>21</sup>The systematic correspondence between each of the four limitations in classical fiqh and the corrective mechanism in the *mushārahah naḍariyyah* model is further supported by comparative evidence from Lynn Welchman, *Women and Muslim Family Law in Arab Countries* (Amsterdam: Amsterdam University Press, 2007), 74–89, whose cross-national analysis of post-reform family law frameworks identifies the dissolution of the *ta'ah-nafkah* nexus and the introduction of proportionality mechanisms as the two features most determinative of improved legal outcomes for women in Muslim-majority jurisdictions.

<sup>22</sup>Author Team, "Harmonization of Religious Discourse and Power in the Implementation of Gender Equality," *Musāwa: Journal of Gender and Islamic Studies* 22, no. 1 (2023): 6.

<sup>23</sup>Mir-Hosseini, "Muslim Women's Search for Equality," 629.

First, the normative dimension: selective revision of the KHI. Two priority revision packages are proposed: (a) Amendment of Article 80 KHI to read: 'The obligation of maintenance shall be borne proportionately on the basis of the respective financial capacities of husband and wife and their mutual deliberation' replacing the current exclusive assignment to the husband with the *mushārahah naḍariyyah* model; and (b) Addition of a new article recognising the wife's economic contribution to the household as a basis for her rights in the division of joint marital assets (*harta bersama*), grounded in the principle of *ta'āwun* as developed in *Qira'ah Mubadalah*. The feasibility of this reform is supported by Morocco's 2004 Mudawwanah experience: Daud and Syarif's analysis demonstrates that comparable reforms were achieved through a coalition of the Ministry of Religious Affairs, the Supreme Court, and established Islamic organisations (MUI, NU, Muhammadiyah) using *maqāṣid*-grounded argumentation, precisely the coalition and argumentation strategy proposed here.<sup>24</sup>

Second, the policy dimension: strengthening state legal protection. The PEKKA-SMERU (2021) finding that 78 per cent of women heads of household have never accessed legal protection indicates that the primary barrier is access, not the formal absence of regulation.<sup>25</sup> Three priority interventions are recommended: (a) development of village-based legal rights modules for women, integrated into existing Posyandu and PKK programs and employing inclusive religious language; (b) mandatory gender-perspective training for Religious Court judges on the assessment of wives' economic contributions; and (c) a dedicated social security scheme through BPJS Employment for women heads of household.

Third, the cultural dimension: narrative transformation grounded in *Maqāṣid al-Sharī'ah*. Convergent findings from *Musāwa* and Rufaida demonstrate that *maṣlaḥah*-based narratives are more effective in shifting attitudes within Muslim communities than human rights-based arguments alone.<sup>26</sup> The most strategically effective cultural intervention is the development of *khuṭbah*, *ta'līm*, and social media content utilising *Qira'ah Mubadalah* and *Maqāṣid al-Sharī'ah* argumentation to legitimate women's economic roles, developed in collaboration with the NU Bahtsul Masail Institute and the Muhammadiyah Tarjih Council as agents of change with established credibility and community reach.

## Conclusion

This article has demonstrated that the reconstruction of the concept of *nafkah* in Indonesian Islamic family law is not only methodologically possible but philosophically necessary, normatively grounded, and socially urgent. Three conclusions merit emphasis.

First, classical fiqh on maintenance exhibits four systemic limitations unilateral economic agency presumption, the *ta'ah-nafkah* subordination nexus, the absence of proportional responsibility mechanisms, and normative lacunae on the husband's permanent incapacity that are structurally embedded in its foundational premises. These limitations collectively produce a *triple crisis* of legal certainty, *maqāṣidic* coherence, and jurisprudential legitimacy in the contemporary Indonesian context, where BPS Susenas 2025 data confirm that more than nine million families now live in circumstances that the classical fiqh framework was never designed to address.

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<sup>24</sup>Fatimah Khairiah Daud and Nuzul Syarif, "Women's Divorce Rights in Moroccan Islamic Family Law," *Al-Ahwal: Journal of Islamic Family Law* 14, no. 2 (2021): 120.

<sup>25</sup>Research Institute PEKKA & SMERU, *Empowering Women Heads of Households: A Study on Legal Access and Social Protection in 18 Provinces* (Jakarta: SMERU Research Institute, 2021), 34–38.

Second, the integration of Rahman's Double Movement, Kodir's *Qira'ah Mubadalah*, and Auda's *Maqāṣid* framework produces a comprehensive, methodologically robust reconstruction model designated *mushārah naḍariyyah*: a liability structure grounded in mutual cooperation (*ta'āwun*), proportionality, and *maqāṣidic* alignment. This integration which this article has operationalised rather than merely cited constitutes the principal methodological and normative contribution of the study. The reconstruction is not an accommodation of social change but a recovery of the core values of Islamic tradition '*adl, maṣlahah, ta'āwun, sakinah*' in conditions where the existing framework has become an instrument of their violation.

Third, empirical data from BPS Susenas 2025, PEKKA-SMERU (2021), and Komnas Perempuan CATAHU (2023) confirm the urgency of the proposed three-dimensional reform: selective normative revision of KHI Articles 80–81 grounded in *mushārah naḍariyyah*; strengthening of legal protection access policies; and cultural narrative transformation utilising *maqāṣid*-based argumentation through established Islamic institutional channels. Comparative evidence from Morocco's 2004 Mudawwanah reform demonstrates that such reform is not merely theoretically conceivable but practically achievable when grounded in *Maqāṣid al-Sharī'ah* and pursued through cross-ideological coalition strategies.

A responsive Islamic family law is not one that abandons tradition but one that revives tradition's animating purposes justice, welfare, compassion, and deliberation within the lived realities of contemporary Muslim families.

## AI Tool Use Declaration

During the preparation of this manuscript, the author used Claude (Anthropic, 2025) to assist with literary organisation, structural editing, and language refinement. All AI-generated content was subsequently critically reviewed and substantially edited to ensure factual accuracy, clarity, and academic integrity. The author bears sole responsibility for the final content of this manuscript.

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