

Harmonizing Islamic Family Law with International Human Rights Standards: A Dialogical Model for Legal Reform in Indonesia

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ABSTRAK

Hukum keluarga merupakan ranah penting yang mempertemukan tradisi hukum Islam, regulasi negara, praktik sosial, dan standar hak asasi manusia internasional. Di negara-negara mayoritas Muslim, berbagai ketegangan yang berkaitan dengan kesetaraan gender, perkawinan, poligami, perceraian, perkawinan anak, hak asuh, nafkah, dan harta perkawinan memunculkan pertanyaan yang lebih luas mengenai bagaimana reformasi hukum dapat melindungi martabat manusia tanpa memandang hukum Islam sebagai sesuatu yang secara inheren bertentangan dengan perkembangan hak-hak kontemporer. Artikel ini menggunakan penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, komparatif, dan berorientasi pada kasus. Kajian dilakukan terhadap instrumen hak asasi manusia internasional, hukum konstitusional dan peraturan perundang-undangan Indonesia, Kompilasi Hukum Islam, serta pengalaman reformasi hukum di Maroko, Tunisia, Malaysia, dan India, yang dilengkapi dengan kajian ilmiah mutakhir mengenai Indonesia. Hasil analisis menunjukkan bahwa harmonisasi yang berkelanjutan lebih tepat dipahami sebagai proses penerjemahan normatif secara dialogis daripada transplantasi hukum secara sepihak. Artikel ini menekankan lima jalur yang saling memperkuat, yaitu ijtihad kontekstual dan penalaran *maqāṣid al-sharīʿah*; reformasi legislasi berbasis hak; peradilan yang sensitif terhadap gender dan kepentingan terbaik anak; pembelajaran hukum komparatif; serta akuntabilitas partisipatif melalui masyarakat sipil dan mekanisme pemantauan internasional. Pengalaman Indonesia menunjukkan bahwa kemajuan legislasi secara formal, termasuk reformasi hukum perkawinan pada tahun 2019, dapat mengalami pelemahan pada tingkat implementasi, terutama melalui praktik dispensasi perkawinan dan ketidakseragaman putusan pengadilan. Oleh karena itu, artikel ini mengusulkan kerangka enam dimensi yang mengintegrasikan tolok ukur hak asasi manusia internasional, fikih Islam kontekstual, reformasi legislasi, sensitivitas peradilan, implementasi kelembagaan, dan legitimasi partisipatif. Model ini ditujukan untuk mempertemukan legitimasi keagamaan dengan prinsip-prinsip hak universal sekaligus memperkuat keadilan substantif dalam hukum keluarga.

Kata kunci: hukum keluarga Islam; hak asasi manusia; *maqāṣid al-sharīʿah*; kesetaraan gender; harmonisasi hukum

ABSTRACT

Family law is a critical site where Islamic legal traditions, state regulation, social practice, and international human-rights standards intersect. In Muslim-majority jurisdictions, tensions surrounding gender equality, marriage, polygamy, divorce, child marriage, custody, maintenance, and marital property raise a broader question of how legal reform can protect human dignity without treating Islamic law as inherently incompatible with contemporary rights. This article employs normative legal research using statutory, conceptual, comparative, and case-oriented

approaches. It examines international human-rights instruments, Indonesian constitutional and statutory law, the Compilation of Islamic Law, and comparative reform experiences in Morocco, Tunisia, Malaysia, and India, supplemented by recent scholarship on Indonesia. The analysis finds that sustainable harmonization is best understood as dialogical normative translation rather than one-sided legal transplantation. Five mutually reinforcing pathways are emphasized: contextual *ijtihad* and *maqāṣid al-sharīʿah* reasoning; rights-based legislative reform; gender- and child-sensitive adjudication; comparative legal learning; and participatory accountability through civil society and international monitoring. The Indonesian experience demonstrates that formal legislative progress, including the 2019 marriage-law reform, may be weakened by implementation gaps, particularly through marriage dispensations and uneven judicial practice. The article therefore proposes a six-dimensional framework combining international human-rights benchmarks, contextual Islamic jurisprudence, legislative reform, judicial sensitivity, institutional implementation, and participatory legitimacy. This model seeks to reconcile religious legitimacy and universal rights while strengthening substantive family justice.

Keywords: Islamic family law; human rights; *maqāṣid al-sharīʿah*; gender equality; legal harmonization.

Introduction

Family law occupies a distinctive position in every legal order because it regulates relationships that are simultaneously intimate, social, economic, and political. Rules governing marriage, divorce, maintenance, custody, marital property, and the status of children shape the distribution of authority and resources within households and determine the legal protection available to family members when relationships deteriorate. For that reason, family law cannot be understood exclusively as private law. It is also a field in which the state exercises a substantial responsibility to secure equality, dignity, autonomy, and protection from harm.

The international human-rights framework has progressively transformed the way family relationships are understood in law. The Universal Declaration of Human Rights established equality and non-discrimination as foundational principles. The International Covenant on Civil and Political Rights (ICCPR) subsequently recognized the family as a fundamental social unit while requiring equality of rights and responsibilities between spouses. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) addressed discrimination in marriage and family relations more directly, while the Convention on the Rights of the Child (CRC) placed the best interests, development, participation, and protection of children at the centre of decisions affecting them. These instruments collectively create a normative framework in which the protection of family life cannot be separated from the protection of individuals within the family. (United Nations, 1948) (United Nations, 1966) (Convention on the Rights of the Child [CRC], 1989).

The problem becomes more complex in jurisdictions where family law is substantially informed by Islamic jurisprudence. Islamic family law is not a single uniform legal system. It consists of diverse interpretive traditions, schools of jurisprudence, state

legislation, judicial practices, customary norms, and contemporary reform projects. Nevertheless, certain rules inherited from classical fiqh—particularly those concerning polygamy, unilateral divorce, guardianship, differentiated marriage rights, and gendered responsibilities—have generated sustained debate about their compatibility with contemporary conceptions of equality and non-discrimination. The debate is not merely doctrinal. It concerns the legitimacy of legal change, the boundaries of religious authority, and the capacity of the modern state to reform family relations without delegitimizing religious identity.

Recent scholarship confirms that this field is undergoing significant transformation. Miichi's (2025) study of Indonesia's 2019 marriage-law revision demonstrates that gender-equality reform in a Muslim-majority democracy can emerge through interaction among feminist activism, constitutional litigation, legislative institutions, and changing political opportunities. The reform raised the statutory minimum marriage age for women from 16 to 19, equalizing it with the age applicable to men. Importantly, the study shows that the reform was not simply a technical amendment: it resulted from a political and legal process in which women's and children's rights advocates, the Constitutional Court, and the legislature interacted. (Miichi, 2025).

Other recent studies complicate any assumption that statutory reform automatically produces substantive equality. Liem et al. (2024) demonstrate that child-marriage applications and marriage dispensations remained associated with socioeconomic and institutional factors during the COVID-19 period. Shahrullah et al. (2023) likewise show that judges in West Java faced difficult choices when applying the post-2019 marriage-age framework because the statutory rule continues to allow judicial dispensations. These findings reinforce the distinction between law in the books and law in action. (Liem et al., 2024; Shahrullah et al., 2023).

The judicial dimension is equally important. Halimatusa'diyah and Triana (2024)'s (2024) empirical study of the Indonesian Islamic judiciary finds that gender-sensitive judging is shaped by judges' orientations toward gender equality and that female judges are more likely to support feminist judging. Their study focuses on polygamy, marriage dispensations, divorce involving domestic violence, and post-divorce alimony, demonstrating that the institutional interpretation of family law may be as important as the statutory text itself. (Halimatusa'diyah & Triana, 2024).

Against this background, the central problem addressed in this article is how international human-rights standards can be integrated into family-law reform without reducing Islamic legal tradition to an obstacle to equality or treating international human rights as a culturally neutral body of rules that can simply be transplanted. The article approaches harmonization as a process of normative translation: universal principles such as dignity, equality, non-discrimination, and child protection must be rendered

institutionally and jurisprudentially meaningful within particular constitutional and religious contexts.

The article makes three contributions. First, it reframes harmonization as a dialogical process rather than a one-directional process of internationalization. Second, it integrates normative legal analysis with comparative lessons from Muslim-majority jurisdictions and recent empirical scholarship on Indonesia. Third, it develops a legislative and institutional reform agenda that connects international standards with Islamic legal reasoning, particularly *maqāṣid al-sharīʿah*, progressive *ijtihad*, judicial interpretation, and public accountability.

The study is guided by three questions: (1) What are the principal areas of tension between Islamic family-law norms and international human-rights standards? (2) What legal, jurisprudential, and institutional mechanisms can facilitate harmonization in Muslim-majority jurisdictions? and (3) What lessons can Indonesia derive from comparative reform experiences for future legislative and judicial reform?

Research gap. Existing scholarship has produced substantial work on the compatibility of Islamic law and human rights, gender equality in Muslim family law, and specific Indonesian reforms such as the 2019 marriage-law revision and child-marriage dispensations (An-Na'im, 1990, 2002; Baderin, 2003; Bowen, 2010; Miichi, 2025; Shahrullah et al., 2023). However, these strands are often examined separately: doctrinal studies emphasize normative compatibility, sociolegal studies emphasize implementation, and comparative studies frequently focus on individual jurisdictions or specific institutions. Recent bibliometric evidence also shows that Islamic family-law scholarship remains thematically dispersed across marriage, divorce, family relations, and regional legal systems (Mohamad et al., 2026). The present article addresses this gap by integrating international human-rights standards, Islamic legal reasoning, comparative reform, and institutional implementation into a single dialogical framework, with Indonesia as the principal site of application.

The objective is not to establish that one normative system is categorically superior to another. Instead, the study seeks to identify points of convergence and mechanisms through which substantive rights can be strengthened while maintaining legitimate religious and constitutional commitments.

Analytical framework. The article uses normative convergence as its central analytical lens. The framework distinguishes substantive principles—dignity, equality, non-discrimination, protection from violence, and the best interests of the child—from institutional pathways, which may legitimately vary across constitutional and religious contexts. Within Islamic jurisprudence, *maqāṣid al-sharīʿah*, *maṣlaḥah*, *ʿadl*, and contextual *ijtihad* are treated as interpretive resources rather than automatic answers. This approach follows the broader argument that Islamic law and international human rights should be examined through constructive engagement rather than an assumed

binary of compatibility versus incompatibility (Baderin, 2003; An-Na'im, 2002; Jaffal et al., 2022).

Research Methodology

This article employs normative legal research using statutory, conceptual, comparative, and case-oriented approaches. The primary legal materials comprise international human-rights instruments, Indonesian constitutional and statutory provisions, the Compilation of Islamic Law, and selected family-law legislation from comparative jurisdictions. International standards examined include the UDHR, ICCPR, CEDAW, and CRC. Indonesian materials include the 1945 Constitution, Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, child-protection legislation, Law No. 39 of 1999 on Human Rights, and the Compilation of Islamic Law.

The comparative approach examines Morocco, Tunisia, Indonesia, and Malaysia, while drawing additional analytical insight from Muslim personal-law scholarship in India and the United Arab Emirates. The jurisdictions are not treated as interchangeable models. They are selected because they illustrate different strategies of family-law change: religiously grounded legislative reconstruction, state-led codification, incremental constitutional reform, institutional pluralism, and negotiated legal harmonization.

Secondary materials were updated through recent peer-reviewed literature, with particular attention to publications in journals indexed in Scopus and/or Web of Science. The updated literature includes research published in 2023–2026 on Indonesian marriage-law reform, child marriage, judicial decision-making, Muslim personal law, and constructive harmonization between Islamic family law and CEDAW. The study therefore combines the doctrinal materials contained in the original manuscript with recent international scholarship rather than relying solely on older theoretical literature.

The analysis proceeds through four stages: first, identification of normative tensions; second, examination of the internal resources of Islamic jurisprudence for reform; third, comparative assessment of legislative and judicial experiences; and fourth, formulation of an Indonesian reform agenda. Because this is normative research, the article does not claim to measure causal effects statistically. Its contribution lies in legal interpretation, comparative synthesis, and the development of a coherent reform framework.

Results and Discussion

Family Protection and Individual Rights

International human-rights law protects family life while recognizing that family protection cannot justify discrimination against individuals within the family. This dual commitment is especially important for family-law reform. The state has an interest in preserving family relationships, but that interest is limited by the dignity and rights of

spouses and children. Accordingly, a legal rule cannot be considered legitimate merely because it is characterized as protecting the family if its operation systematically deprives one group of equal legal agency.

Article 23 of the ICCPR illustrates this balance. The family is protected as a fundamental social unit, but paragraph 4 requires states to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution. This provision establishes an important interpretive benchmark for divorce procedures, property distribution, custody, and other consequences of marital breakdown. CEDAW reinforces the principle by requiring equality in entering marriage, choosing a spouse, rights and responsibilities during marriage and dissolution, and matters concerning children and property (United Nations, 1966).

CEDAW is particularly relevant because it treats discrimination against women in family relations as a structural rather than merely interpersonal problem. Article 16 addresses marriage and family relations directly, while the Committee's General Recommendation No. 29 emphasizes the economic consequences of marriage, family relations, and dissolution. This approach matters because formal equality at the moment of marriage can be undermined by unequal access to divorce, maintenance, marital property, or post-divorce support (Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], 1979).

Recent scholarship on the United Arab Emirates demonstrates that constructive harmonization between Islamic family law and CEDAW is possible even where states have historically entered reservations to Article 16. Jaffal et al. (2022) argue that constructive harmonization requires attention to the conceptual relationship between Islamic legal principles and CEDAW's equality and non-discrimination requirements rather than assuming that the two are necessarily incompatible. Their analysis is particularly relevant to Muslim-majority states negotiating the boundaries of religious interpretation and treaty obligations.

The CRC introduces a child-centred dimension that is indispensable to family-law reform. The best interests of the child should be treated as a primary consideration in judicial and administrative decisions affecting children. Marriage, custody, maintenance, and divorce proceedings therefore require decision-makers to examine children's welfare independently of adult claims and family reputation. This principle also changes the legal evaluation of child marriage: it cannot be reduced to a matter of parental consent or cultural acceptance because it may affect education, health, economic opportunity, autonomy, and exposure to violence (Convention on the Rights of the Child [CRC], 1989).

The Indonesian evidence is particularly instructive. Liem et al. (2024) (2024) identify socioeconomic conditions, education, and religious-court processes among factors associated with child-marriage dispensations. Shahrullah et al. (2023) further demonstrate that judges face a practical dilemma when applying the new statutory minimum age because the law permits exceptions. These findings suggest that the

harmonization of family law with the CRC requires not only a higher statutory threshold but also rigorous standards for exceptions, judicial reasoning, administrative coordination, and social protection.

Islamic Legal Reasoning as a Resource for Harmonization

A central weakness in polarized debates about Islamic family law is the assumption that Islamic law and international human rights constitute two internally homogeneous and mutually exclusive systems. Islamic jurisprudence is historically plural, interpretive, and responsive to social context. International human rights law is likewise a developing normative framework whose domestic implementation varies across constitutional systems. Harmonization should therefore begin by rejecting the binary itself.

Baderin's (2003) influential argument concerning the compatibility of Islamic law and international human rights remains relevant because it shifts the analytical question from whether Islam accepts human rights in the abstract to how Islamic legal concepts can be interpreted in relation to contemporary rights obligations. More recent scholarship similarly emphasizes that constructive harmonization requires engagement with Islamic legal reasoning rather than simply imposing an external normative vocabulary (Baderin, 2003).

Ijtihad provides an internal mechanism for reconsidering legal rules in light of new circumstances, while *maqāṣid al-sharī'ah* offers a purposive framework for evaluating whether legal outcomes advance justice and human welfare. In family law, *maqāṣid*-oriented reasoning can direct attention toward the protection of life, lineage, dignity, intellect, property, and social welfare. Such reasoning is particularly relevant when inherited rules operate in social circumstances substantially different from those in which earlier jurists formulated their doctrines.

The point is not to suggest that *maqāṣid* automatically produces a single predetermined answer. Rather, it supplies a method for evaluating legal consequences. A rule concerning marriage, divorce, or custody should be assessed in terms of its actual effects on the parties and children concerned. Recent comparative scholarship on Indonesia and Morocco illustrates the value of contextualizing Islamic family-law institutions within different social and legal environments. Izzati et al. (2024) (2024), for example, show that *ta'liq al-ṭalāq* has developed differently in Indonesia and Morocco, with Moroccan law using the instrument more explicitly as a mechanism for protecting women's rights.

The debate over gender equality in Islamic family law should also distinguish between equality of dignity and identity of legal function. Contemporary Muslim scholars disagree on the precise meaning of equality, but there is increasing attention to justice, mutuality, agency, and protection from harm. Recent scholarship on gender equity among contemporary Muslim scholars illustrates the diversity of positions concerning divorce, polygamy, testimony, inheritance, and marital responsibilities. The significance of

this literature is methodological: it demonstrates that Islamic legal discourse continues to contain competing interpretations and therefore cannot be represented as a single immutable position.

Areas of Family Law Requiring Harmonization

International standards require marriage to be based on free and full consent. In Islamic family law, consent is also a significant legal concept, although its institutional expression can differ according to the school of jurisprudence and the legal system. Harmonization should therefore focus on ensuring that guardianship or family involvement does not become a mechanism through which adult women are deprived of meaningful autonomy. Legal safeguards should address forced marriage, coercion, economic dependence, and unequal bargaining power.

Polygamy represents one of the most visible points of tension between Islamic family law and contemporary gender-equality standards. The central legal issue is not simply whether polygamy has a textual basis, but whether the regulatory framework provides equal dignity, informed consent, economic protection, and safeguards for existing spouses and children. Different Muslim-majority states have adopted different regulatory models, ranging from strict judicial control to prohibition. The comparative lesson is that the legal treatment of polygamy reflects broader choices concerning substantive equality and the role of the state in regulating intimate relationships.

The Indonesian judiciary provides a useful institutional perspective. Halimatusa'diyah and Triana (2024) (2024) show that polygamy cases form part of a wider set of gender-sensitive family-law disputes in which judicial reasoning can either reinforce or mitigate gender inequality. This suggests that statutory regulation must be accompanied by judicial standards that require careful consideration of consent, economic capacity, existing family responsibilities, and potential harm.

Divorce is another central area of harmonization. Classical Islamic jurisprudence historically differentiated between *talaq*, *khul'*, and judicial dissolution. Modern state family law has increasingly moved toward court-based divorce procedures, but procedural equality remains uneven. Recent research on Indonesia identifies continuing gender asymmetry in Muslim divorce procedures and post-divorce entitlements. The implication is that equal access to dissolution requires more than allowing women to file for divorce; it requires fair evidentiary standards, accessible procedures, enforceable maintenance, equitable property distribution, and effective protection from violence.

The emerging literature also shows that legal pluralism complicates the picture. Larouche and Lemons (2020)' (2020) study of a Delhi family court demonstrates that Muslim women's disputes may be resolved through combinations of religious and non-religious legal rules rather than through a single autonomous body of Muslim personal law. This challenges the assumption that harmonization simply means adjusting a discrete

religious legal code. In practice, family-law disputes are often governed by overlapping statutory, religious, customary, and judicial norms.

The 2019 amendment to Indonesia's Marriage Law is a major step toward equality because it established a uniform statutory minimum marriage age of 19. However, the continuing use of judicial dispensations creates a critical implementation problem. Shahrullah et al. (2023) (2023) demonstrate that judges in West Java must balance statutory prevention of child marriage against claims of urgent circumstances and the best interests of children.

The reform agenda should therefore move from age-based legislation toward a broader child-protection architecture. Judicial dispensations should be exceptional, evidence-based, individually reasoned, and subject to meaningful scrutiny. Courts should consider education, health, psychological maturity, economic dependency, risks of violence, and the long-term consequences of marriage. A legal system that raises the formal age but routinely permits exceptions risks preserving the underlying social pattern through a different procedural route.

Substantive equality extends beyond marriage formation and divorce. Custody and maintenance decisions determine whether children remain protected after marital breakdown, while property rules determine whether women leave marriage with meaningful economic security. CEDAW's concern with the economic consequences of marriage and dissolution is therefore central. Reform should avoid treating maintenance, custody, and marital property as secondary issues because these matters often determine whether formal legal equality becomes lived equality.

Recent Indonesian judicial scholarship also indicates the importance of gender-sensitive adjudication in post-divorce maintenance. Halimatusa'diyah and Triana (2024) (2024) show that judges' orientations toward gender equality matter in cases involving post-divorce alimony. This supports a broader proposition: legal harmonization requires institutional actors capable of recognizing substantive inequality, not simply statutes written in gender-neutral language (Halimatusa'diyah & Triana, 2024).

Comparative Experiences of Reform

Morocco's 2004 Moudawwana reform remains one of the most important comparative examples. The reform strengthened women's legal position in marriage and divorce, restricted polygamy, increased protections relating to custody, and restructured family relations. Its significance lies partly in its strategy of legitimation: reform was articulated through Islamic jurisprudential reasoning and political-religious discourse rather than presented simply as the replacement of Islamic law with secular law (Izzati et al., 2024).

The Indonesia–Morocco comparison remains productive. Izzati et al. (2024)'s study of *ta'liq al-ṭalāq* demonstrates that similar Islamic legal institutions can be institutionalized toward different policy objectives depending on social and legal context.

Morocco's more explicit emphasis on women's protection illustrates how Islamic legal mechanisms can be reinterpreted as instruments of substantive equality.

Tunisia's Code of Personal Status, introduced in 1956, established an ambitious state-led reform trajectory. The prohibition of polygamy and the regulation of divorce demonstrate the capacity of legislation to restructure family relations. The Tunisian experience nevertheless cannot simply be transplanted. Its broader lesson is that legal reform requires political authority capable of maintaining a coherent policy direction and institutions capable of implementing it (An-Na'im, 2002).

Indonesia illustrates a different model characterized by gradual legislative reform, constitutional review, religious-court adjudication, and civil-society advocacy. The 2019 marriage-law revision is particularly significant because it followed constitutional litigation and sustained advocacy. Miichi's (2025) recent study shows that feminist actors were able to transform a long-standing political controversy into a successful legislative reform (Miichi, 2025).

The Indonesian model nevertheless reveals a persistent implementation gap. Child marriage continues despite the statutory age increase; judicial dispensations create exceptions; and judicial interpretation varies across cases. The lesson is therefore that incremental reform must be accompanied by institutional mechanisms capable of ensuring consistency and substantive protection.

Malaysia offers a different institutional configuration because Islamic family law operates through state-level Syariah jurisdictions alongside federal civil law. This arrangement demonstrates that harmonization must take account of the distribution of legislative and judicial authority. A formally progressive rule may have limited effect if jurisdictional fragmentation produces inconsistent implementation. Malaysia therefore illustrates the importance of institutional design in addition to substantive legal standards (Uddin, 2020).

India demonstrates another dimension of the problem. Subramanian's analysis of Muslim family-law change shows that legal reform can occur when political actors find credible justifications for changing group-specific rules within constitutional, group-normative, and transnational frameworks. Larouche and Lemons (2020) further show that actual family-court practice can involve overlapping bodies of law. The Indian experience cautions against assuming that a single statutory intervention will necessarily transform the complex legal ecology of family disputes (Subramanian, 2008).

Toward a Dialogical Model of Harmonization

The comparative evidence suggests that harmonization should be understood as dialogical rather than hierarchical. A hierarchical model assumes that international human rights provide the complete normative answer and that local religious law merely needs to conform. An opposite hierarchical model assumes that religious or cultural norms are

immune from external evaluation. Both positions are inadequate for plural constitutional societies.

A dialogical model begins with areas of normative convergence: human dignity, protection from violence, free consent, children's welfare, fairness in marital dissolution, and access to justice. It then asks how those objectives can be articulated through local legal traditions. In Muslim-majority societies, Islamic jurisprudence can provide concepts such as *maṣlaḥah*, *maqāṣid*, *ʿadl*, *raḥmah*, and mutual contractual responsibility that can support rights-protective interpretations.

This model also responds to concerns about cultural imperialism. Recent scholarship on Muslim family life warns against treating Muslim families exclusively through assumptions derived from Western secular family norms. Britton's (2024) analysis of the racialization of Muslim family life highlights how dominant frameworks can misrepresent Muslim women's agency and reduce complex family practices to stereotypes of patriarchal oppression. The implication is not that gender inequality should be ignored, but that reform should be attentive to agency, identity, and context (Britton, 2024).

Accordingly, constructive harmonization should satisfy four conditions: substantive protection of rights; procedural legitimacy; contextual legal reasoning; and institutional enforceability. International standards supply minimum benchmarks, Islamic legal reasoning can contribute internal legitimacy, constitutional law provides domestic authority, and courts and administrative institutions provide implementation mechanisms.

Strategic Opportunities for Legislative and Institutional Reform

Indonesia would benefit from a systematic review of family-law legislation against the combined benchmarks of the Constitution, CEDAW, ICCPR, and CRC. Such review should identify both explicit discrimination and provisions that produce unequal outcomes indirectly. The review should encompass marriage formation, polygamy, divorce, marital property, maintenance, custody, child marriage, and access to legal remedies.

The Compilation of Islamic Law should be understood as a historically significant but revisable instrument of legal codification. Its reform should not be framed as secularization. Instead, revision can be presented as contemporary Islamic legal development informed by *maqāṣid*, constitutional equality, and international human-rights obligations. Areas requiring particular attention include women's access to divorce, post-divorce maintenance, marital property, child protection, and the legal consequences of gendered marital roles.

Judicial reform is indispensable because family-law disputes are intensely fact-specific. Judges need training in CEDAW, CRC, constitutional rights, gender analysis, domestic-violence law, and contextual Islamic jurisprudence. The empirical findings of

Halimatusa'diyah and Triana (2024) (2024) demonstrate why judicial orientation matters: statutory equality cannot guarantee substantive equality if decision-makers reproduce gender stereotypes.

Marriage-dispensation procedures should be redesigned to ensure that exceptions to the minimum age do not become a routine alternative route to marriage. Courts should require individualized evidence of exceptional circumstances, apply a child-rights assessment, hear the child directly where appropriate, consider educational and health consequences, and provide written reasons. Judicial statistics should be publicly monitored to identify patterns of excessive dispensations.

Civil-society organizations play a critical role in connecting legal reform with lived experience. Women's organizations, child-rights organizations, religious institutions, and legal-aid providers can identify implementation gaps and develop culturally persuasive strategies. The success of Indonesia's 2019 marriage-law revision demonstrates the importance of sustained advocacy and coalition-building.

International Monitoring as Domestic Accountability

UPR recommendations and treaty-body observations should be integrated into national reform plans rather than treated merely as international reporting requirements. Government agencies can establish measurable indicators concerning child marriage, divorce access, post-divorce maintenance, legal aid, and gender-sensitive adjudication. Civil society and universities can independently monitor progress. Such mechanisms would translate international commitments into domestic accountability.

Tabel 1. Proposed Six-Dimensional Harmonization Framework

Dimension	Core Principle	Indicative Reform
Normative	Human dignity, equality, non-discrimination, best interests of the child	Audit family-law rules against CEDAW, ICCPR, CRC and constitutional rights
Jurisprudential	Contextual <i>ijtihad</i> and <i>maqāṣid al-sharī'ah</i>	Develop rights-sensitive interpretations of marriage, divorce, custody and maintenance
Legislative	Substantive equality	Revise discriminatory or structurally unequal provisions and tighten child-marriage exceptions
Judicial	Gender- and child-sensitive adjudication	Training, reasoned judgments, judicial guidelines, and monitoring
Institutional	Effective implementation	Legal aid, integrated social services, data systems, and inter-agency coordination
Participatory	Dialogical legitimacy	Involve scholars, women's organizations, child-rights groups, civil society and affected communities

The central finding is that harmonization is best understood as a process of institutional translation rather than textual conformity. International human-rights instruments establish principles, but those principles acquire practical meaning through

domestic institutions. The Indonesian experience demonstrates that a constitutional ruling may catalyze legislative reform, but subsequent judicial practices can determine whether the reform achieves its protective purpose. Morocco demonstrates that religiously legitimate reinterpretation can facilitate legislative change, while India demonstrates that legal pluralism complicates the assumption that a single religious code governs all family disputes.

The second finding concerns the relationship between equality and Islamic legal reasoning. The relevant question should not be whether every classical rule has an identical contemporary equivalent. The more productive inquiry is whether the objectives and legal consequences of contemporary family law are consistent with justice, dignity, mutual responsibility, and protection from harm. This approach makes space for reinterpretation without treating Islamic law as infinitely malleable or human rights as culturally empty.

The third finding is institutional. Legal reform is unlikely to produce substantive change if judges, administrators, social-service providers, and communities do not have the capacity to implement it. Recent Indonesian research on feminist judging and child-marriage dispensations demonstrates this clearly. Reform must therefore move from a legislation-centred model to a governance model in which law, courts, social services, education, and civil society operate together.

The fourth finding is that harmonization should avoid both cultural relativism and legal universalism in their strongest forms. Cultural relativism becomes problematic when it is used to immunize harmful practices from rights scrutiny. Universalism becomes problematic when it assumes that the same institutional form must be imposed across different societies. The proposed dialogical model instead distinguishes universal substantive values from variable institutional pathways.

This study has several limitations. First, it is normative and comparative rather than an empirical study of family-law outcomes. It therefore does not claim to measure the causal effectiveness of particular reforms. Second, the comparative jurisdictions have different constitutional structures, political histories, and institutional capacities; lessons must therefore be adapted rather than mechanically transplanted. Third, the literature on Islamic family law is multilingual and dispersed across legal, religious, sociological, and area-studies publications. The updated review prioritizes recent peer-reviewed scholarship accessible through major international indexing systems, but it does not claim to exhaust all scholarship in Arabic, Urdu, Persian, Malay, or other languages. Finally, indexing status can change over time; journal and database status should be rechecked at the moment of formal submission.

Conclusion

Family-law harmonization with international human-rights standards is neither legally impossible nor conceptually reducible to the replacement of Islamic law with

secular norms. The comparative evidence demonstrates that reform can occur through multiple pathways, including legislative reconstruction, constitutional review, judicial interpretation, progressive *ijtihad*, civil-society advocacy, and international monitoring. What matters is whether these mechanisms collectively produce substantive protection for dignity, equality, autonomy, and children's welfare.

The principal areas requiring reform include marriage consent, polygamy, divorce, child marriage, custody, maintenance, and the economic consequences of marital dissolution. In Indonesia, the 2019 marriage-law reform demonstrates the capacity of constitutional and legislative institutions to advance equality, but recent research also shows that judicial dispensations and institutional practices can weaken the protective purpose of reform. Similarly, research on the Islamic judiciary demonstrates that judicial orientation and gender sensitivity affect access to justice.

The article therefore advances a dialogical model of harmonization grounded in six mutually reinforcing dimensions: international human-rights benchmarks, contextual Islamic jurisprudence, legislative reform, gender-sensitive adjudication, institutional implementation, and participatory legitimacy. Such a model avoids the false choice between religious identity and universal rights. It instead recognizes that Islamic legal traditions contain interpretive resources capable of supporting contemporary family justice when approached through contextual reasoning and *maqāṣid*-oriented analysis.

For Indonesia and other Muslim-majority jurisdictions, the future of family-law reform depends less on choosing between two supposedly incompatible normative systems than on developing institutions capable of translating shared values into enforceable rights. International human rights can provide a minimum normative floor; Islamic jurisprudence can provide internal moral and legal resources; constitutional law can provide domestic authority; and courts, legislatures, civil society, and social institutions can provide the mechanisms of implementation. Harmonization, in this sense, is not the abandonment of tradition but its critical reconstruction in the service of human dignity and family justice.

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