

Reconstructing Qiwāmah and Wilāyah in the Shāfi'ī Legal Tradition: Toward a Reform of Islamic Family Law in Indonesia

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Abstract

This study addresses an epistemological problem in Indonesian Islamic family law, which remains rooted in the classical Shāfi'ī jurisprudential framework. The Compilation of Islamic Law (KHI), serving as the formal reference for Muslim family law, reproduces patriarchal paradigms through the concepts of qiwāmah (male leadership), nusyūz (wife's disobedience), and wilāyah (male guardianship). These notions reinforce gender hierarchy and create tension between classical jurisprudential interpretations and modern principles of equality as guaranteed by the Constitution and international conventions such as CEDAW. Using a qualitative library research approach and a maqāṣidī-hermeneutical analysis, this study reinterprets classical legal texts through the lens of maqāṣid al-sharī'ah (the higher objectives of Islamic law), emphasizing justice (al-'adl), welfare (al-maṣlaḥah), and human dignity (karāmah insāniyyah). Primary sources such as al-Māwardī's al-Hāwī al-Kabīr and al-Ḥusnī's Kifāyat al-Akhyār are examined alongside the maqāṣid frameworks of al-Syātibī, Ibn 'Ashūr, and Jasser Auda. The findings reveal that through a maqāṣid-based reinterpretation, qiwāmah becomes a shared responsibility (takāful), nusyūz is reframed as relational dysfunction requiring reconciliation (ishlāḥ), and wilāyah transforms into a protective-administrative function rather than patriarchal authority. This reconstruction yields a model of responsive maqāṣidī fiqh, an adaptive Islamic legal system that aligns with social transformation and upholds justice and gender equality in family life.

Keywords: Fiqh Reconstruction, Gender Equality, Maqāṣid al-Sharī'ah.



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INTRODUCTION

Islamic family law in Indonesia continues to rest on the classical Shāfi'ī legal tradition, which forms the principal normative framework of the Compilation of Islamic Law (KHI) institutionalized as positive law through Presidential Instruction No. 1 of 1991. (Agustina, 2022), (Ferliadi, 2020) Although the KHI provides legal certainty, it still reflects an epistemological foundation shaped by a patriarchal paradigm evident in classical works such as al-Shirazi's al-Muhadhdhab and al-Nawawi's al-Majmu', which position men as qawwam and exclusive guardians while placing women in a less autonomous legal position. (Nasution & Faza, 2025) This construction comes into tension when confronted with constitutional principles of equality articulated in Articles 28D and 28I of the 1945 Constitution, as well as Indonesia's international commitments under Law No. 7 of 1984 on CEDAW and domestic protection under Law No. 23 of 2004, a tension also highlighted by Musdah Mulia. (Abdurrahman, 1992), (Mulia, 2015)

In practice, patriarchal biases embedded in classical jurisprudence continue to influence the religious courts and everyday social life, particularly on issues of qiwāmah, nushūz, and wilāyah. SIMFONI-PPA data from 2025 records 28,621 cases of violence, the majority involving women, with household settings being the most dominant arena, indicating persisting

unequal power relations. (*SIMFONI-PPA*, n.d.) This condition is reinforced by a 2022 report from the Supreme Court showing that more than 72 % of child marriage dispensation petitions were granted, largely legitimizing the authority of male guardians. These empirical findings align with studies by Arifin and Rifai and Faizah, which underscore how traditional understandings of qiwāmah often produce unequal distributions of authority within families. (Arifin & Rifai, 2025) (Faizah, 2018) These two sets of data demonstrate that gender-related issues in Islamic family law are not merely theological but also epistemological, shaping judicial decision-making, legal education, and the social practices of Muslim communities. The conceptual dimension (the foundations of jurisprudence), the normative dimension (the textuality of the KHI), and the practical dimension (judicial application) interact and reinforce one another, as also discussed in Ni‘ami et al. regarding the epistemic structure of Shafi‘i jurisprudence. (Ni‘ami et al., 2023)

A clear research gap emerges from the limited studies integrating maqāṣid al-sharī‘ah with Shafi‘i legal epistemology to reconstruct the concepts of qiwāmah, nushūz, and wilāyah in a manner compatible with Indonesia’s positive legal framework. Although feminist scholars such as Amina Wadud, Asma Barlas, and Musdah Mulia have revealed patriarchal biases in interpretation, they have not yet formulated a maqāṣid-based normative reconstruction within the structure of madhhab jurisprudence. Yet the maqāṣid tradition developed by al-Juwaynī, al-Ghazālī, al-Shāṭibī, and Ibn ‘Āshūr, along with Jasser Auda’s systems approach (2008), provides an epistemological foundation for reassessing the objectives and rationales of classical legal rules. (al-Juwaini, 1979), (al-Ghazālī, 1993), (Shatibi, 2002), (Ibn Ashur, 2001) Meanwhile, maqāṣid al-sharī‘ah thought developed by scholars such as Imām al-Juwaynī, al-Ghazālī, al-Syāṭibī, Ibn ‘Āshūr, and Jasser Auda actually provides an epistemological framework capable of bridging the gap between text and lived reality. Al-Juwaynī emphasized the importance of understanding law based on the objectives of the Sharī‘ah rather than mere textual literalism. (al-Juwaini, 1979) Al-Ghazālī, in al-Mustaṣfā, asserted that all maqāṣid al-sharī‘ah revolve around five foundational principles ḥifz al-dīn, al-nafs, al-‘aql, al-nasl, and al-māl all directed toward human well-being. (al-Ghazālī, 1993) Al-Syāṭibī later highlighted the dynamic nature of law with his well-known statement: “al-aḥkām tataḡayyar bi taghayyur al-azmān wa al-amkīnah wa al-aḥwāl” laws may change with shifts in time, place, and circumstance. (Al-Syatibi, 2003) Ibn ‘Āshūr expanded this by arguing that maqāṣid include protecting human dignity (karāmah insāniyyah) as a universal objective of the Sharī‘ah. (Ibn ‘Āshūr, 1988) Jasser Auda, through his “maqāṣidī system approach,” further stressed that Islamic law must be understood as multidimensional, interconnected, and oriented toward substantive justice. (Auda, 2008a)

The novelty of this study lies in three main contributions. First, at the theoretical level, it integrates maqāṣid al-sharī‘ah with Shafi‘i legal epistemology to critically examine the normative structure of gender relations in Islamic family law. Second, methodologically, it synthesizes maqāṣid-oriented hermeneutics with comparative analysis of the turāth (classical legal tradition), following the frameworks articulated by Auda and Ibn ‘Āshūr, to produce an operational analytical procedure. (Auda, 2008b), (Ibn Ashur, 2001) Third, at the practical level, it proposes a reconstruction of qiwāmah nushūz wilāyah grounded in mutual consent and functional responsibility, consistent with gender-just legal reform initiatives suggested by Ropiah and relational islāḥ approaches articulated by Hammad. (Ropiah, 2024) This model is expected to support the reform of the KHI and guide religious court practice toward greater equality and public welfare. (Muhammad & Kodir, 2007)

RESEARCH METHOD

This study employs a qualitative approach using a library research method that focuses on critical reading, interpretation, and normative reconstruction of classical and contemporary

sources of Islamic jurisprudence. The primary objects of analysis are three central concepts in Islamic family law *qiwāmah*, *nusyūz*, and *wilāyah* as formulated within Shafi‘i jurisprudence and institutionalized in the Compilation of Islamic Law (KHI) through Presidential Instruction No. 1 of 1991. The analytical framework used is hermeneutic–*maqāṣidī* analysis, which combines textual examination of *fiqh* sources with an evaluation of the objectives of the law as articulated by classical and modern *maqāṣid* theorists. Operationally, the hermeneutic–*maqāṣidī* analytical design in this study proceeds through four stages: (1) textual analysis of Shafi‘i juristic opinions in authoritative works such as al-Māwardī’s *al-Hāwī al-Kabīr* (d. 450 AH) and al-Ḥusnī’s *Kifāyat al-Akhyār* (d. 829 AH) to map the foundational construction of *qiwāmah*, *nusyūz*, and *wilāyah*; (2) identification of the ‘illah (ratio legis) using the framework of *uṣūl al-fiqh* as explained by al-Juwaynī in *al-Burhān* and al-Ghazālī in *al-Mustaṣfā*; (3) evaluation of *maqāṣid* by referring to the formulations of legal objectives developed by al-Syāṭibī in *al-Muwāfaqāt* (8th century AH), Ibn ‘Āshūr in *Maqāṣid al-Syarī‘ah al-Islāmiyyah* (1946), and Jasser Auda’s systems-based contemporary *maqāṣid* theory in *Maqāṣid al-Sharī‘ah as Philosophy of Islamic Law* (2008); (4) normative reconstruction, namely reformulating the three concepts so they align with principles of substantive justice, constitutional gender equality, and Indonesia’s positive law, including the 1945 Constitution, Law No. 1/1974 as amended by Law No. 16/2019, and Law No. 23/2004.

The selection of sources is justified by their authority and representativeness within the Shafi‘i and *maqāṣid* traditions. Al-Māwardī’s work is included due to its status as one of the most comprehensive encyclopedic references in Shafi‘i jurisprudence, while al-Ḥusnī represents the applicative *fiqh* formulations widely used in Islamic legal education in pesantren and universities. In the *maqāṣid* domain, al-Syāṭibī provides the classical methodological foundation, whereas Ibn ‘Āshūr and Auda offer modern theoretical bases for reassessing ‘illah and *maslahah* in contemporary contexts. Indonesian scholarship, such as Yusdian Wahyudi’s *Epistemologi Maqāṣid al-Syarī‘ah* (2019), is used to bridge global *maqāṣid* theory with the needs of national family law reform. (Hadari Nawawi, 1993) The validity and reliability of the study are strengthened through source triangulation and methodological triangulation. Source triangulation is conducted by comparing classical *fiqh* texts, contemporary *maqāṣid* literature, and national legal documents (the KHI, Marriage Law, Government Regulation No. 9/1975, and relevant Supreme Court decisions on marriage and gender relations). Methodological triangulation is achieved by consistently applying the analytical sequence textual analysis→identification of ‘illah→*maqāṣid* evaluation→normative reconstruction to all three concepts examined. Interpretive accuracy is maintained by tracing the historical contexts of classical texts, consulting authoritative commentaries, and conducting cross-verification among works within the Shafi‘i tradition, such as al-Nawawī’s *al-Majmū‘* and Ibn Ḥajar al-Haytamī’s *Tuḥfat al-Muḥtāj*. (Suratman & Dillah, 2015) This method ensures that the resulting epistemic reconstruction is academically sound and aligned with the principles of *maqāṣid al-syarī‘ah* as well as the demands of contemporary Islamic family law reform in Indonesia.

Findings and Discussion

The reconstruction proposed in this study primarily takes the form of renormativization, namely the renewal of ethical norms and purposes (*maqāṣid*) underlying the concepts of *qiwāmah*, *nusyūz*, and *wilāyah*. This approach restructures the normative foundations of these concepts by shifting the emphasis from hierarchical arrangements to the principles of functional responsibility, reciprocity, and the protection of human dignity. Renormativization not only reinterprets textual meanings but also establishes a new value orientation that aligns more closely with the contemporary Indonesian sociological context, human rights principles, and the overarching objectives of the *Sharī‘ah*. Consequently, the resulting reform is normative–

substantive in nature and can serve as a juridical basis for improving the Compilation of Islamic Law (KHI) as well as for guiding judicial practice in religious courts.

Reconstructing the Concept of Qiwāmah

The concept of qiwāmah in Qur’an Surah al-Nisā’ [4]:34 has long served as a central pillar in shaping gender relations within classical Islamic jurisprudence. The verse states:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

For centuries, this verse has been interpreted through a hierarchical framework that positions men as leaders and women as those who are led and subordinated. This understanding treats qiwāmah as a male prerogative grounded in two main assumptions: first, that men possess superior intellect and physical capability compared to women; second, that men’s obligation to provide financial support justifies their authoritative position. In the exegetical and legal tradition of the Shāfi‘ī school, these two assumptions became the legal foundation of household relations. (al-Shāfi‘ī, 1993) However, such a textual-literal approach tends to overlook the semantic, historical, and maqāsid-oriented dimensions of the Qur’anic text. Linguistically, the term qawwāmūn (قَوَّامُونَ) is not synonymous with “dominating” (sayṭarah). It derives from the root qāma–yaqūmu, which means “to stand for,” “to uphold,” “to manage,” or “to take care of.” In Mufradāt Alfāz al-Qur’ān, al-Rāghib al-Aṣfahānī explains:

القيام على الشيء هو حفظه والاهتمام به

(To stand over something means to protect it and care for it.)

This definition shows that qiwāmah, in its original philological sense, conveys responsibility and care—not domination or authority. (Al-Rāghib al-Aṣfahānī, 1992) In other words, the root meaning of the term carries the notion of maintenance (ri‘āyah), not control (sulṭah). Thus, from a linguistic standpoint, the claim that this verse grants men ontological superiority over women lacks strong textual grounding.

Even in classical exegesis, such as the work of Fakhr al-Dīn al-Rāzī, this verse is understood within the framework of socio-economic responsibility rather than absolute superiority. Al-Rāzī explains that the “advantage” of men over women mentioned in the verse refers to a functional advantage, not an inherent ontological superiority, because such differences are relative and situational. The advantage of men in this context does not indicate a higher spiritual or intellectual rank, but highlights roles that, at the time, were socially limited to men earning a livelihood and protecting the family. Thus, qiwāmah in essence is not a “privileged right” but a “social obligation” arising from responsibility. (Fakhr al-Dīn al-Rāzī, 1981) Contextually, this verse was revealed in 7th-century Arabian society, which was deeply patriarchal, with economic and social structures fully controlled by men. Women lacked adequate access to education, employment, and economic resources. Accordingly, the legitimacy of male authority in the verse is tied to their financial responsibility toward the family, as expressed in the phrase “bimā anfaqu min amwālihim” (“because they spend of their wealth”). The legal implication is that qiwāmah functioned as a mechanism for maintaining balanced responsibilities within a social structure dependent on one party as the primary provider.

However, today’s social context has changed fundamentally. Modern women have broad access to education, economic resources, and the public sphere. They can act as breadwinners and often become the main financial support of the family. In this context, the argument of “financial provision” as the basis for qiwāmah is no longer relevant when applied rigidly. To insist that qiwāmah still means male domination is to ignore the principle of social justice and the changing realities that inform the application of Islamic law. In Islamic legal theory, a change in the ‘illah (legal cause) leads to a change in the law (taghayyur al-aḥkām bi taghayyur

al-azminah wa al-amkinah). When the primary basis of qiwāmah men's exclusive financial responsibility is no longer applicable, its legal implications must also be reconsidered. Thus, interpreting qiwāmah as a fixed hierarchical structure without accounting for modern socio-economic realities reflects interpretive stagnation that contradicts the dynamism of maqāṣid al-sharī'ah.

A maqāṣid-based approach shifts the meaning of qiwāmah from hierarchical authority to a partnership of mutual responsibility (takāful). From a maqāṣid perspective, the objective of the Sharī'ah in the family context is to safeguard household welfare (ḥifẓ al-usrah) through balanced rights and responsibilities not to preserve the superiority of one party. Ibn 'Āshūr, in Maqāṣid al-Sharī'ah al-Islāmiyyah, affirms that the substantive meaning of qiwāmah is responsible management, not domination:

القِوَامَةُ لَا تَقْتَضِي التَّسْلُطَ بَلْ تَدْبِيرَ الْمَصَالِحِ بِرَفْقٍ وَعَدْلٍ

(Qiwāmah does not imply domination, but the careful and just management of interests.) (Ibn 'Āshūr, 1988)

Within this framework, qiwāmah becomes an ethical rather than a juridical function: men and women jointly manage family life in the spirit of consultation (shūrā) and justice ('adl). Leadership, once understood as singular and centralized, becomes participatory. The maqāṣid-oriented reconstruction of qiwāmah aligns with the principle of al-musāwah fī al-karāmah al-insāniyyah (equality in human dignity), as emphasized in Qur'an 49:13, where human worth is measured not by gender but by piety. Thus, differing roles do not entail unequal status. In the context of Indonesia's positive law, a maqāṣidī reading of qiwāmah also finds relevance. Article 79 of the Kompilasi Hukum Islam (KHI), which states that "the husband is the head of the household and the wife is a homemaker," reflects a classical hierarchical model. Through a maqāṣid lens, this phrase can be reinterpreted not as administrative authority but as flexible social functions that may shift according to circumstances. Both husband and wife become ra'iyah (responsible guardians) of the family, consistent with the Prophet's ﷺ statement:

كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ

(Every one of you is a guardian, and every one of you is responsible for those under your care.) (Muslim, 1994)

This ḥadīth is universal: men and women alike hold equal moral and social responsibility within their respective spheres. Therefore, qiwāmah is not the monopoly of men but a shared responsibility to uphold justice, compassion, and the welfare of the family. Reconstructing the meaning of qiwāmah through a maqāṣid al-sharī'ah approach produces a more egalitarian and ethical model of family relations. Obedience is no longer synonymous with subordination but becomes a mutual commitment to shared moral goals. In this paradigm, obedience becomes reciprocity, and leadership becomes collective management of family life. Thus, in a maqāṣid-oriented reading, qiwāmah is not a justification for patriarchy but an ethic of responsibility grounding the relationship between husband and wife in justice ('adl), welfare (maṣlaḥah), and compassion (raḥmah). This perspective restores qiwāmah to its original Qur'anic purpose: establishing balanced human relations founded on justice and respect for the dignity of both spouses.

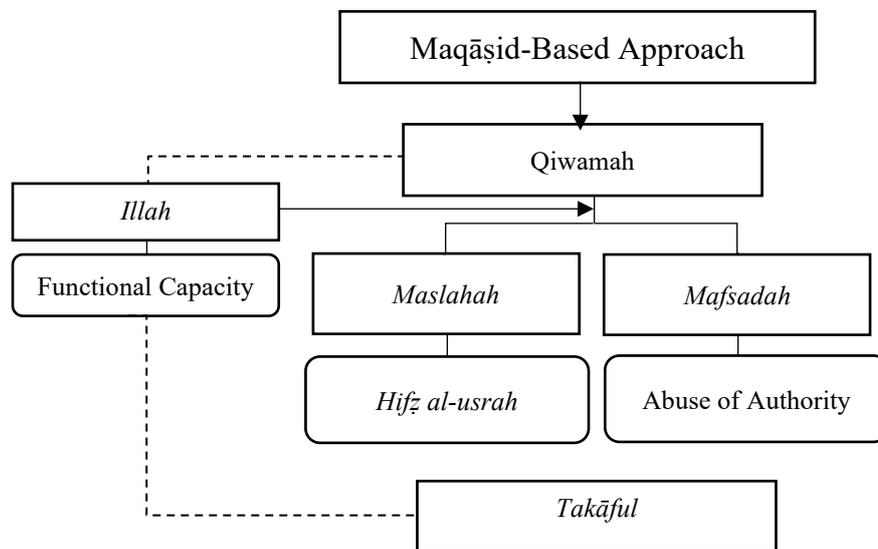
The concept of qiwāmah, centered on the reading of Qur'an 4:34, has long been understood within a hierarchical framework: men as leaders or guardians who possess authoritative rights over women. However, when examined through philological, historical, and especially maqāṣid-based lenses, it becomes evident that this dominant interpretation is contextual and open to reconstruction. Linguistically, qawwām carries the idea of maintenance and management qiyām as caring for and safeguarding rather than sheer domination. Historically, the verse was revealed in a social order where men held full responsibility for

financial provision. From a maqāṣid perspective, the purpose of the Sharī‘ah is to preserve family welfare (ḥifẓ al-usrah), not to uphold gender-based injustice. From the intersection of these three perspectives emerges a space for ijtihād to reinterpret qiwāmah as shared responsibility (takāful) responsive to contemporary social realities.

Contemporary scholarship supports this renewed reading. N. Faizah highlights the openness of Islamic jurisprudence to interpretations of qiwāmah that remain in dialogue with changing times, allowing qiwāmah to be understood as functional leadership that shifts according to socio-economic conditions and household needs, rather than a fixed institution of male supremacy.(Faizah, 2018) More recent research examining Zainab al-Ghazali’s writings presents alternative interpretations that emphasize social responsibility and protection, providing a basis for an inclusive family model that does not compromise women’s autonomy.(Nasution & Faza, 2025)

In a comparative study of nusyūz exegesis, Afriani identifies a strong tendency toward literal-normative interpretations in classical scholarship and proposes a relational reading seeing qiwāmah as a managerial household duty that can be shared according to ability and mutual consultation.(Afriani, 2025) Furthermore, feminist tafsīr traditions and reconstructive studies critique rigid patriarchal readings. Sholikhah frames qiwāmah not as an ontological status but as a social role that can shift, thereby opening legal space that supports equality without rejecting textual sources.(Sholikhah, 2025) Ferliadi and colleagues highlight financial provision as a historical ‘illah: when this economic rationale changes (as women increasingly participate in the workforce), the legitimacy of unilateral authority weakens—prompting reconstruction based on substantive justice.(Ferliadi, 2020)

Maqāṣid-Based Approach to the Reconstruction of Qiwāmah



From a maqāṣid methodological standpoint, reconstructing qiwāmah requires three steps: clarifying the ‘illah (legal cause), assessing the maṣlahah/mafsadah (benefit/harm), and formulating a new norm that prioritizes al-‘adl (justice) and ḥifẓ al-usrah (family preservation). Ibn ‘Āshūr and contemporary maqāṣid scholars emphasize that law must be interpreted according to its objectives; when a classical practice results in harm to one of the essential maqāṣid (such as threatening life, dignity, or property), the text must be reinterpreted so that the overarching aims of the Sharī‘ah are fulfilled.(Sunarto, 2019) Empirical studies in Indonesia on the epistemology of financial provision show that changing economic roles within families require adjustments to the concept of qiwāmah to ensure it remains relevant and fair. In practical terms, reconstruction means qiwāmah can no longer function as an automatic basis for

restricting wives' rights. The renewed conception emphasizes three points: first, role distribution should be based on capacity and mutual agreement husbands and wives as partners who deliberate in managing household affairs; second, financial provision should be understood as one dimension of responsibility, not a purchase of obedience; third, legal mechanisms (e.g., decisions of the Religious Courts, the KHI) must internalize maqāṣid-based criteria whether a ruling promotes the welfare of the family and upholds 'adl, or whether it legitimizes inequality. (RizkyRahman et al., 2025)

Comparative research shows that normative interpretations asserting authority are often balanced by ethical spiritual readings such as Sayyid Qutb versus al-Ṭabarī that foreground moral values. This provides a theoretical foundation for judges seeking to adopt maqāṣid-based approaches in judicial practice. Reconstructive arguments also gain support from feminist scholarship and gender studies, which underscore that interpretive change is an act of ijtihād, not the adoption of foreign ideas. Ramli, Rosele, and Ariffin examine the dialectic of feminist tafsīr that critiques literalist readings while maintaining rigorous scholarly methodology; their findings show that gender-sensitive exegesis can be built using established and methodical interpretive principles. (Ramli et al., 2018) Ropiah and various local journal contributions further demonstrate that “women-friendly fiqh” is an internal reconstruction of the Islamic legal tradition itself aimed at fulfilling the Sharī'ah's goals of justice and human dignity. (Ropiah, 2025)

Normatively, reconstructing qiwāmah requires revising terminology within family law documents: replacing terms that frame leadership as undivided authority with terms emphasizing “shared responsibility,” “coordination,” or “functional leadership” that is contingent on context. In practice, educational institutions (pesantren curricula, faculties of Sharī'ah), judicial training programs, and guidelines for family case management must incorporate maqāṣid principles and empirical case studies on the impact of patriarchal interpretations on women an approach supported by Ropiah and colleagues to ensure judicial outcomes align with the broader objectives of Islamic law. Critics of reconstruction often worry about the “liberalization” of religion. The maqāṣid response emphasizes that reconstruction is not about discarding the text, but about restoring the text to its original purpose: ensuring justice, protection, and mercy. Contemporary studies in Indonesia show strong potential for harmonizing maqāṣid, human rights principles, and national legislation demonstrating that reconstructing qiwāmah is both a theoretically grounded and practically feasible project within modern family law. (Arifin & Rifai, 2025) Reconstructing qiwāmah requires a paradigm shift: from fixed, gender-based authority to collective responsibility rooted in justice and contextual relevance. Its theoretical foundation is supported by contemporary tafsīr scholarship, maqāṣid studies, and empirical research all of which show that reinterpreting qiwāmah is not only possible but necessary for Islamic family jurisprudence to fulfill its core purpose: safeguarding the dignity, safety, and well-being of the family in today's world.

Reconstructing the Concept of Nusyūz

The concept of nusyūz remains a central point of theoretical debate and practical application in Islamic family law because it touches the private realm of the household while also intersecting with fundamental human rights protections. Textually, the fiqh tradition defines nusyūz as a category generally applied to wives: an act of “rising up” or refusing compliance with the husband, understood as a breach of domestic obligations. The procedural sequence commonly cited admonition (wa'z), separation of beds (hajr), and light striking (ḍarb) has long served as the interpretive basis for corrective actions by husbands, as recorded in classical works such as Kifāyat al-Akhyār and al-Hāwī. (Al-Dhimsyiqy, 2008)

A textual and hermeneutical analysis shows that these classical readings operate within a patriarchal logic: the sequence (admonition → hajr → ḍarb) is not merely procedural but

symbolic, reinforcing the husband’s position as the moral and juridical authority in the household. Such interpretations have been systematically critiqued by contemporary scholars who highlight their gendered and human rights implications. Tobroni situates nusyūz within a human rights framework, calling for reconstruction so that religious norms do not justify violations of basic rights.(Tobroni, 2020) Sary, contextualizing nusyūz within the KHI and drawing on the arguments of Siti Musdah Mulia, shows that its uncritical application risks perpetuating discrimination.(Sary, 2022)

In modern social contexts, empirical findings and comparative studies demonstrate that traditional understandings of nusyūz often fail to reflect real-life family dynamics: women now participate actively in economic life and household decision-making, making the claim of “disobedience” no longer automatically equivalent to the breakdown of family order. Afriani and Hammad emphasize the need for a relational reading viewing nusyūz as an indicator of relational dysfunction (communication gaps, unequal distribution of roles, structural violence), rather than an individual moral failure of the wife leading to solutions that are restorative rather than punitive.(Hammad, 2025)

Contemporary tafsīr literature adds methodological depth: contextual approaches (e.g., Abdullah Saeed), maqāṣid-based frameworks, and mubādalāh methods call for gender-just interpretations in which verses related to nusyūz are integrated with the principles of protecting life, dignity, and human honor. Comparative tafsīr studies reveal wide interpretive variation from literalist to feminist hermeneutic readings opening ijtihād space to reject the legitimacy of violence.(Afriani, 2025) From the perspective of positive law, traditional norms that leave room for symbolic ḍarb conflict with Law No. 23/2004 on the Elimination of Domestic Violence and broader human rights principles. Research on court rulings and the practice of religious courts shows inconsistency: on one hand, judges still reference classical interpretations; on the other, social and legal pressures push them toward prioritizing victim protection and non-violence.(Triyono, 2025)

The maqāṣid approach offers a clear normative framework: the primary measure is not the literal phrasing of legal instructions, but the preservation of maṣlaḥah and the avoidance of mafsadah in relation to the objectives of the Sharī‘ah protection of life (ḥifẓ al-nafs), protection of dignity (ḥifẓ al-‘irdh), and preservation of family harmony (ḥifẓ al-nizām). Fakhr al-Dīn al-Rāzī interprets the steps in Qur’an 4:34 as corrective instruments rather than a license to demean or harm. However, modern maqāṣid scholars (such as Ibn ‘Āshūr) stress that if the final step striking produces greater harm than benefit, it must be abandoned.(Fakhr al-Dīn al-Rāzī, 1981)

Contemporary Indonesian scholarship highlights the practical implications of this maqāṣid-based reading: nusyūz must be reoriented into a mechanism for restorative family conflict resolution family counseling, mediation involving trained facilitators, legal protection for survivors of domestic violence, and judicial policies that consider socio-economic context and evidence.(Basid & Jazila, 2023) Field studies on nusyūz cases likewise show that rehabilitative approaches are more effective at preventing conflict escalation than punitive frameworks that legitimize violence. Furthermore, feminist tafsīr scholarship not only rejects interpretations that marginalize women but also offers interpretive methodologies that integrate historical-linguistic hermeneutics with ethical aims of the Sharī‘ah providing a methodological foundation for judges, policymakers, and religious educators seeking to implement reconstruction in a valid and responsible way.(Ramli et al., 2018)

In summary, the implications of reconstructing nusyūz are as follows:

1. The terminology of nusyūz must be redefined as a relational indicator, not a moral label used to punish.
2. Responses must be restorative counseling, mediation, victim protection rather than physical sanctions or legal stigma.

3. Religious courts, policymakers, and religious educational institutions must adopt maqāsid-based and human-rights-based standards in handling family cases so that resolutions genuinely promote maṣlaḥah.

Ongoing empirical research is necessary to monitor the impact of interpretive shifts on families and the protection of women (national studies from 2020–2025 already provide a strong initial foundation). Through this approach, interpretations and practices that reconstruct nusyūz do not abandon the text; rather, they situate it within the overarching aims of the Sharī'ah: realizing tranquility, justice, and compassion within the family not legitimizing violence or subordination.

Reconstructing the Concept of Wilāyah

The concept of wilāyah fī al-nikāḥ (guardianship in marriage) occupies a crucial place in Islamic family law because it most visibly reflects how the epistemology of classical fiqh shaped gendered power relations. Terminologically, wilāyah is defined as “the legal authority of a male guardian (wali) to marry off a woman under his care.” The ḥadīth «لَا نِكَاحَ إِلَّا بِوَالِيٍّ» (“There is no marriage without a guardian,” narrated by al-Tirmizī, Abū Dāwūd, Ibn Mājah) forms the primary basis for the majority schools especially the Shāfi'ī and Mālikī who consider the presence of a guardian a *syarṭ ṣiḥḥah* (pillar of validity) for the marriage contract. (Al-Bukhari, n.d.), (Al-Tirmidzi, n.d.)

However, over time the meaning of wali shifted from an administrative–protective function to a structure of male dominance over women. This shift marks the emergence of a patriarchal fiqh logic where women cease to be active legal subjects and instead become objects who are “married off.” Classical fiqh builds wilāyah on the foundation of the ‘aṣabiyyah (paternal kinship) system. The right of guardianship is limited to male relatives from the father’s line (ta’ṣīb). Al-Māwardī states:

الْوَالِيَّةُ فِي النِّكَاحِ تَكُونُ لِلْأَبِ ثُمَّ لِمَنْ نَاسَبَ الْأَبَ، وَمَنْ لَا يَرْجِعُ نَسَبُهُ إِلَى الْأَبِ فَلَا وَالِيَّةَ لَهُ.

(Guardianship in marriage belongs to the father, then to those related to him; those not linked to the father’s lineage have no guardianship.) (Mawardi, 2010)

This structure produces a genealogical hierarchy (father → grandfather → brothers → paternal uncles → male cousins) that excludes women including mothers from legal authority because they are considered *lā ta’ṣīb* (not part of the paternal line). Moreover, al-Ḥusnī’s *Kifāyat al-Akhyār* affirms the legitimacy of *ijbār al-ab* (the father’s binding authority):

وَلِلْأَبِ إِجْبَارٌ بِنْتِهِ الْبَالِغَةِ عَلَى النِّكَاحِ إِذَا كَانَ الْكُفُّ مُوجُودًا.

(A father may compel his adult virgin daughter to marry if a suitable match is available.) (Taḥṣīn al-Ḥusnī, n.d.)

Within this epistemic framework, women are positioned as lacking autonomy, justified by assumptions about their reduced rationality (*nāqish al-‘aql wa al-dīn*). The stated purpose of wilāyah as al-Māwardī argues is *ṣiyānah li al-‘irdh wa ḥifz al-nasab* (protecting honor and lineage). Yet in social practice, this function often becomes a justification for restricting women’s freedom. Z. Sholikhah’s research shows that the epistemic bias surrounding wilāyah parallels similar bias in interpretations of *imāmah* (leadership), both relying on the assumption of women’s “natural incapacity.” This highlights the interconnection between classical exegetical paradigms and patriarchal social systems. (Sholikhah, 2025)

Historically, the system of wilāyah had strong social rationality: maintaining family honor, controlling social status, and ensuring *kafā’ah* (marital compatibility). In medieval Arab society, marriage was a contract between families, not merely a personal bond. But in modern societies, these foundations have lost relevance because:

1. Women now possess economic and educational independence;

2. National law recognizes consent as a legal requirement of any contract;
3. Human rights principles prohibit any form of forced marriage.

The doctrine of *ijbār al-ab*, which grants the guardian the authority to compel his daughter into marriage, stands in direct contradiction to *maqāṣid* principles such as *ḥifẓ al-nafs* (protection of the self) and *ḥifẓ al-‘irdh* (protection of personal dignity). The Prophet’s ﷺ authentic *ḥadīth* affirms:

الأمُّ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا، وَإِذْنُهَا صِمَاتُهَا

(A previously married woman has more right over herself than her guardian, and a virgin must be asked for her consent; her silence is her permission.)

Thus, *wilāyah ijbār* directly contradicts the spirit of the Sunnah and the *maqāṣid*-based principle of justice. In the Indonesian legal context, Article 20 of the KHI does indeed list the guardian as a condition of validity. Yet in practice, patriarchal tendencies remain strong. A. Basith and A. Ali Akbar, analyzing court decisions, show that the role of the guardian is often abused to justify child marriage and exert pressure on women. N. Maisyal stresses that all aspects of family law including guardianship must be reformulated through a *maqāṣidī* approach to align with gender equality principles. (Maisyal, 2016)

Within the framework of *maqāṣid al-sharī‘ah*, the primary aims of the law are *ḥifẓ al-nafs*, *ḥifẓ al-‘irdh*, and *ḥifẓ al-nizām al-ijtimā‘ī* (social order). Therefore, *wilāyah* must be reinterpreted as a protective–administrative mechanism, rather than an authoritative–coercive one. Muhammad ‘Abduh, in *Tafsīr al-Manār*, states:

الولاية في النكاح ليست تسلطاً بل وصاية على المصلحة وصيانة للعرض

(Guardianship in marriage is not domination, but stewardship over welfare and protection of honor.)

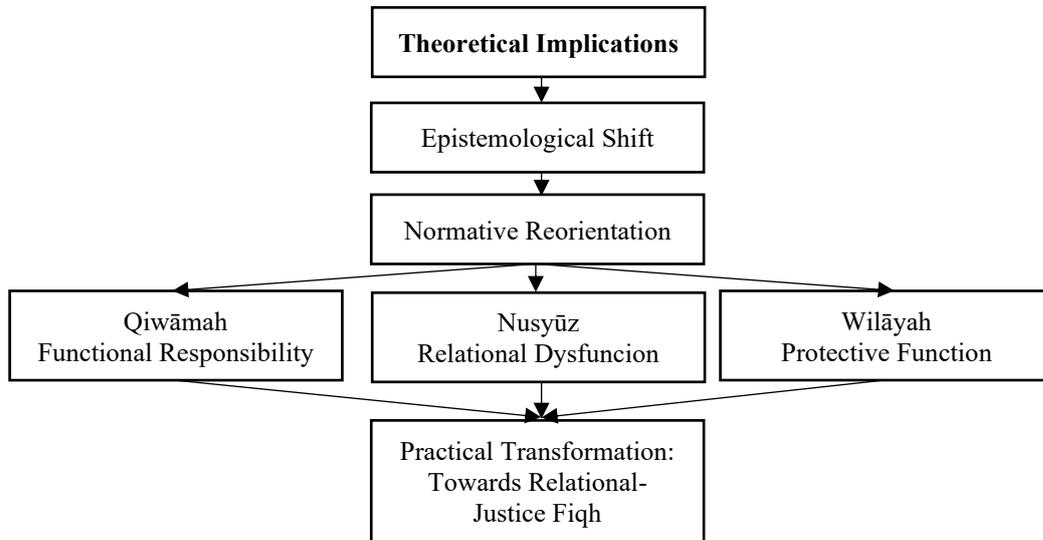
This reinterpretation shifts the paradigm: the guardian is no longer a “holder of rights,” but a custodian of welfare. Thus, *wilāyah ijbār* must be deconstructed into *wilāyah ri‘āyah* guardianship grounded in care and the principle of *lā ḍarar wa lā ḍirār* (no harm and no reciprocation of harm). Sarina Aini, in *Konsepsi Perwalian Menurut Fiqih*, stresses the importance of re-reading *wilāyah* through the lens of protection rather than authority, including a greater role for the state (*wilāyah al-sulṭān*). (Sarina Aini, 2022) S. Hidayatullah goes further, proposing a reconceptualization of the *walī mujbir*, in which the *ijbār* authority is removed and replaced with mechanisms of consultation and welfare verification. (Hardiansyah, 2025) The state (through the KUA or the *qāḍī*) functions as a protective guardian ensuring women’s rights, consistent with the Prophet’s ﷺ statement: “*Fa-s-sulṭān walī man lā walī lahu.*” (The ruler is the guardian of one who has no guardian.) Thus, *wilāyah* in the *maqāṣidī* paradigm becomes a mechanism of protection, not a hierarchy of power.

The *maqāṣid*-based reconstruction of *wilāyah* asserts that the objective of the *Sharī‘ah* is not to maintain gender hierarchies, but to uphold justice, welfare, and human dignity. A guardian is not an owner of rights over a woman, but a protector ensuring that the marriage contract is conducted fairly and with genuine consent. In modern Islamic family law, *wilāyah* must therefore be reformulated as a social legal function that secures women’s rights, rather than restricting their freedom. This approach does not dismiss tradition; it restores it to its *Sharī‘ah* spirit: *al-‘adl wa ar-raḥmah* justice and mercy. When read through a *maqāṣid* lens, Islam aligns with substantive equality and universal human dignity.

Theoretical Implications: From Normative Fiqh to Responsive Fiqh

The *maqāṣid*-based reconstruction of *qiwāmah*, *nusyūz*, and *wilāyah* generates epistemological, normative, and practical implications that reorganize the conceptual foundations of Islamic family law. This reconstruction does not seek to dismantle the classical

tradition but to revitalize its methodological spirit by returning to the ethical purposes of the Shari‘ah justice, welfare, and human dignity.



1. Epistemological Shift: From Taqlīdī to Ta‘līlī Reasoning

The reconstruction reflects a transition from text-bound (taqlīdī) jurisprudence to causal and purpose-oriented (ta‘līlī) reasoning. Classical scholars such as al-Juwaynī, al-Ghazālī, al-Shāṭibī, and Ibn ‘Āshūr established that legal rulings must evolve with changing circumstances, and modern maqāṣid theorists (e.g., (Auda, 2008b),(Wahyudi, 2007) expand this framework to encompass contemporary social realities. Accordingly, legal norms must be reassessed based on their capacity to uphold justice and public interest.

2. Normative Reorientation: From Hierarchical Relations to Relational Justice

The maqāṣid approach reframes the core concepts of Islamic family law:

- a. Qiwāmah is no longer grounded in male superiority but in functional responsibility and mutuality.
- b. Nusyūz is reframed from female disobedience to an indicator of relational dysfunction requiring restorative mechanisms.
- c. Wilāyah shifts from paternalistic control to a protective function based on consent and welfare.

This reorientation aligns with Ibn al-Qayyim’s principle that justice and compassion constitute the essence of Shari‘ah.(Ibn al-Qayyim, n.d.) Any interpretive model producing structural inequality therefore loses its normative legitimacy.

3. Practical Transformation: Towards Relational–Justice Fiqh

The reconstruction implies a three-level transformation:

- a. Normative transformation: redefining qiwāmah as shared responsibility, repositioning nusyūz as conflict diagnosis rather than sanction, and reinterpreting wilāyah as a mechanism ensuring women’s autonomy and well-being.
- b. Institutional transformation: encouraging judges in religious courts to apply justice and maṣlaḥah as interpretive principles in cases involving obedience, guardianship, and marital conflict.
- c. Societal transformation: legitimizing state intervention as a ḥisbah function to protect women from coercion, violence, or arbitrary denial of guardianship.

4. Revitalizing the Ethical Spirit of the Shari‘ah

Ultimately, the maqāṣid-based reconstruction seeks to restore the moral core of Islamic law. As articulated by al-Shāṭibī and developed by contemporary scholars, Shari‘ah

aims to elevate human dignity and restrain unjust power. Responsive fiqh is therefore not a deviation from the tradition but a reaffirmation of its ethical foundations—ensuring that family law functions as a framework of mercy, equity, and social protection.

CONCLUSION

This study affirms that the concepts of qiwāmah, nusyūz, and wilāyah in the classical Shāfi'ī fiqh tradition emerged within a patriarchal social context that positioned men as the center of legal, moral, and economic authority. Although historically contextual, these constructions shaped asymmetrical power relations and produced gender bias within Islamic family law systems. The maqāṣid al-sharī'ah approach offers a reconstructive framework to restore Islamic law to its moral and social purposes: upholding al-'adl (justice), al-maṣlaḥah (public welfare), and ar-raḥmah (compassion). By interpreting texts based on maqṣad rather than literal wording, the law can be transformed into a living ethical system that adapts to social change.

From a maqāṣidī perspective, qiwāmah becomes shared responsibility (takāful), not domination; nusyūz becomes a form of relational dysfunction resolved through iṣlāḥ and mu'āsyarah bil ma'rūf, not a justification for violence; wilāyah becomes a protective–administrative function grounded in consent, not paternalistic authority. This reconstruction demonstrates that gender equality and the protection of women are not foreign modern agendas, but authentic manifestations of maqāṣid themselves. Within the Indonesian legal context, this paradigm provides a philosophical and methodological basis for reforming the Kompilasi Hukum Islam, improving the practice of religious courts, and informing public policy. Thus, a maqāṣid-oriented fiqh is not only law that remains relevant to its time it is a reflection of the true spirit of the Sharī'ah: bringing justice, welfare, and mercy to all humanity.

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