



## Sharia, State, and Family: Towards a Responsive Legislative Design for Household Resilience in Indonesia

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### Abstract

The family constitutes a fundamental social institution that undergirds the stability of both society and the state. In the context of rapid transformations driven by digitalization, modernization, and globalization, families in Indonesia face multifaceted challenges, including rising divorce rates, domestic violence, the erosion of parental roles, and a decline in the quality of family interactions. This study seeks to develop a responsive legislative model aimed at enhancing family resilience. It critically examines key regulatory instruments within Indonesian family law—specifically, the Marriage Law, the Compilation of Islamic Law, the Law on the Elimination of Domestic Violence, the Child Protection Law, and the Law on Population and Family Development—to conduct a normative evaluation of their responsiveness to evolving family dynamics. Utilizing normative juridical methods grounded in a literature review, the research employs the responsive legal theories of Nonet and Selznick, alongside the *maqāṣid al-sharī'ah* (objectives of Islamic law) framework, as analytical tools. The findings highlight the significance of adaptive and participatory regulation in safeguarding family rights and functions. Theoretically, enhancing family resilience in Indonesia requires the evolution of the legal framework toward a responsive model that integrates procedural norms with the values of justice, compassion, and shared responsibility.

### Keywords

Sharia; Indonesian Family Law; Responsive Legislative Design; Family Resilience; *Maqāṣid al-Sharī'ah*

### Introduction

In Indonesia, rapid social transformations driven by digitalization, modernization, and evolving social values have introduced new challenges to family life. Official data from the Central Statistics Agency (BPS) indicate that the number of divorce cases reached 516,334 in 2022, marking a significant increase from the previous year and reflecting heightened tensions within marital relationships.<sup>1</sup> Furthermore, reports from the National Commission on Anti-Violence Against Women (Komisi Nasional Perempuan) consistently underscore the persistently high incidence of domestic violence within the household, revealing enduring structural and relational vulnerabilities in Indonesian families.<sup>2</sup> These circumstances, compounded by economic instability and conflicts mediated through digital platforms, suggest that Indonesian families confront increasingly

<sup>1</sup> “Data BPS Tentang Angka Perceraian 2022,” [kompas.com/konsultasihukum/read/2023/12/31/070435480/menyoal-kenaikan-angka-perceraian-di-indonesia](https://kompas.com/konsultasihukum/read/2023/12/31/070435480/menyoal-kenaikan-angka-perceraian-di-indonesia).

<sup>2</sup> Komisi Nasional Perempuan, *Catatan Tahunan 2023: Kekerasan terhadap Perempuan di Ranah Personal* (Komnas Perempuan, 2023).



complex challenges. This situation prompts critical inquiry into whether the existing family law framework is adequately responsive to contemporary social realities and capable of enhancing family resilience amid ongoing societal transformation.

Within Indonesia's national legal framework, Islamic Family Law encapsulates principles of justice, equitable rights and obligations, and the protection of family members. Foundational Islamic concepts related to family well-being—namely tranquility (*sakīnah*), affection (*mawaddah*), and compassion (*rahmah*)—emphasize a normative commitment to fostering harmonious and resilient family units. However, existing legislative instruments, including the Marriage Law, the Compilation of Islamic Law, the Law on the Elimination of Domestic Violence, the Child Protection Law, and the Law on Population and Family Development, have not been systematically analyzed in terms of their responsiveness to evolving social dynamics, particularly those arising from digital disruption, gender justice concerns, and post-divorce family arrangements.<sup>3</sup> Prior research has predominantly concentrated on doctrinal critiques, gender analyses, or fiqh-based reformulations of Islamic family law. Although these contributions are valuable, they primarily address substantive norms rather than the structural design and character of the legislation itself. Furthermore, there has been limited exploration of integrating the theory of responsive law with the objectives of Islamic law (*maqāṣid al-sharī'ah*) as complementary foundations for developing a legislative model aimed at enhancing family resilience.<sup>4</sup>

This study addresses the existing gap by examining how responsive legislative design can be developed within the framework of Indonesia's family law. The author contends that enhancing family resilience necessitates not only normative revisions but also a transformation toward adaptive, participatory, and value-oriented legislation. The originality of this research lies in the conceptual development of a responsive legislative model that integrates contemporary legal theory with Islamic normative principles, thereby positioning family law as an instrument of dynamic social transformation rather than a static set of rules. By situating Indonesia's experience within the broader discourse on family law reform in ASEAN and beyond,<sup>5</sup> this study contributes to ongoing discussions on Islamic legal responsiveness and *maqāṣid*-based legislative innovation.<sup>6</sup>

## Literature Review

The theory of responsive law, as developed by Philippe Nonet and Philip Selznick, conceptualizes law as a dynamic social institution that evolves in response to societal demands and moral aspirations.<sup>7</sup> Moving beyond repressive and autonomous legal models, responsive law prioritizes substantive justice, public participation, and institutional adaptability.<sup>8</sup> In the context of legislative formation, this approach necessitates openness to public deliberation and attentiveness to socio-

<sup>3</sup> Yuni Roslaili et al., "Family Law Reform in Indonesia According to the Maqashid Al-Shari'a Perspective (A Case Study of Law No. 16 of 2019)," *Gender Equality: International Journal of Child and Gender Studies* 7, no. 2 (2021): 183–197.

<sup>4</sup> Majid Abdul, "Islamic Legal Reform Based on Maqāṣid Syarī'ah: A Study of Al-Ghazālī's Thoughts and Its Relevance in the Context of Indonesian Family Law," *Usrah: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025): 1–11.

<sup>5</sup> Zaini Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 1 (2024): 1–19.

<sup>6</sup> Adriaan Bedner and Stijn Van Huis, "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism," *Utrecht Law Review* 6, no. 2 (2010): 175–191.

<sup>7</sup> Refer to Philippe Nonet and Selznick, *Law and Society in Transition: Toward Responsive Law* (New York: Harper & Row, 1978).

<sup>8</sup> Nonet and Selznick, 73.

cultural transformations. Nonetheless, scholars have critiqued responsive law for its potential indeterminacy. Some contend that excessive openness to social demands may undermine legal certainty and obscure institutional boundaries.<sup>9</sup> Additionally, it has been noted that the theory assumes the existence of a relatively mature democratic culture, which may not be present in transitional legal systems.<sup>10</sup> These critiques are particularly salient when evaluating the theory's applicability in plural legal contexts, such as Indonesia.

Responsive or participatory legislative approaches have been examined in Muslim-majority jurisdictions, notably Morocco and Tunisia, particularly in the context of reforms to family codes (*Mudawwanah*).<sup>11</sup> In these settings, legislative reform has integrated participatory consultation with normative reinterpretations of Islamic principles. However, the effectiveness of such reforms remains contested, especially with regard to implementation challenges and socio-political resistance. In Indonesia, the principle of meaningful participation in law-making is constitutionally enshrined through Law No. 12 of 2011 and further reinforced by Constitutional Court Decision No. 91/PUU-XVIII/2020, which recognizes public participation as a substantive requirement for legislative legitimacy. Despite this, scholarly inquiry has yet to systematically explore how theories of responsive law might inform the development of Islamic family legislation in Indonesia.

Previous studies on participatory lawmaking in Southeast Asia have demonstrated that the engagement of civil society organizations, women's movements, and religious scholars during early legislative consultations can substantially enhance the legitimacy of laws and promote compliance.<sup>12</sup> Research focusing on legislative practices in Indonesia highlights that, although participation is often facilitated procedurally, it tends to exert limited substantive influence on the final legislative content, particularly in the domain of family law.<sup>13</sup> Comparative analyses from Malaysia and Morocco indicate that adaptive legislative mechanisms—such as regulatory impact assessments and iterative public consultations—can mitigate implementation gaps and bolster public trust in legal reforms.<sup>14</sup>

The objectives of Islamic law (*maqāṣid al-sharī'ah*) framework, originally articulated by al-Ghazālī and al-Shāṭibī and subsequently reformulated by contemporary scholars such as Jasser Auda, emphasizes the protection of religion, life, intellect, lineage, and property as the fundamental objectives of Islamic law.<sup>15</sup> Contemporary scholarship on *maqāṣid* has expanded these objectives to encompass human dignity, justice, and rights-based approaches.<sup>16</sup> Within the domain of Islamic family law, the *maqāṣid* framework has been employed to advocate for gender equality reforms,

<sup>9</sup> See Brian Z. Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge: Cambridge University Press, 2006).

<sup>10</sup> Mahmudin Bunyamin, "The Implementation of The Concept of Maslahat (Benefits) in Determining the Minimum Age of Marriage in Islamic Family Law in Indonesia and Jordan," *Al-Adalah* 18, no. 2 (2021): 303–22.

<sup>11</sup> See Mir-Hosseini Ziba, *Marriage on Trial: Islamic Family Law in Iran and Morocco* (New York: St. Martin's Press, 2000).

<sup>12</sup> Andi Rahmat Hidayat et al., "Why Democratization and Decentralization in Indonesia Have Mixed Results on the Ground: A Systematic Literature Review," *Public Administration and Development* 45, no. 2 (2025): 159–72.

<sup>13</sup> Al Farabi, "The State Penghulu vs The Non-State Penghulu: The Validity and Implementing Authorities of Indonesian Marriage," *Justicia Islamica* 17, no. 2 (2020): 343–64.

<sup>14</sup> Asmuni Asmuni et al., "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights," *Ulumuna* 27, no. 2 (2024): 876–904.

<sup>15</sup> Miftakhul Huda and Hisam Ahyani, "Normative Justice and Implementation Related to Sharia Economic Law Disputes in Realizing Legal Certainty and Justice in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 1 (2024): 103–19.

<sup>16</sup> See Kamali, Mohammad Hashim, *Shari'ah Law: An Introduction* (London: Oneworld Publications, 2008).



child protection measures, and the reinterpretation of marriage and divorce regulations.<sup>17</sup>

Comparative studies demonstrate the influence of *maqāṣid* discourse on Morocco's 2004 *Mudawwanah* reform and Malaysia's family law amendments. Nonetheless, critics contend that *maqāṣid* discourse may be selectively instrumentalized to legitimize predetermined policy outcomes.<sup>18</sup> Furthermore, some scholars question whether *maqāṣid* adequately addresses structural power inequalities in the absence of broader socio-political reforms. In Indonesia, recent scholarship emphasizes *maqāṣid*-based justifications for raising the minimum marriage age and enhancing women's rights post-divorce.<sup>19</sup> However, the majority of these studies remain doctrinal and do not incorporate legislative theory or participatory design within *maqāṣid*-based reform discussions. Recent contributions to *maqāṣid*-based legal theory advocate for the operationalization of *maqāṣid* through measurable legislative criteria, including the protection of child welfare, the provision of gender equality, and procedural safeguards for vulnerable groups.<sup>20</sup> An analysis of the literature on family law reform in Indonesia reveals that, although normative reforms have been enacted, their effectiveness is frequently constrained by bureaucratic fragmentation and limited coordination between religious courts and civil law institutions.<sup>21</sup> International scholarship underscores that integrating *maqāṣid* into lawmaking processes, coupled with participatory consultation, can enhance both the ethical coherence and practical enforcement of family law reforms.<sup>22</sup>

The existing scholarship on Islamic family law reform predominantly concentrates on three areas: doctrinal reinterpretation of fiqh norms, gender-based critiques of patriarchal provisions, and comparative analyses of reform across Muslim-majority states.<sup>23</sup> While these contributions are valuable, there remains a paucity of research that effectively bridges modern legal theory—particularly the theory of responsive law—with *maqāṣid*-based ethical reasoning in the development of legislative frameworks. This study situates itself at the nexus of these discourses. Rather than solely revising substantive legal norms, it conceptualizes legislative responsiveness as both a procedural and ethical endeavor. By integrating Nonet and Selznick's theory of responsive law with *maqāṣid al-sharī'ah* as a normative guide, this article proposes a model of legislative design aimed at reconciling democratic participation, legal certainty, and Islamic ethical objectives within Indonesia's pluralistic legal system. This approach addresses contemporary challenges related to

<sup>17</sup> J. Rehman, "The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq," *International Journal of Law, Policy and the Family* 21, no. 1 (2007): 108–27; Khoiruddin Nasution et al., "The Childfree Discourse in Contemporary Islamic Family Law and Human Rights: Insights from Young Muslim Academics in Indonesia," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 1–32.

<sup>18</sup> Refer to Kamali, *Shari'ah Law: An Introduction*.

<sup>19</sup> Bunyamin, "The Implementation of the Concept of Maslahat (Benefits) in Determining the Minimum Age of Marriage in Islamic Family Law in Indonesia and Jordan"; Fauzi Fauzi et al., "Pulang Bale Marriage Traditions and Child Care Issues: A Study of Ḥaḍānah and Family Resilience in Aceh," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (2024): 179–191.

<sup>20</sup> Refer to Auda, Jasser, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach Revisited* (London: The International Institute of Islamic Thought, 2021).

<sup>21</sup> Sri Wahyuni and Zuliza Mohd Kusrin, "Gender Equality in the Concept of Family Maintenance and Marital Property in Indonesian and European Legal Context: A Comparative Study," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 2 (2025): 265–76.

<sup>22</sup> Ahmad Syafi'i Sulaiman Jamrozi et al., "Maqāṣid Al-Sharī'ah in The Study of Hadith and Its Implication for The Renewal of Islamic Law: Study on Jasser Auda's Thought," *Justicia Islamica* 19, no. 1 (2022): 74–93.

<sup>23</sup> St. Rahmawati, "Mainstreaming of Gender Equality in Islamic Family Law: Opportunities and Challenges," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 2 (2020): 360–374.

harmonizing procedural legitimacy with ethical imperatives.<sup>24</sup> Given the impact of digitalization and socio-economic transformations on family dynamics, the study extends the theoretical framework of responsive law to operationalize *maqāṣid* principles in legislative drafting.<sup>25</sup> This hybrid model not only remedies normative deficiencies in Indonesia's current family law but also offers a transferable framework for other Muslim-majority jurisdictions confronting similar issues of legal pluralism and social change.

## Research Methodology

This study employs a normative juridical approach, analyzing law as a system of norms encompassed within legislation, legal doctrines, and Islamic ethical principles. The research does not involve the collection of primary empirical data; rather, it relies exclusively on normative legal analysis, supported by secondary empirical data obtained from official reports and scholarly studies. All statistical and socio-legal data referenced are secondary in nature and are utilized solely to provide contextual background for the normative evaluation. Data collection was conducted through library research. Primary legal sources include Law Number 1 of 1974 concerning Marriage (as amended by Law Number 16 of 2019), the Drafting of Islamic Law (Presidential Instruction Number 1 of 1991), Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 35 of 2014 concerning Child Protection, and Law Number 52 of 2009 concerning Population and Family Development. Secondary sources comprise academic books, peer-reviewed journal articles, and theoretical works, with particular emphasis on the responsive legal theories of Philippe Nonet and Philip Selznick, as well as the *maqāṣid al-sharī'ah* framework developed by Jasser Auda.

The analysis is conducted through a qualitative normative interpretation of legal provisions, employing doctrinal and conceptual methodologies. To mitigate subjectivity, the level of legal responsiveness is evaluated using systematic and operational indicators derived from responsive legal theory and *maqāṣid al-sharī'ah*. These indicators encompass: the participatory dimension, which assesses the extent to which regulations reflect public participation and stakeholder involvement in their formulation; substantive justice orientation, which examines the presence of provisions protecting vulnerable groups such as women, children, and economically dependent spouses; adaptive capacity, referring to the regulation's ability to address contemporary challenges, including digital disruption and evolving family structures; integration of values, involving the incorporation of *maqāṣid* principles, particularly the protection of lineage (*ḥifẓ al-nasl*), life (*ḥifẓ al-nafs*), and dignity; and institutional coherence, which considers the consistency between the law's objectives, implementation mechanisms, and enforcement structures. Each regulation is assessed against these criteria through structured doctrinal analysis. Consequently, this study produces normative evaluations and conceptual formulations of responsive legislative models rather than empirical findings. The two theoretical frameworks function as analytical tools to

<sup>24</sup> Refer to Tamanaha, *Law as a Means to an End*.

<sup>25</sup> Hidayat et al., "Why Democratization and Decentralization in Indonesia Have Mixed Results on the Ground?"; Fahmi Ramadhan Firdaus et al., "Meaningful Participation as People's Sovereignty Form in Democratic Rule of Law State," *Jurnal Hukum Ius Quia Iustum* 31, no. 2 (2024): 337–57; Rengga Kusuma Putra et al., "The Urgency of Meaningful Participation in the Law Making Process from the Perspective of Democratic Countries (Comparison of Indonesia, South Africa and the United States)," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 24, no. 1 (2025): 2571–2586.



develop an adaptive model of Islamic family law that is ethically grounded and oriented toward justice and *maṣlahah* within contemporary Indonesian society.

## Result

The normative evaluation of Indonesian family law regulations reveals varying levels of responsiveness when assessed using the operational indicators developed in this study, namely: participatory dimension, substantive justice orientation, adaptive capacity, institutional coherence, and value integration within the framework of *maqāṣid al-sharī'ah*. This assessment is based exclusively on secondary legal materials and doctrinal analysis, with direct reference to statutory provisions and authoritative judicial decisions. The normative appraisal of Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, demonstrates an adaptive form of responsiveness characterized as reactive-constitutional. Specifically, Article 7, paragraph (1), was amended to equalize the minimum marriage age at nineteen years for both men and women, constituting a direct response to Constitutional Court Decision Number 22/PUU-XV/2017. This reform reflects the legal system's capacity to adjust in response to constitutional review and normative pressures related to child protection and gender equality.<sup>26</sup> However, from both sociological and legislative perspectives, the amendment appears to be more a reaction to judicial review than the outcome of proactive and participatory deliberation within the legislative process.<sup>27</sup>

Recent scholarship has demonstrated that reforms concerning the minimum age of marriage reflect the principles of *maqāṣid al-sharī'ah*. Nevertheless, these reforms continue to function within a political-legal framework that is predominantly reactive rather than fully deliberative.<sup>28</sup> Regarding substantive justice, the regulation of polygamy under Articles 3 and 4 maintains a system that requires court authorization and the fulfillment of specific conditions. However, its normative framework remains primarily focused on procedural legality and has yet to incorporate comprehensive protections grounded in gender equality.<sup>29</sup> Consequently, while the protection of lineage (*ḥifẓ al-nasl*) is explicitly recognized, the aspect of safeguarding the dignity and well-being of women, as encompassed within the protection of life (*ḥifẓ al-nafs*), has not been fully realized in positive legal norms. In contrast to the Marriage Law, the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991) demonstrates a semi-responsive character with a relatively low degree of adaptability. The KHI was promulgated through an executive directive without undergoing a deliberative parliamentary legislative process, thereby restricting public participation in its formulation.<sup>30</sup> Recent critical scholarship situates the KHI within a distinctive normative status, as it lacks formal recognition as a statute, which consequently limits its legitimacy and capacity for reform within the evolving context of national law.

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<sup>26</sup> Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia."

<sup>27</sup> Labib Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia," *Journal of Indonesian Legal Studies* 10, no. 1 (2025): 91–134.

<sup>28</sup> Ahmad Ash Shiddieqy et al., "Integrating Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Indonesia and Morocco," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 2 (2025): 165–190.

<sup>29</sup> Ismail Hasani and Halili Halili, "Human Rights and Constitutionality Issues of Blasphemy Law in Indonesia," *Jurnal Konstitusi* 19, no. 2 (2022): 406–30.

<sup>30</sup> Dede Kania et al., "Gender Equality Implementation in Women's Legal Cases in Religious Courts," *Kosmik Hukum* 25, no. 2 (2025): 205–20.

**Table 1.** Normative assessment of legislative responsiveness in Indonesian Family Law.

Regulation	Participatory Dimension	Substantive Justice Orientation	Adaptive Capacity	Institutional Coherence	Integration of <i>Maqāṣid al-Sharī'ah</i>	Responsive Level
Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019	Limited to moderate changes, with amendments prompted by constitutional review rather than through proactive deliberation	Moderate reform, establishing minimum age and promoting equality; however, the regulation of polygamy remains procedural	Moderate adaptive-reactive legal framework	Moderate alignment between judicial and legislative frameworks; however, the integration of gender protection measures remains incomplete	Explicit in <i>ḥifẓ al-nas</i> , implicit in <i>ḥifẓ al-nafs</i>	Semi-responsive: reactive constitutional
The Compilation of Islamic Law, 1991	Legislation enacted by the executive branch without parliamentary deliberation.	Characterized by a limited hierarchical marital system with partial alignment based on gender.	Since 1991, there has been minimal reform.	The practice within religious courts is relatively consistent	Inclusively on <i>ḥifẓ al-nas</i> , exclusively on <i>ḥifẓ al-nafs</i> , particularly concerning gender justice	Semi-responsive: limited adaptability
Law No. 23 of 2004 on the Elimination of Domestic Violence	High, as a result of sustained advocacy by civil society and women's movements.	Highly centered on the protection of the rights of the victim.	Highly responsive to social and human rights discourse.	Robust integration of criminal sanctions and protective mechanisms	Substantive integration of <i>ḥifẓ al-nafs</i> , <i>ḥifẓ al-'aql</i> , and <i>ḥifẓ al-nasl</i>	Responsive and substantively integrated
Law No. 35 of 2014 on Child Protection	Moderate to high alignment with the international child rights framework	Highly centered on children as autonomous rights holders	Moderate to high in normative aspects; but a gap persists during the application phase	Robust from a normative perspective; however, challenges persist in its application.	Substantive integration of <i>ḥifẓ al-nafs</i> and <i>ḥifẓ al-'aql</i> effectively supports <i>ḥifẓ al-nasl</i>	Responsive: normatively robust to the dimensions of its application
Law No. 52 of 2009 on Population and Family Development	Limited actualization of a top-down institutional approach	Moderate levels of welfare-oriented family quality protection	Moderately adaptive in administrative terms but remains normatively centralized	Administratively coherent, state-driven model	Prominently emphasized <i>ḥifẓ al-nasl</i> and <i>ḥifẓ al-māl</i> , albeit with limited integration	Semi-responsive, institutional, and top-down approach

Source: Authors' elaboration, 2026

Substantively, Articles 80 to 84, which designate the husband as the head of the household and the wife as the housewife, embody a hierarchical relational structure. Some studies suggest that this framework has not been fully reconciled with the principles of gender equality that have

emerged in contemporary Islamic family law.<sup>31</sup> Furthermore, the stagnation of KHI reform since 1991 indicates a limited capacity to adapt to social changes and the development of human rights discourse, despite the fact that doctrinally the KHI remains relatively coherent within the practice of religious courts.<sup>32</sup> From the perspective of *maqāṣid al-sharī'ah*, the KHI strongly upholds the protection of lineage (*ḥifẓ al-nas*); however, its integration with the protection of life and human dignity (*ḥifẓ al-nafs*) within a framework of gender justice remains constrained.

Law Number 23 of 2004 on the Elimination of Domestic Violence exemplifies a heightened level of legal responsiveness. This statute was enacted following an extensive advocacy process led by civil society organizations and women's movements, thereby embodying a significant participatory element in its formulation.<sup>33</sup> Article 5 criminalizes physical, psychological, sexual, and economic violence, while Article 10 guarantees the rights of victims, thereby recognizing victims as legal subjects entitled to active protection. International scholarship on domestic violence legislation underscores that a victim-centered and integrated protection framework is a hallmark of contemporary responsive law. Furthermore, recent studies grounded in *maqāṣid al-sharī'ah* principles affirm that protecting victims of domestic violence concretely manifests the safeguarding of life, intellect, and lineage within modern Islamic legal discourse.<sup>34</sup> Normatively, the statute exhibits institutional coherence by aligning criminal sanctions with protective mechanisms and substantively reflects the integration of the values of *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-'aql* (protection of intellect), and *ḥifẓ al-nasl* (protection of lineage).

Furthermore, Law Number 35 of 2014 concerning Child Protection demonstrates a strong commitment to substantive justice by recognizing children as holders of autonomous rights. Article 59, which mandates special protection for children who are victims of violence and discrimination, exemplifies the incorporation of children's rights principles consistent with international standards.<sup>35</sup> This legislative amendment also reflects normative adaptation to global legal developments, particularly the Convention on the Rights of the Child. However, numerous academic reports and studies indicate that challenges in implementation continue to hinder the effectiveness of child protection at the practical level.<sup>36</sup> Recent comparative research confirms that the disparity between legal norms and their enforcement can compromise the achievement of the *maqāṣid al-sharī'ah* objectives in the context of child protection. Therefore, while these laws are normatively responsive and aligned with the protection of the soul and intellect, their effective implementation necessitates ongoing institutional strengthening.

Law Number 52 of 2009 concerning Population and Family Development exhibits a semi-responsive character, characterized by a strong welfare orientation yet implemented through an institutional top-down approach. Articles 4 to 6 underscore the role of the state, particularly through the National Population and Family Planning Board (BKKBN), in directing family

<sup>31</sup> See Auda, Jasser, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach Revisited*.

<sup>32</sup> Muhammad Iqbal Abdussalam and Zezen Zainul Ali, "Family Planning According to the Lembaga Dakwah Islam Indonesia and Nahdlatul Ulama Bandar Lampung City," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 1 (2022): 27–41.

<sup>33</sup> Rahmawati, "Mainstreaming of Gender Equality in Islamic Family Law."

<sup>34</sup> Roslaili et al., "Family Law Reform in Indonesia According to the Maqashid Al-Shari'a Perspective (A Case Study of Law No. 16 of 2019)."

<sup>35</sup> Lisma Lisma and Roykhatun Nikmah, "Child Care and Protection in Perspective of Legislation, Human Rights and Islamic Law," *Al-Bayyinah* 5, no. 1 (2021): 29–42.

<sup>36</sup> Lucitania Rizky et al., "Effectiveness of The Convention on the Rights of the Child (CRC) Regime by UNICEF in Encouraging the Implementation of Child Protection in SoutheastAsian Countries," *JASSP* 2, no. 1 (2022): 12–20.

planning policies and family development initiatives. Normatively, this legislation supports the protection of offspring (*ḥifẓ al-nasl*) and property (*ḥifẓ al-māl*) by enhancing family quality and demographic planning. However, academic discourse reveals a normative tension between the administrative-centralistic nature of family planning policies and religious interpretations that are more specific within Muslim communities.<sup>37</sup> Recent scholarship on family law reform in Muslim-majority countries further suggests that an excessively centralized approach may constrain social participation and limit broader normative dialogue.<sup>38</sup> Consequently, despite its relative administrative coherence, the law's level of participation and normative engagement remains limited when evaluated from the perspective of responsive law. Overall, these normative insights indicate variability in the degree of responsiveness within Indonesian family law legislation. Notably, the Law on the Elimination of Domestic Violence and the Child Protection Law exemplify a more responsive and substantively integrated legal framework aligned with *maqāṣid al-sharī'ah*, whereas the Marriage Law, the Compilation of Islamic Law, and the Population and Family Development Law occupy a semi-responsive position, exhibiting differing degrees of adaptability and participatory engagement.

## Discussion

Within the framework of Indonesian family law, the advocacy for a responsive approach must transcend mere normative appeals and be anchored in an institutionally grounded design consistent with a positive legal framework. This responsive model necessitates not only the incorporation of values such as participation, adaptability, and the orientation of *maqāṣid al-sharī'ah* but also the establishment of clear procedural mechanisms embedded within the legislative system, as governed by Law No. 12 of 2011 on Lawmaking (as amended). Consequently, the primary analytical inquiry shifts from questioning the desirability of responsiveness to examining how it can be effectively operationalized within Indonesia's legislative structure and political-legal context. Nonet and Selznick conceptualize responsive law as purposive, participatory, and oriented toward substantive justice rather than mere formal autonomy.<sup>39</sup> Contemporary scholarship increasingly emphasizes that responsive legislation depends on an inclusive deliberative process and the meaningful involvement of marginalized groups in law-making.<sup>40</sup> In the Indonesian context, although mechanisms for participation are formally recognized in the drafting of laws and regulations, empirical studies indicate that public participation often remains procedural rather than substantive.

To operationalize responsiveness in family law reform, at least three institutional mechanisms warrant strengthening: (1) the mandate to conduct structured public hearings that engage women's organizations, Islamic clerics (*'ulamā'*), psychologists, child protection agencies, and civil society networks; (2) the implementation of regulatory impact assessments (RIA) incorporating gender analysis and children's rights considerations prior to the ratification of legal amendments; and (3)

<sup>37</sup> Abdussalam and Ali, "Family Planning According to the Lembaga Dakwah Islam Indonesia and Nahdlatul Ulama Bandar Lampung City."

<sup>38</sup> Wahyuni and Kusrin, "Gender Equality in the Concept of Family Maintenance and Marital Property in Indonesian and European Legal Context."

<sup>39</sup> Nonet and Selznick, Philips, *Law and Society in Transition: Toward Responsive Law*.

<sup>40</sup> Brian Z. Tamanaha, "The Rule of Law and Legal Pluralism in Development," *Hague Journal on the Rule of Law* 3, no. 1 (2011): 1–17.

the integration of empirical data from Religious Courts and BKKBN statistics into the legislative deliberation process. Recent research on participatory lawmaking in Southeast Asia indicates that the substantive involvement of civil society actors enhances both normative legitimacy and the effectiveness of implementation.<sup>41</sup> Absent such procedural deepening, aspirations toward responsive law risk remaining merely rhetorical. Nonetheless, institutional constraints persist. Parliamentary dynamics are frequently shaped by coalition politics and elite compromises, which may obscure reform agendas, particularly when religious sensitivities intersect with issues of gender equality.<sup>42</sup>

Family law reform often encounters resistance framed as a defense of religious orthodoxy, reflecting the political-legal tension between reformist and conservative forces.<sup>43</sup> Moreover, recent comparative studies demonstrate that formal recognition of participation is insufficient without mechanisms to ensure accountability and follow-up. Within the Indonesian context, pilot programs incorporating structured civic consultation into local legislative formulation have yielded positive effects on policy adoption, especially when combined with multi-stakeholder evaluation panels.<sup>44</sup> Such initiatives may serve as models for enhancing participatory lawmaking in national family law reform.<sup>45</sup> The amendment of the minimum marriage age following Constitutional Court Decision Number 22/PUU-XV/2017 exemplifies a reactive-constitutional model of responsiveness. Judicial review functions as a catalyst for reform and evidences a constitutional dialogue between the Court and lawmakers. Comparative constitutional law literature corroborates that the judiciary frequently assumes a transformative role in advancing gender equality within family law.

Reliance on judicial triggers reveals inherent structural limitations in legislative proactivity. An analysis of constitutional adjudication in Indonesia demonstrates that progressive judicial decisions do not inherently lead to systemic reforms without sustained legislative commitment.<sup>46</sup> Consequently, the design of responsive legislation should incorporate the following elements: a periodic review clause; sunset provisions mandating evaluation; and an institutional monitoring mechanism involving the Ministry of Women's Empowerment and Child Protection. These measures align with global best practices in adaptive governance and regulatory learning. Recent comparative constitutionalism research emphasizes that court rulings can stimulate legislative innovation when accompanied by institutionalized feedback loops and active civil society oversight.<sup>47</sup> In the Indonesian context, integrating data-driven review mechanisms—such as analyses of divorce trends, child welfare statistics, and gender impact assessments—can facilitate the transformation of reactive reforms into proactive, evidence-based legislative cycles.<sup>48</sup>

The integration of *maqāṣid al-sharī'ah* into legal frameworks should be operationalized through concrete norms rather than remaining as abstract references. Contemporary scholarship on *maqāṣid* underscores a dynamic and rights-oriented reinterpretation, particularly concerning issues

<sup>41</sup> Hasani and Halili, "Human Rights and Constitutionality Issues of Blasphemy Law in Indonesia."

<sup>42</sup> Firdaus et al., "Meaningful Participation as People's Sovereignty Form in Democratic Rule of Law State."

<sup>43</sup> Hasani and Halili, "Human Rights and Constitutionality Issues of Blasphemy Law in Indonesia."

<sup>44</sup> Muhammad Husni Abdulah Pakarti et al., "The Role of Family Law in Confronting Polygamy Practices in Contemporary Society," *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 2 (2023): 132–141.

<sup>45</sup> Hidayat et al., "Why Democratization and Decentralization in Indonesia Have Mixed Results on the Ground?"

<sup>46</sup> Refer to Simon Butt, *The Constitutional Court and Democracy in Indonesia* (Brill: Nijhoff, 2015).

<sup>47</sup> Ahmad Ash Shiddieqy et al., "Integration of Islamic Family Law and Gender Equality."

<sup>48</sup> Ratu Durotun Nafisah, "Constitutional Democracy in Indonesia by Melissa Crouch (Ed). Oxford: Oxford University Press, 2023. 336 Pp. Hardback: £99.00.," *Asian Journal of Comparative Law* 20, no. 1 (2025): 161–63.

of gender justice and child protection.<sup>49</sup> Recent studies suggest that *maqāṣid* can function as an ethical-constitutional framework that bridges Islamic legal reasoning with international human rights standards.<sup>50</sup> In practice, this integration can be achieved by explicitly recognizing principles such as dignity (*karāmah*) and public interest (*maṣlahah*) within the law as interpretative guidelines; adopting gender-sensitive legal planning protocols; and making explicit reference to Indonesia's obligations under the Convention on the Rights of the Child (CRC). Comparative research in Muslim-majority countries demonstrates that *maqāṣid*-based reinterpretations have been effectively employed to reform laws on child marriage and domestic violence while preserving Islamic legitimacy. Nonetheless, challenges persist, including political contestation over religious authority and divergent interpretive paradigms among Islamic organizations, which impede consensus-building.<sup>51</sup> Furthermore, bureaucratic fragmentation across ministries undermines policy coherence in family governance. Recent scholarship also highlights the necessity for measurable indicators to assess compliance with *maqāṣid* principles in law, such as explicit evaluations of child welfare outcomes, gender equality in legal access, and the efficacy of family dispute resolution mechanisms.<sup>52</sup> By integrating *maqāṣid* principles with a participatory legislative drafting process, Indonesia can establish a framework that balances ethical legitimacy, procedural transparency, and enforceable protections.<sup>53</sup>

The proposal to mandate premarital counseling grounded in Islamic and psychosocial principles represents a concrete and responsive intervention. Rather than solely regulating divorce procedures, amendments to the Marriage Act could require certified premarital education as an administrative prerequisite for marriage. Empirical research on families indicates that structured premarital programs significantly reduce the risk of early divorce and enhance relational resilience.<sup>54</sup> Demographic studies in Indonesia have also identified emotional immaturity and lack of preparedness as primary contributors to divorce. From the perspective of *maqāṣid al-sharī'ah*, preventive counseling operationalizes *ḥifẓ al-nasl* and *ḥifẓ al-nafs* by promoting family stability and psychological well-being. However, effective implementation necessitates: (1) budget allocation and cross-ministerial coordination among the Ministry of Religion, BKKBN, and the Ministry of Women's Empowerment and Child Protection (PPPA); (2) development of a standardized national curriculum integrating *fiqh al-munākahāt* and psychosocial competencies; and (3) establishment of monitoring and evaluation mechanisms to prevent the process from becoming mere administrative formalism. Absent such infrastructure, the counseling requirement risks becoming symbolic compliance rather than a transformative preventive measure. Studies from Malaysia and Singapore demonstrate that incorporating evidence-based assessments and digital tracking of premarital education completion enhances long-term marital compliance and

<sup>49</sup> See Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008).

<sup>50</sup> Roslaili et al., "Family Law Reform in Indonesia According to the Maqashid Al-Shari'a Perspective (A Case Study of Law No. 16 of 2019)."

<sup>51</sup> Wahyuni and Kusrin, "Gender Equality in the Concept of Family Maintenance and Marital Property in Indonesian and European Legal Context."

<sup>52</sup> Refer to Auda, Jasser, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach Revisited*.

<sup>53</sup> Roslaili et al., "Family Law Reform in Indonesia According to the Maqashid Al-Shari'a Perspective (A Case Study of Law No. 16 of 2019)."

<sup>54</sup> Abdulah Pakarti et al., "The Role of Family Law in Confronting Polygamy Practices in Contemporary Society."



outcomes.<sup>55</sup> Indonesia could adopt a comparable monitoring system to ensure that premarital counseling functions not only as a procedural formality but also as a substantive safeguard of family resilience.<sup>56</sup>

Responsive legislation must address emerging challenges such as online divorce, cyber-infidelity, and technology-facilitated violence. Digital violence has become a significant aspect of intimate partner violence worldwide.<sup>57</sup> Although Indonesia has initiated regulations targeting electronic-based violence, coordination between family law and cyber regulations remains limited. Adaptive reforms may include: (a) explicit recognition of various forms of digital violence within family law; (b) the establishment of an integrated complaint mechanism linking the Religious Court and cybercrime units; and (c) the incorporation of digital literacy into premarital education and family development programs. Academic research indicates that failure to integrate technological realities into family law compromises both protection and law enforcement. Recent international studies emphasize that digital forms of intimate partner violence disproportionately impact women and children and necessitate cross-sectoral collaboration among law enforcement agencies, family courts, and social services.<sup>58</sup> Incorporating digital risk assessments into family law frameworks can proactively address these emerging challenges while safeguarding fundamental family rights.

Responsive family law reform, although normatively aligned with *maqāṣid al-sharīʿah* and human rights principles, encounters several structural challenges. These include fragmented political coalitions, divergent religious interpretations, bureaucratic institutional inertia, and limitations in data integration for policy formulation. Research on legal reform within plural legal systems indicates that coalition-based, gradual strategies are more feasible than radical restructuring.<sup>59</sup> Consequently, responsive design in Indonesia is likely to necessitate incremental codification reforms supported by empirical evidence and cross-sectoral dialogue. Comparative studies demonstrate that coalition building, combined with pilot implementations and iterative policy evaluations, enhances the viability of legislative reform in contexts characterized by legal pluralism. In the Indonesian context, early involvement of local religious authorities and civil society networks in the drafting process can mitigate political friction and promote the adoption of sustainable family law innovations.

## Conclusion

This study concludes that reform of Islamic family law in Indonesia must transcend incremental and technical normative modifications, advancing instead toward a comprehensive model of responsive legislative design. By engaging Nonet and Selznick's theory of responsive law in conjunction with the ethical framework of *maqāṣid al-sharīʿah*, the research proposes an integrative

<sup>55</sup> Hannah C. Williamson et al., "Premarital Education and Later Relationship Help-Seeking," *Journal of Family Psychology* 32, no. 2 (2018): 276–81; Wahyuni and Kusrin, "Gender Equality in the Concept of Family Maintenance and Marital Property in Indonesian and European Legal Context."

<sup>56</sup> Asep Saepullah et al., "A Contemporary Socio-Legal Evaluation of Indonesia's Post-Reformation Child Marriage Policies," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1393–426.

<sup>57</sup> Heather Douglas et al., "Technology-Facilitated Domestic and Family Violence: Women's Experiences," *The British Journal of Criminology* 59, no. 3 (2019): 551–70; Monika Sri Yulianti et al., "Sisterhood in Digital Literacy: Strengthening Women's Resilience Against Online Gender-Based Violence (OGBV)," *Mediator: Jurnal Komunikasi* 18, no. 2 (2025): 244–55.

<sup>58</sup> Refer to Douglas et al., "Technology-Facilitated Domestic and Family Violence."

<sup>59</sup> Refer to John Gillespie and Pip Nicholson, eds., *Law and Development and the Global Discourses of Legal Transfers* (Cambridge: Cambridge University Press, 2012).

analytical model that bridges contemporary socio-legal theory and Islamic normative philosophy. The findings indicate that legal responsiveness within Islamic family law does not compromise religious legitimacy; rather, *maqāṣid al-sharī'ah* offers a substantive ethical foundation for legislation that is adaptive, participatory, and justice-oriented. Empirically, the study identifies varying degrees of responsiveness among existing regulations. The Law on the Elimination of Domestic Violence and the Child Protection Act exhibit stronger participatory elements and substantive incorporation of social realities. In contrast, the Marriage Law, the Compilation of Islamic Law, and the Population and Family Development Law remain only partially adaptive and predominantly procedural. These limitations stem not solely from doctrinal rigidity but also from restricted institutional participation, the absence of systematic review mechanisms, and inadequate alignment with contemporary developments, including challenges posed by the digital era.

From a legal policy standpoint, this research proposes three targeted implications. First, institutional reform in legislative design is imperative. Family law reform should incorporate mandatory participatory mechanisms, regulatory impact assessments—particularly those addressing gender and child rights—and periodic review clauses. These measures would transform responsiveness from a theoretical ideal into a binding procedural obligation within Indonesia's positive legal framework. Second, the operational integration of *maqāṣid al-sharī'ah* is essential. The principles of *maqāṣid* should serve as interpretive guidelines and normative foundations in lawmaking, ensuring the protection of *ḥifẓ al-nasl* (protection of lineage), *ḥifẓ al-nafs* (protection of life and dignity), and *ḥifẓ al-dīn* (protection of religion), while maintaining alignment with constitutionalism and human rights standards. Third, the development of preventive and promotive legal instruments is critical. Policies such as mandatory premarital counseling grounded in Islamic and psychosocial values, legal safeguards for families in the digital sphere, and strengthened child custody arrangements centered on the best interests of the child would reorient family law from a reactive dispute-resolution mechanism to a preventive and transformative governance framework. Ultimately, sustainable reform necessitates cross-sectoral collaboration among legislators, religious authorities, academics, women's and child protection institutions, and civil society. Through such multidimensional institutional alignment, Islamic family law can evolve into a dynamic regulatory system that upholds religious foundations while advancing substantive justice and public welfare (*maṣlaḥah*) for contemporary Muslim families.

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