

Gender and Justice in Islamic Family Law: A Critical Analysis of Contemporary Discourse

Pramidazzura Alifa Rifqi✉

Universitas Sebelas Maret
e-mail: pramdzzr@gmail.com

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ABSTRACT

This article critically examines contemporary discourse on gender and justice in Islamic family law, focusing on the structural causes of persistent gender inequality within legally enforced family norms. Although Islamic law is normatively grounded in principles of justice and moral equality, prevailing interpretations of family law often reproduce patriarchal power relations through doctrines governing marriage, divorce, inheritance, and guardianship. This study identifies three core legal problems: normative ambiguity in defining gender justice within Islamic legal sources, interpretive dominance of formalistic classical fiqh over justice-oriented reasoning, and institutional resistance to gender-equitable reinterpretation. Employing a normative juridical method with statute, conceptual, and case approaches, the article analyzes codified Islamic family law, contemporary hermeneutical debates, and patterns of judicial reasoning. The analysis demonstrates that gender injustice persists not due to doctrinal necessity, but because ethical objectives of Islamic law are subordinated to hierarchical interpretive authority. This article argues for a prescriptive reconstruction of Islamic family law grounded in maqāṣid al-sharī'ah, emphasizing substantive justice rather than formal equality. It proposes recalibrating interpretive authority, reforming codified norms, and adopting gender-sensitive legal reasoning to restore the legitimacy and moral coherence of Islamic family law in contemporary societies.

INTRODUCTION

The discourse on gender and justice in Islamic family law has become one of the most contested areas in contemporary Islamic legal studies. Islamic family law regulates fundamental aspects of private life, including marriage, divorce, inheritance, guardianship, and marital authority, making it a primary site where gender relations are legally constructed and reproduced. While classical fiqh formulations were developed within specific socio-historical contexts, many of their normative assumptions continue

to shape contemporary legal frameworks, often generating tensions with modern conceptions of gender justice and equality.¹

In many Muslim-majority countries, including Indonesia, Islamic family law has undergone partial codification and reform. However, these reforms frequently retain patriarchal legal structures that privilege male authority in marital relations, inheritance distribution, and legal standing within the family.² Such conditions raise a fundamental legal issue: whether existing interpretations of Islamic family law adequately reflect the Qur'anic principles of justice and moral equality, or whether they perpetuate structural gender bias under the guise of religious normativity. This issue is not merely theological but juridical, as it affects the legitimacy and fairness of legally enforced family norms.

The normative tension between classical doctrine and contemporary demands for gender justice is further intensified by the coexistence of multiple interpretive authorities. State legislation, religious courts, classical fiqh manuals, and contemporary gender-sensitive interpretations operate simultaneously, often without clear normative hierarchy.³ This plurality creates legal ambiguity in determining which interpretation of Islamic family law should prevail when adjudicating family disputes. As a result, gender justice is frequently subordinated to formalistic readings of tradition, reinforcing unequal power relations within the family.

Contemporary scholarship has actively challenged patriarchal interpretations of Islamic family law. Aziz and Fahrudin (2021) critically examine gender injustice in the doctrine of women's right of *rujuk*, while Anisa (2025) analyzes the hermeneutical critiques advanced by Asma Barlas and Amina Wadud.⁴ Similarly, Burhanuddin et al. (2025) highlight the structural critique posed by Islamic feminism against patriarchal legal constructions in Indonesia.⁵ Despite these contributions, much of the existing literature remains fragmented, focusing on specific legal institutions or interpretive debates without addressing the broader normative coherence of Islamic family law as a legal system.

The research gap addressed in this article lies in the lack of a comprehensive normative juridical analysis that critically evaluates contemporary gender discourse in Islamic family law as a systemic legal issue. Existing studies often adopt theological, sociological, or thematic approaches, but rarely interrogate how legal norms, interpretive authority, and institutional enforcement interact to sustain or challenge gender injustice. This article therefore seeks to critically analyze contemporary discourse on gender and justice in Islamic family law, identify normative ambiguities and conflicts, and propose a prescriptive framework for aligning Islamic family law with substantive gender justice grounded in Islamic legal principles.

¹ I. Daharis, "The Role and Position of Women in the Family According to Islamic Law," *LITERATUS* 5, no. 2 (2023).

² I. Hayati, B. Edyar, and R. Sanjaya, "Islamic Family Law in Indonesia and Gender Inequality Discourse," *Berasan* 2, no. 2 (2024).

³ A. Ansori and M. Juliansyahzen, "The Contestation of the Family Law Discourse in the Digital Age," *Samarah* 6, no. 1 (2022).

⁴ M. Aziz and A. Fahrudin, "Keadilan Gender dalam Islam," *Akademika* 15 (2021); L. Anisa, "Kritik Konstruksi Relasi Gender dalam Keluarga Islam," *YUDHISTIRA* 2, no. 4 (2025).

⁵ A. Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia," *West Science Islamic Studies* (2025).

METHODOLOGY

This research employs a normative juridical method to analyze gender and justice in Islamic family law within contemporary discourse. The normative approach is selected because the central issues examined concern normative ambiguity, interpretive conflict, and structural inequality embedded in legal norms governing family relations. Rather than assessing empirical practices, this study focuses on legal doctrines, principles, and authoritative interpretations that shape the content and application of Islamic family law.⁶

The statute approach is used to examine codified Islamic family law instruments, particularly the Indonesian Compilation of Islamic Law and relevant judicial practices. This approach allows for the identification of provisions that institutionalize gender asymmetry, such as those regulating marital authority, inheritance, and divorce rights. By examining statutory formulations, the research highlights how state-backed codification may reproduce classical patriarchal assumptions.⁷

The conceptual approach is employed to analyze key legal concepts, including justice, equality, gender, and authority within Islamic legal theory. Justice is examined not merely as formal equality, but as substantive fairness rooted in *maqāṣid al-sharī'ah*. Gender is analyzed as a juridical construct shaped by interpretation rather than divine determinism. This approach facilitates a critical evaluation of whether prevailing legal doctrines remain consistent with Islamic ethical principles.⁸

The case approach complements statutory and conceptual analysis by examining patterns of judicial reasoning in Islamic family law cases involving gender-based claims. While this research does not focus on a single landmark ruling, it analyzes tendencies in how courts interpret gendered norms, revealing the dominance of textual formalism over contextual and justice-oriented reasoning.⁹ The integration of these approaches forms the basis for prescriptive recommendations aimed at reconstructing Islamic family law in a manner that upholds gender justice.

RESULTS AND DISCUSSION

Normative Patterns of Gender Inequality in Contemporary Islamic Family Law

The analysis reveals that contemporary Islamic family law continues to exhibit normative patterns that institutionalize gender inequality, despite ongoing reform efforts and progressive interpretive discourse. These patterns are not incidental but structurally embedded within legal doctrines governing marital authority, divorce, inheritance, and guardianship. The persistence of such norms indicates that gender injustice in Islamic family law is primarily a juridical problem rooted in interpretive authority and normative hierarchy rather than a mere gap between law and practice.¹⁰

One of the most salient findings concerns the construction of marital authority. Many codified Islamic family law provisions maintain the concept of male guardianship and leadership within marriage, often justified through selective textual interpretation.

⁶ Peter Mahmud Marzuki, *Legal Research*, rev. ed. (Jakarta: Kencana, 2017).

⁷ J. Situngkir, "Critical Review of Article 28 of the Compilation of Islamic Law from a Gender Justice Perspective," *Politika Progresif* 2, no. 1 (2025).

⁸ A. Imtihanah, "Gender-Friendly Islamic Family Law," *Kodifikasia* 14, no. 2 (2020).

⁹ S. Shiddieqy et al., "Integration of Islamic Family Law and Gender Equality," *Legitima* 7, no. 2 (2025).

¹⁰ I. Hayati, B. Edyar, and R. Sanjaya, "Islamic Family Law in Indonesia in the Discourse of Gender Inequality," *Berasan* 2, no. 2 (2024).

While classical fiqh recognized differentiated gender roles within specific socio-historical contexts, contemporary legal codifications frequently transform these contextual norms into rigid legal rules.¹¹ This transformation produces a normative imbalance by privileging male authority while framing women's rights as derivative or conditional, thereby undermining substantive gender justice.

Divorce regulation further illustrates systemic gender asymmetry. Although Islamic law recognizes multiple forms of divorce, contemporary legal practice often prioritizes unilateral male divorce while subjecting women's divorce claims to stricter procedural and evidentiary requirements.¹² Such asymmetry reflects a formalistic reliance on classical doctrine without adequate engagement with *maqāṣid al-sharī'ah*, particularly the principles of justice and harm prevention. The result is a legal framework that tolerates unequal access to marital dissolution under the guise of doctrinal fidelity.

Inheritance law remains one of the most contested areas in gender discourse. Classical inheritance rules are frequently applied without contextual reinterpretation, despite significant changes in women's socio-economic roles.¹³ Contemporary scholars advocating gender-equitable interpretations emphasize that inheritance ratios were historically linked to financial responsibilities rather than inherent gender superiority. However, legal institutions often resist such reinterpretation, citing legal certainty and orthodoxy. This resistance reinforces structural inequality and limits the adaptability of Islamic family law.

The findings also indicate that interpretive authority plays a decisive role in sustaining gender inequality. Religious courts and legal institutions tend to privilege traditional juristic opinions over contemporary gender-sensitive interpretations, even when the latter are grounded in recognized Islamic legal methodologies.¹⁴ This preference reflects an institutional conservatism that prioritizes stability over justice, thereby constraining normative reform.

Overall, the results demonstrate that gender injustice in Islamic family law is not merely a consequence of outdated norms but a manifestation of unresolved normative ambiguity and hierarchical interpretation. Without restructuring interpretive authority and legal reasoning, incremental reforms are unlikely to achieve substantive gender justice.

Contestation of Interpretation and the Crisis of Justice-Oriented Legal Reasoning

The second result highlights a profound contestation of interpretation within contemporary Islamic family law discourse, revealing a crisis of justice-oriented legal reasoning. This contestation is characterized by the coexistence of classical jurisprudential authority, state codification, and progressive hermeneutical approaches, none of which enjoys definitive normative supremacy. As a result, gender justice

¹¹ I. Daharis, "The Role and Position of Women in the Family According to Islamic Law," *LITERATUS* 5, no. 2 (2023).

¹² R. Septiani, "The Position of Women in Islamic Family Law," *Journal of Nafaqah* (2025).

¹³ N. Marilang, "Gender Justice and Equality in Islamic Inheritance Law," *Madani Legal Review* 6, no. 1 (2022).

¹⁴ W. Noor and U. Hasanah, "The Concept of Gender Equality in Inheritance According to Islamic Family Law in Indonesia," *IJTIHAD* 41, no. 1 (2025).

becomes contingent upon institutional preference rather than principled legal reasoning.¹⁵

Progressive scholars such as Amina Wadud and Asma Barlas argue for contextual and ethical reinterpretation of Qur'anic texts to uncover egalitarian principles suppressed by patriarchal readings.¹⁶ These approaches emphasize moral justice and gender equality as intrinsic to Islamic revelation. However, their normative influence within formal legal institutions remains limited. Courts and lawmakers often treat such interpretations as academic discourse rather than legitimate legal reasoning, thereby marginalizing justice-oriented hermeneutics.

Conversely, reliance on classical fiqh is often justified by appeals to legal certainty and continuity. Yet, this reliance frequently ignores the plurality of opinions within classical jurisprudence itself.¹⁷ The selective adoption of patriarchal interpretations reflects an implicit normative choice rather than doctrinal necessity. This selective formalism creates an illusion of neutrality while perpetuating gender bias.

The contestation of interpretation is further intensified by the politicization of Islamic family law reform. Gender justice initiatives are often framed as external or liberal impositions, undermining their acceptance within religious legal discourse.¹⁸ This framing obscures the fact that many gender-equitable interpretations are firmly grounded in Islamic legal methodology, including maqāṣid-based reasoning and principles of *maslahah*.

The result of this contestation is a fragmented legal landscape in which justice is inconsistently applied. Women's access to rights depends heavily on judicial discretion and institutional orientation rather than clear normative standards. This condition undermines the rule of law and erodes public trust in Islamic family law as a just legal system.

These findings indicate that achieving gender justice requires more than reinterpretation; it necessitates a structural shift in legal reasoning that prioritizes substantive justice over formalistic authority. Without resolving interpretive contestation through principled normative frameworks, Islamic family law will remain trapped in a cycle of partial reform and persistent inequality.

Prescriptive Reconstruction of Islamic Family Law toward Substantive Gender Justice

This section advances a prescriptive reconstruction of Islamic family law aimed at realizing substantive gender justice beyond formal equality. The findings in the previous sections demonstrate that gender injustice persists not because Islamic law lacks ethical foundations for equality, but because prevailing legal frameworks prioritize formalistic authority over justice-oriented reasoning. Consequently, reform efforts that focus solely on selective amendments or isolated reinterpretations remain insufficient to dismantle structural gender bias.¹⁹

¹⁵ A. Ansori and M. Juliansyahzen, "The Contestation of the Family Law Discourse in the Digital Age," *Samarah* 6, no. 1 (2022).

¹⁶ L. Anisa, "Critique of Gender Relations in Islamic Family Law," *YUDHISTIRA* 2, no. 4 (2025).

¹⁷ M. Begum et al., "Gender Equity in Muslim Family Law," *Al-Ahkam* 34, no. 2 (2024).

¹⁸ A. Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law," *West Science Islamic Studies* (2025).

¹⁹ A. Ansori and M. Juliansyahzen, "The Contestation of the Family Law Discourse in the Digital Age," *Samarah* 6, no. 1 (2022).

A central prescriptive implication concerns the reorientation of legal reasoning from literalist formalism toward *maqāṣid al-sharīʿah*-based interpretation. Justice (*ʿadl*) constitutes a core objective of Islamic law, and gender equity must be understood as an expression of that objective rather than as an external normative demand. Contemporary gender-sensitive scholars have demonstrated that many classical rulings concerning marriage, divorce, and inheritance were contingent upon historical social arrangements, particularly economic dependency and patriarchal authority structures.²⁰ Treating these rulings as immutable norms disregards the dynamic character of Islamic jurisprudence and undermines its ethical coherence.

Prescriptive reconstruction further requires redefining interpretive authority within Islamic family law institutions. Courts and legislators should no longer treat classical *fiqh* opinions as hierarchically superior to contemporary *ijtihād* that employs recognized Islamic legal methodologies. Instead, interpretive authority must be grounded in methodological validity, ethical consistency, and justice outcomes.²¹ This shift would allow courts to engage critically with precedent while remaining faithful to Islamic legal principles. Without such recalibration, judicial discretion will continue to reproduce gender bias under the guise of doctrinal continuity.

Codification represents another critical domain of reconstruction. State-enforced Islamic family law, particularly in codified instruments, often crystallizes patriarchal interpretations into binding legal rules. A prescriptive response requires revising codified provisions to reflect substantive equality in marital rights, divorce access, and economic entitlements.²² Such revision should not be framed as secularization, but as internal legal reform rooted in Islamic jurisprudential ethics. Failure to reform codification perpetuates a structural contradiction between ethical justice and positive law.

Institutionally, reconstruction must also address procedural justice. Gender justice cannot be achieved solely through doctrinal reform if procedural mechanisms continue to disadvantage women. Courts must adopt gender-sensitive evidentiary standards and ensure equal access to legal remedies.²³ Procedural neutrality that ignores structural inequality functions as indirect discrimination, undermining substantive justice.

Ultimately, this prescriptive reconstruction affirms that gender justice is not an optional dimension of Islamic family law but a normative requirement intrinsic to its legitimacy. Islamic family law that fails to uphold justice risks losing moral authority and social relevance. Therefore, integrating justice-oriented interpretation, reforming codification, and recalibrating institutional practices are indispensable steps toward realizing gender-equitable Islamic family law in contemporary society.

²⁰ F. Fansuri and M. Ramadhani, "Reinterpreting Islamic Inheritance Law for SDGs," *Profetika* 25, no. 2 (2025).

²¹ A. Imtihanah, "Gender-Friendly Islamic Family Law," *Kodifikasia* 14, no. 2 (2020).

²² J. Situngkir, "Critical Review of Article 28 of the Compilation of Islamic Law," *Politika Progresif* 2, no. 1 (2025).

²³ S. Shiddieqy et al., "Integration of Islamic Family Law and Gender Equality," *Legitima* 7, no. 2 (2025).

CONCLUSION

This article demonstrates that gender injustice in Islamic family law is not merely the result of outdated norms, but a structural consequence of unresolved normative ambiguity, interpretive hierarchy, and institutional conservatism. Contemporary Islamic family law continues to reproduce gender asymmetry through legal doctrines governing marital authority, divorce, inheritance, and guardianship, despite extensive scholarly efforts to promote gender-just interpretations. The persistence of inequality reflects a juridical failure to translate ethical principles of justice embedded in Islamic law into binding legal norms.

The analysis confirms that the core problem lies in the dominance of formalistic and selective interpretations of classical *fiqh* that are treated as authoritative without sufficient contextualization. While progressive hermeneutical approaches grounded in *maqāsid al-sharī'ah*, *maslahah*, and ethical justice offer robust doctrinal alternatives, their marginalization within legal institutions has resulted in fragmented and inconsistent application of gender justice. As a consequence, women's legal rights in family law remain contingent upon judicial discretion rather than principled normative standards.

Prescriptively, this article argues for a reconstruction of Islamic family law based on justice-oriented legal reasoning. Such reconstruction requires reconfiguring interpretive authority to prioritize substantive justice over doctrinal formalism, integrating *maqāsid*-based reasoning into codified family law, and strengthening institutional openness to gender-equitable interpretations rooted in Islamic legal methodology. Without this normative shift, reforms will remain superficial and incapable of addressing structural gender injustice.

Ultimately, ensuring gender justice in Islamic family law is not a departure from Islamic legal tradition but a reaffirmation of its foundational commitment to justice, dignity, and moral equality. A justice-centered reconstruction of Islamic family law is therefore essential to restore its legitimacy and relevance in contemporary Muslim societies.

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