

Transformative Fiqh: Women As Witnesses To Marriage Contracts

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Abstract

Classical fiqh has long placed limits on women's testimony, giving preference to male witnesses based on textual interpretations of Islamic sources of law. This perspective is rooted in classical jurisprudence that considers male testimony to be superior because of the difference in rational capacity and memory between men and women. However, along with social, educational, and intellectual development, this classical approach has been increasingly criticized for being considered incompatible with the principles of justice in Islam. This study aims to analyze the concept of transformative fiqh related to the role of women as witnesses in Islamic marriage contracts. In addition, a comparative analysis was carried out on legal practices in various Muslim countries that have begun to shift to a more inclusive and competency-based witness system. This research uses a qualitative research method with a normative-juridical approach, analyzing classical fiqh texts, the principles of maqāṣid al-sharī'ah, and contemporary legal frameworks. The results of this study show that transformative fiqh offers a fairer and more relevant approach in Islamic jurisprudence, so that the testimony in the marriage contract can be in line with the principles of justice and legal certainty, without abandoning the main purpose of Islamic sharia.

Keywords: *Testimony, Marriage Contract, Gender Justice, Legal Reform.*

Abstrak

Fiqh klasik telah lama menetapkan batasan terhadap kesaksian perempuan, dengan lebih mengutamakan saksi laki-laki berdasarkan interpretasi tekstual terhadap sumber hukum Islam. Perspektif ini berakar pada yurisprudensi klasik yang menganggap kesaksian laki-laki lebih unggul karena perbedaan kapasitas rasional dan daya ingat antara laki-laki dan perempuan. Namun, seiring dengan perkembangan sosial, pendidikan, dan intelektual, pendekatan klasik ini semakin dikritik karena dianggap tidak selaras dengan prinsip keadilan dalam Islam. Penelitian ini bertujuan menganalisis konsep fiqh transformatif terkait peran perempuan sebagai saksi dalam akad nikah Islam. Selain itu, dilakukan analisis perbandingan terhadap praktik hukum di berbagai negara Muslim yang telah mulai beralih ke sistem kesaksian yang lebih inklusif dan berbasis kompetensi. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan normatif-yuridis, menganalisis teks fiqh klasik, prinsip maqāṣid al-sharī'ah, serta kerangka hukum kontemporer. Hasil penelitian ini menunjukkan bahwa fiqh transformatif menawarkan pendekatan yang lebih adil dan relevan dalam yurisprudensi Islam, sehingga kesaksian dalam akad nikah dapat sejalan dengan prinsip keadilan dan kepastian hukum, tanpa meninggalkan tujuan utama syariat Islam.

Kata Kunci: Kesaksian, Akad Nikah, Keadilan Gender, Reformasi Hukum.

A. Introduction

In the classical fiqh tradition, testimony in a marriage contract is seen as one of the pillars that must be fulfilled to ensure the validity of the marriage, with the provision that the witness must consist of two just Muslim men.¹ This view is based on a literal interpretation of the postulates of the Qur'an and hadith that distinguish the weight of male and female testimony, as reflected in the law of testimony in general.² The limitation of women's role as witnesses in marriage contracts is rooted in the assumption that women have limitations in rational capacity and memory compared to men, an understanding that later became the legal basis in various schools of fiqh.³ However, in the evolving social and intellectual context, this approach to classical fiqh began to be criticized because it was considered not to fully represent the principles of justice in Islam.⁴ With the emergence of the idea of sharia maqashid and a transformative approach in Islamic law, it is important to revisit these provisions in order to build a witness system that is more skill-based and gender-correct, so as to remain in line with the universal values of Islam and the demands of contemporary realities.

One of the main challenges in Islamic law today is how to balance loyalty to classical texts and the need to adapt the law to evolving social realities.⁵ In the context of marriage contract testimony, the classical fiqh approach that limits the role of women as witnesses is often considered to be no longer relevant to the principles of justice and equality upheld in Islam.⁶ While classical fiqh places more emphasis on the gender aspect in determining the validity of witnesses, contemporary legal approaches in various Muslim countries have begun to point to professionalism and expertise as the main criteria for testimony.⁷ This is based on the principle that testimony is a form of proof that must prioritize the individual's capacity to

¹ Syahnur Aida Alifia et al., "The Validity of Politicians as Marriage Witnesses from the Perspective of Islamic Law," *Al-Mahkamah: Islamic Law Journal* 2, no. 1 (2024): 16–26, <https://doi.org/10.61166/mahkamah.v2i1.19>.

² Dewi Widiyanti and Muammar Firdaus, "Interpreting Women's Emancipation in the Context of Islamic Multiperspectivism: An Analytical Approach," *Saree: Research in Gender Studies* 5, no. 1 (2023): 19–36, <https://doi.org/10.47766/saree.v5i1.1003>.

³ Fadilla Syahriani and Navisa Latifa Auliya, "The Position of Women Witnesses in Islamic Law: An Analysis of Women's Contribution to the Judicial Process in Indonesia," *USRATY: Journal of Islamic Family Law* 2, no. 2 (2024): 113–23, <https://doi.org/10.30983/usraty.v2i2.8708>.

⁴ Juairiah Juairiah and Indria Puspitasari Lenap, "The Role of Women MSME Actors in Increasing Family Income from the Maqashid Shariah Perspective in the East Gegutu Neighborhood," *Formosa Journal of Multidisciplinary Research* 3, no. 9 (2024): 3287–304, <https://doi.org/10.55927/fjmr.v3i9.11005>.

⁵ Nur Alia et al., "Understanding and Implementing Islamic Law: Challenges and Solutions in Modern Contexts," *Antmind Review: Journal of Sharia and Legal Ethics* 1, no. 2 (2024): 72–82, <https://doi.org/10.63077/qgizc372>.

⁶ Syaik Abdillah et al., "Revisiting the Role of Women as Witnesses in Fiqh Justice," *AHKAM* 19, no. 1 (2019): 61–80; Fadilla Syahriani and Navisa Latifa Auliya, "The Position of Women Witnesses in Islamic Law: An Analysis of Women's Contribution to the Judicial Process in Indonesia," *USRATY: Journal of Islamic Family Law* 2, no. 2 (2024): 113–23, <https://doi.org/http://dx.doi.org/10.30983/usraty.v2i2.8708> USRATY.

⁷ Abdillah et al., "Revisiting the Role of Women as Witnesses in Fiqh Justice"; Sulastri Caniago et al., "Gender Integration in Islamic Politics: Fiqh Siyasah on Women's Political Rights since Classical to Contemporary Interpretations," *MILRev: Metro Islamic Law Review* 3, no. 2 (2024): 411–31.

understand and convey information accurately, regardless of gender.⁸ Therefore, the transformative fiqh paradigm demands the reinterpretation of Islamic law to be more in line with the sharia maqashid, which emphasizes justice, benefit, and inclusivity in every aspect of life, including in determining who is entitled to be a witness in the marriage contract.

The urgency of developing a transformative fiqh paradigm in the context of women's testimony in marriage contracts is increasingly evident in the modern era, where the principles of justice and equality are increasingly being demanded in the Islamic legal system.⁹ Transformative fiqh seeks to reconstruct Islamic law with a more dynamic approach, not only based on classical texts literally, but also considering the maqashid of sharia and the ever-changing socio-cultural context.¹⁰ The restriction of women as witnesses in marriage contracts is not only a formal legal issue, but also reflects structural injustices that need to be reviewed through the perspective of gender justice and professionalism in legal proof.¹¹ If Islamic law is to remain relevant and able to respond to the challenges of the times, then a more flexible approach is needed and based on the universal values of Islam, such as justice ('adl), benefits (maslahah), and equality (musawah).¹² Therefore, the development of a transformative fiqh paradigm is a strategic step in strengthening the role of Islamic law that is more inclusive, responsive to social realities, and adheres to the basic principles of sharia.

Based on the above background, several fundamental questions arise that need to be studied further within the framework of transformative fiqh. First, how the classical fiqh paradigm views women as witnesses in the marriage contract, as well as what are the normative and epistemological basis behind the limitation of their role in Islamic law. Second, how the approach of justice and expertise can be used to reconstruct this concept of testimony to be

⁸ Dewi Widiyanti and Muammar Firdaus, "Interpreting Women's Emancipation in the Context of Islamic Multiperspectivism: An Analytical Approach," *Saree: Research in Gender Studies* 5, no. 1 (2023): 19–36, <https://doi.org/10.47766/saree.v5i1.1003>; Mohamed Sulthan et al., "Gender Equity in Muslim Family Law: Modern and Contemporary' Ulama's View," *Al-Ahkam* 34, no. 2 (2024): 221–56, <https://doi.org/10.21580/ahkam.2024.34.2.20773>; A N Maram, H Aziz, and M R Nasir, "Interpreting Islamic Education For Social Change: Hasan Al-Turabi's Views on Women's Rights And Gender Equality," *Edukasi Islami: Jurnal Pendidikan Islam* 12, no. 4 (2023): 3233–46, <https://doi.org/10.30868/ei.v12i04.4926>.

⁹ Faquiddin Abdul Kodir et al., "Maqāshid Cum-Mubādalah Methodology of KUPI: Centering Women's Experiences in Islamic Law for Gender-Just Fiqh," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 2 (2025): 519–45, <https://doi.org/10.19105/al-lhkam.v19i2.16617>; Sulastri Caniago et al., "Gender Integration in Islamic Politics: Fiqh Siyasa on Women's Political Rights since Classical to Contemporary Interpretations," *MILRev: Metro Islamic Law Review* 3, no. 2 (2024): 411–31, <https://doi.org/10.32332/milrev.v3i2.9962>.

¹⁰ Hijrian Angga Prihantoro, "Examining Witness Interest: The Obstacles of Testimony in Islamic Jurisprudence and Positive Law," *Justicia Islamica* 21, no. 1 (2024): 1–22, <https://doi.org/10.21154/justicia.v21i1.8653>.

¹¹ Khairuddin Tahmid and Idzan Fautanu, "Institutionalization of Islamic Law in Indonesia," *AL-'ADALAH* 18, no. 1 (2021): 1–16, <https://doi.org/10.24042/adalah.v18i1.8362>.

¹² Adi Nur Rohman and Elfirda Ade Putri, "PROGRESSIVE READING OF CHILD CUSTODY RIGHTS IN INDONESIA: A GENDER JUSTICE PERSPECTIVE ON MARRIAGE LAW," *Jurnal Hukum Dan Peradilan* 11, no. 1 (2022): 43, <https://doi.org/10.25216/jhp.11.1.2022.43-63>; Shamila Dawood, "Islamic Law and Gender Equality: Challenges and Reforms in Sri Lanka's Muslim Marriage and Divorce Act," *Journal of Islamic Law* 5, no. 2 (2024): 288–305, <https://doi.org/10.24260/jil.v5i2.2833>.

more in line with the principles of maqashid sharia and contemporary social demands. This approach not only considers gender aspects, but also emphasizes professionalism in testimony as part of the legal evidentiary system. Third, what are the implications of the transformative fiqh paradigm for Islamic law reform, especially in terms of the recognition of women's testimony in marriage contracts. By answering these questions, it is hoped that this study can make a significant academic contribution in building Islamic law that is more just, inclusive, and contextual, so as to be able to answer the challenges of the times without abandoning the fundamental principles of sharia.

This research aims to offer a more equitable and expertise-based reconstruction of fiqh law in the context of women's testimony in marriage contracts. By reviewing the concept of testimony in classical fiqh through the approach of maqashid sharia, this study seeks to establish a legal framework that considers not only textual aspects, but also social realities and principles of justice. This reconstruction is based on the idea that testimony in a marriage contract is not just a gender issue, but also related to a person's expertise, credibility, and capacity to give valid testimony. Thus, the transformative fiqh paradigm offered in this study can be an alternative in understanding Islamic law in a more dynamic and contextual way, without eliminating the essence of sharia itself.

This research has broad significance in the development of more inclusive Islamic legal policies. With more and more Muslim countries reforming Islamic family law, a strong conceptual foundation is needed to ensure that these changes remain in line with the principles of justice in Islam. The results of this research can serve as a reference for academics, scholars, and policymakers in developing regulations that are more adaptive to the needs of contemporary Muslim society. At the academic level, this study is expected to enrich the discourse on fiqh and gender, as well as encourage a broader discussion on how Islamic law can continue to evolve in line with the changing times, without losing its normative footing in sharia.

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¹³ Nur Insani et al., "Empowering Muslim Women: Bridging Islamic Law and Human Rights with Islamic Economics," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 88–117, <https://doi.org/10.18860/j-fsh.v16i1.26159>.

¹⁴ Basar Dikuraisyin et al., "Reconstruction of Marriage Law: Judges' Progressive Reasoning Based on Maqāshid in Addressing Divergent Interpretations in Indonesian Courts," *Al-Manahij: Jurnal Kajian Hukum Islam*, August 16, 2024, 219–36, <https://doi.org/10.24090/mnh.v18i2.9436>.

and gender, as well as encourage a broader discussion on how Islamic law can continue to evolve in line with the changing times, without losing its normative footing in sharia.

B. Research Method

This research uses a qualitative-based multidisciplinary approach that integrates three main methods, namely normative-hermeneutical, historical and social-contextual, and gender. The normative-hermeneutic approach is used to analyze fiqh postulates on women's testimony in marriage contracts, by tracing classical interpretations and reinterpreting based on sharia maqashid in order to find a fairer and more contextual legal formulation.¹⁵

Historical and socio-contextual approaches are used to examine the changing role of women in Muslim societies over time and to compare the practice of Islamic law in different countries that have accommodated women's testimony in marriage contracts.¹⁶ Meanwhile, a gender approach is applied to conduct a critical analysis of gender bias in classical fiqh, while offering the concept of testimony based on individual expertise and credibility, rather than just based on gender.¹⁷ With the combination of these three approaches, this study seeks to present a comprehensive argument in building a transformative fiqh paradigm that is more inclusive, fair, and based on the principles of sharia maqashid.

C. Result And Discussion

1. The Transformative Paradigm: the basis of Sharia Maqāṣid and Equality in Legal Reconstruction

Testimony in classical fiqh

In classical fiqh, testimony is one of the important elements in the validity of the marriage contract, which serves as a form of publication (i'lan) and legal protection for both spouses.¹⁸ The four main sects of Islam—Hanafi, Maliki, Shafi'i, and Hanbali—have different views on the requirements of witnesses in marriage contracts, especially regarding the number and gender of witnesses. The Hanafi school permits marriage only with the testimony of two men or one man and two women, following the concept of testimony in the law of mu'āmalāt. The Maliki school, on the other hand, considers that the testimony in the marriage contract is

¹⁵ Alvan Fathony, "Khaled Abou El Fadl's Negotiable Hermeneutics: Counteracting the Authoritarianism of Religious Interpretation in Islamic Law," *AT-TURAS: Journal of Islamic Studies* 6, no. 1 (2019): 116–41, <https://doi.org/10.33650/at-turas.v6i1.558>.

¹⁶ Umi Waqhidah and Annias Suci Pratamia, "HIJAB IN THE SPOTLIGHT OF CONTEMPORARY INTERPRETATION: BETWEEN RELIGIOUS OBLIGATIONS AND SOCIAL DEMANDS," *Journal Central Publisher* 2, no. 7 (2025): 2283–90, <https://doi.org/10.60145/jcp.v2i7.478>.

¹⁷ Patimah Halim and Nur Amalia, "Reconstructing the Division of Islamic Heritage through a Gender Justice Approach," *Shautuna Scientific Journal of Comparative Schools and Law Students*, September 30, 2024, 823–36, <https://doi.org/10.24252/shautuna.v5i3.48448>.

¹⁸ Hamzeh Al Amosh and Noorhayati Mansor, "The Implications of Ownership Structure on the Environmental Disclosure in Jordan," *International Journal of Academic Research in Business and Social Sciences* 10, no. 3 (2020): Pages 330-346, <https://doi.org/10.6007/IJARBSS/v10-i3/7054>.

not harmonious, but rather an *istihbab* (encouragement), so that under certain conditions, the marriage can remain valid even without witnesses.¹⁹ The Shafi'i and Hanbali schools require two male witnesses for the validity of the marriage contract and reject the testimony of women, arguing that marriage is a contract that has broad legal implications, so it must be supported by witnesses who are considered more credible in the classical Islamic legal system.

The main argument used by classical jurists in limiting women's testimony in marriage contracts is the literal interpretation of Qur'anic verses and hadiths.²⁰ One of the propositions that is often used is QS. Al-Baqarah (2:282), which mentions that in financial transactions, the testimony of one man can be replaced by two women, arguing that if one of the women forgets, the other can remind him. In classical fiqh, this verse is then used as a general basis for distinguishing the status of male and female testimony, even though the context of the verse talks about financial transactions, not marriage contracts.²¹ In addition, the hadith that states that women have a lack of intellect and religion (*naqishatu 'aqlin wa din*) is often used as a basis to assess the credibility of women as witnesses in Islamic law.²² This approach focuses more on the biological and psychological aspects of women, who are considered more emotionally affected, so their testimony is considered less accurate than men's.

In addition to textual arguments, there are also social arguments that support the restriction of women's testimony in classical fiqh.²³ In the early days of Islam, patriarchal social structures made women's roles in public life very limited. Women are rarely involved in legal transactions or decision-making in public spaces, so they do not have enough experience in giving strong testimony. This view develops into the assumption that women do not have the same legal capacity as men, and therefore, in complex legal matters such as marriage contracts, women's testimony is considered less reliable.²⁴ The Shafi'i and Hanbali schools even argue that

¹⁹ Dr. Jabbar Kadhemi Al-Mulla and Dr. Haider Shawkan Saeed, "The Origin Is in the Jurisprudential Deduction A Comparative Study between Al-Hilla and A-Hanafi Jurists: *الأصل في الاستنباط الفقهي دي دراسة مقارنة*," *Al-Muhaqqiq* 5, no. 12 (2022): 21–44, <https://doi.org/10.62745/muhaqqiq.v5i12.73>; Navis Yusrizal, "The Compatibility Between Yusuf Qardhawi's Fatwa and the Compilation of Islamic Law Related to Mujbir Guardians and Marriage Guardians," *Syakshshiyah Journal of Islamic Family Law* 3, no. 2 (2023): 193, <https://doi.org/10.32332/syakshshiyah.v3i2.8005>.

²⁰ Lathifatul Asna and Nasihun Amin, "Hermeneutics of Reception by Hans Robert Jauss: An Alternative Approach Toward Quranic Studies," *International Journal Ihya' 'Ulum al-Din* 24, no. 2 (2022): 160–71, <https://doi.org/10.21580/ihya.24.2.13092>.

²¹ Ikhdha Khullatil Mardiyah et al., "Learning the Book of Al-Hujjaj Al-Qath'iyyah in a Gender Perspective in Student Islamic Boarding Schools," *Intellectual Journal: Journal of Islamic Education and Studies* 13, no. 2 (2023): 193–210, <https://doi.org/10.33367/ji.v13i2.4066>.

²² Andi Miswar et al., "Qur'anic Narratives of Women's Competencies and The Consequences of Islamic Law on Their Involvement in Society," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1577, <https://doi.org/10.22373/sjhk.v7i3.17945>.

²³ Justin Jones, "Where Only Women May Judge': Developing Gender-Just Islamic Laws in India's All-Female 'Shari'Ah Courts,'" *Islamic Law and Society* 26, no. 4 (2019): 437–66, <https://doi.org/10.1163/15685195-00264P04>.

²⁴ Muchamad Coirun Nizar, "The Religious Court's Decisions on Divorce: A Maqāṣid Sharī'a Perspective," *Ulumuna* 24, no. 2 (2021): 398–416, <https://doi.org/10.20414/ujs.v24i2.408>.

a marriage contract is a contract that has serious implications for the status of the family and descendants, so that only a male witness can confirm the validity of the contract. Criticism of this classical view emerged as social systems began to change and women gained wider access to education and professional life. Restrictions on women's testimony based on past social conditions have become irrelevant in the context of modern society. Many contemporary fiqh scholars argue that the main factor in the validity of testimony should be the competence of the witness in understanding and conveying the facts, not his gender.²⁵ Therefore, the maqāṣidī approach in fiqh demands a reconstruction of the concept of testimony in the marriage contract, taking into account social developments and the demands of justice in Islamic law.

Justice in Maqashid Syariah

The principle of justice in Maqāṣid al-Sharī'ah is at the heart of all Islamic rules, which ensure that the law is not only normative, but also brings real benefits to humans.²⁶ Scholars such as Al-Ghazali, Al-Shatibi, and Ibn Ashur affirmed that justice is the main foundation in safeguarding the five basic human needs: religion, soul, intellect, offspring, and property. In the Qur'an, Allah repeatedly emphasizes the importance of being fair, even towards people we do not like (QS. Al-Maidah [5]:8).²⁷ This principle is evident in the history of Islamic civilization, such as how Umar bin Khattab abolished taxes for non-Muslims who could not afford to pay them, showing that justice in Islam is not just a concept, but actually applied in real life. In a broader social context, this principle teaches that Islamic law should always be in favor of the balance and well-being of all people, not just certain groups.²⁸

From a broader perspective, justice in maqashid sharia does not only mean formally granting rights, but also adapting the law to changing social conditions.²⁹ Ibn Ashur in Maqāṣid al-Sharī'ah al-Islāmiyyah emphasizes that justice must be understood in a broader context, encompassing the welfare of society and the prevention of social inequality. For example, in the field of Islamic economics, justice demands a financial system that not only benefits a few, but ensures fair access for all. This principle also applies in family law, where rules such as

²⁵ Amosh and Mansor, "The Implications of Ownership Structure on the Environmental Disclosure in Jordan."

²⁶ Achmad Zubairin et al., "THE MAQASIDI APPROACH IN ISLAMIC LEGISLATION ACCORDING TO IBN 'ASHUR IN AL-TAHRIR WA AL-TANWIR," *ILMU USHULUDDIN* 11, no. 1 (2024): 25–46, <https://doi.org/10.15408/iu.v11i1.41648>.

²⁷ Muhammad Irwan Ariffin, "A Comparative Analysis on Economic Roles of Government and Principles of Taxation between Public Economics and Siyasaḥ Shar'īyyah," *Global Review of Islamic Economics and Business* 11, no. 2 (2023): 015–026, <https://doi.org/10.14421/grieb.2023.112-02>.

²⁸ Waluyo Sudarmaji, "Analisis Maqāṣid Asy-Syarī'ah Ibrahim Ibn Musa Al-Shatibi Terhadap Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Batasan Usia Perkawinan," *Al Furqan: Jurnal Ilmu Al Quran Dan Tafsir* 4, no. 1 (2021): 41–61.

²⁹ Ahmad Syafi'i Sj et al., "Reclaiming Agrarian Justice: The Reformative Potential of Islamic Land Law through Maqāṣid al-Sharia," *Al-Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan* 14, no. 1 (2025): 62–76, <https://doi.org/10.24252/al-daulah.v14i1.58764>.

inheritance must be viewed in a developing social context.³⁰ Some Muslim countries have adjusted inheritance laws to take into account women's economic conditions, rather than just following the text of the law rigidly. This shows that the maqashid of sharia provides room for legal reform to remain relevant to the realities of the times.

In terms of gender justice, maqashid sharia opens up opportunities for a more inclusive and fair interpretation of the law.³¹ Many of the rules in classical fiqh are based on the social context of the past, where the roles of men and women are very different from those of today. However, the principle of maqashid teaches that justice is not about maintaining the status quo, but ensuring that the law truly reflects the needs and benefits of all people. For example, in terms of women's guardianship and testimony in marriage contracts, the maqashid approach requires us to judge a person based on competence and not just gender.³² Some Muslim countries have carried out reforms in family law while maintaining fair Islamic values, showing that sharia maqashid is not just a theory, but can also be applied in real life.

More broadly, the principle of justice in maqashid sharia is also relevant in facing today's global challenges.³³ Ibn Qayyim al-Jawziyyah once said that the law should always move in accordance with justice, because unjust laws are contrary to the main purpose of sharia itself. This means that in the face of issues such as international trade, the environment, and human rights, the maqashid approach allows us to explore Islamic values that support justice on a larger scale. In the context of the environment, for example, Islam teaches balance and sustainability, which is in line with the principle of maqashid in safeguarding the welfare of mankind.³⁴ Therefore, justice in maqashid sharia is not only a legal concept, but also a way of thinking that allows us to continue to adapt Islamic law to remain relevant and provide benefits for all mankind.

Equality in Islam: Between Text and Social Reality

³⁰ Zubairin et al., "THE MAQASIDI APPROACH IN ISLAMIC LEGISLATION ACCORDING TO IBN 'ASHUR IN AL-TAHRIR WA AL-TANWIR"; Farhana Mehmood et al., "An Anthropological Perspective of Female Share in Inheritance: An Appraisal of Gender Gap between Islamic Law and Practice," *Journal of Islamic Thought and Civilization* 12, no. 1 (2022): 199–213, <https://doi.org/10.32350/jitc.121.11>.

³¹ Jones, "Where Only Women May Judge"; Siti Rohmah, "THE PATTERN OF ABSORPTION OF ISLAMIC LAW INTO NATIONAL LAW: Study of The Halal Product Guarantee Law in The Perspective of Maqashid Shari'ah," *JURISDICTIE* 12, no. 1 (2021): 20–47, <https://doi.org/10.18860/j.v12i1.10521>.

³² Farhana Mehmood et al., "An Anthropological Perspective of Female Share in Inheritance."

³³ Kautsar Riza Salman and Meilynda Kurniasari, "The Effect of the Sharia Supervisory Board Characteristics on Maqashid Sharia Index," *International Journal of Islamic Business and Economics (IJIBEC)* 4, no. 1 (2020): 51–62, <https://doi.org/10.28918/ijibec.v4i1.2348>.

³⁴ Adi Prasetyo and Wirdyaningsih Wirdyaningsih, "THE URGENCY OF ANTI-CIRCUMVENTION ARRANGEMENTS IN INDONESIA: A COMPARATIVE ANALYSIS WITH THE UNITED STATES AND ISLAMIC LAW PERSPECTIVES," *Istinbath* 24, no. 1 (2025): 31–50, <https://doi.org/10.20414/ijhi.v24i1.941>.

Equality in Islam is a fundamental principle that is often debated when talking about how legal texts are applied in real life.³⁵ In the Qur'an, Allah affirms that all human beings are created equal, regardless of race, ethnicity, or gender, as in QS. Al-Hujurat [49]:13 which states that the only measure of one's superiority is piety.³⁶ The Prophet Muhammad also reinforced this principle in his farewell sermon, asserting that there is no difference between Arabs and non-Arabs except in piety. However, when we look at the rules of jurisprudence that have developed in Islamic history, various interpretations emerge that sometimes seem to contradict this principle of equality.³⁷ Many rules are born in a certain social context, so if understood textually without considering the maqashid of sharia, it can result in a gap between the law and the ever-changing social reality.

Throughout history, the understanding of equality in Islam has evolved along with social change.³⁸ During the time of the Prophet and his companions, women had a fairly active role in society, both in the economic, educational, and political fields. Aisha bint Abu Bakar, for example, became one of the great scholars whose fatwas were referred to by many companions. However, over time, the understanding of women's roles in Islamic law has narrowed, often influenced by patriarchal norms that do not entirely derive from the teachings of Islam itself.³⁹ This poses a challenge for modern Muslims: how to interpret Islamic legal texts without getting caught up in interpretations that are more influenced by culture than by actual Islamic values? This is where the maqashid sharia approach comes into play, namely by looking at the law in the perspective of its main goal: maintaining justice, balance, and human welfare.

One of the obvious examples in this discussion of equality is the division of inheritance in Islam. Textually, men's share of inheritance is greater than that of women, which is often considered a form of inequality.⁴⁰ However, if we look at the historical context, this rule emerged in a society that at that time placed men as the main breadwinners, so there were economic considerations in the division. Today, many women play an active role in the family

³⁵ Zubairin et al., "THE MAQASIDI APPROACH IN ISLAMIC LEGISLATION ACCORDING TO IBN 'ASHUR IN AL-TAHRIR WA AL-TANWIR."

³⁶ Radhiatul Husni et al., "Religious Moderation in Society 5.0: A Concept Analysis Based on Surah Al-Hujurat Verse 13," *SURAU: Journal of Islamic Education* 1, no. 2 (2023): 146, <https://doi.org/10.30983/surau.v1i2.7409>.

³⁷ Ainul Haris, "The Concept of Education Based on Exemplary To The Prophet Muhammad PBUH: Perspective Muhammad Ibn Abdul Wahab," *Progressives: Journal of Islamic Thought and Education* 10, no. 1 (2021): 37–50, <https://doi.org/10.22219/progresiva.v10i1.15676>.

³⁸ Maurisa Zinira et al., "Portraying Women's Agential Practices of Ideological Muslimah Community: A Passionate Approach to Islamist Politics," *IJISH (International Journal of Islamic Studies and Humanities)* 6, no. 1 (2023): 1–18, <https://doi.org/10.26555/ijish.v6i1.7234>.

³⁹ Andi Nova, "The Implementation of Islamic Education in the Time of the Prophet Muhammad SAW," *Al-Madrasah: Journal of Madrasah Ibtidaiyah Education* 6, no. 1 (2022): 116, <https://doi.org/10.35931/am.v6i1.879>.

⁴⁰ Fachruli Isra Rukmana et al., "THE ROLE OF FEMALE HADITH NARRATORS: Tracing the Degeneration of Gender Roles in Hadith Narration," *Riwayah: Jurnal Studi Hadis* 10, no. 2 (2024): 47, <https://doi.org/10.21043/riwayah.v10i2.28704>.

economy, even becoming the main breadwinner. Some Muslim countries have reformed inheritance rules taking this social reality into account, for example by giving women the flexibility to receive a fairer share based on their economic conditions.⁴¹ This shows that equality in Islam does not mean rigidly equalizing all things, but ensuring that every individual gets his or her rights fairly according to their situation and needs.

Equality in Islam is not just a concept, but must also be translated into fair legal practice. Islam affirms that a person's rights and obligations should be based on their competence and contribution, not on their gender or social status. For example, in the Islamic justice system, there is no evidence that explicitly prohibits women from being judges, although in many classical traditions women are excluded from this position. Today, many Muslim countries have opened up opportunities for women to become judges, even in sharia courts, as a form of application of sharia maqashid that adapts the law to social realities.⁴² Equality in Islam does not mean removing existing differences in the law, but ensuring that the rules actually bring benefits and do not become a tool of discrimination. By understanding equality through the lens of sharia maqashid, we can ensure that Islamic law remains relevant and able to respond to the challenges of the times, without losing its values of justice.

Transformative Approach: Expertise in Testimony

1. Professionalism-Based Testimony

In classical Islamic law, testimony (shahadah) is often associated with factors of a person's number, gender, and social status.⁴³ However, in this increasingly complex world, such an approach is not always effective in achieving justice. Today, Islamic law needs to move in a more transformative direction, where testimony is not only based on a person's number or identity, but rather on his competence and expertise in a field. This approach is in line with the maqashid sharia, which places justice as the primary goal of the law.⁴⁴ By considering the aspect of professionalism in testimony, the Islamic legal system can be more adaptive in responding to the needs of contemporary society which is increasingly intersecting with technology, science, and other professional sectors.

One of the real examples of this professionalism-based testimony can be found in the fields of forensic medicine and financial accounting. In a criminal case, for example, the testimony of

⁴¹ Muhammad Lutfi Hakim, "Between *Hibah* and *Wasiat Wājibah* for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (2024): 147–66, <https://doi.org/10.14421/ahwal.2024.17201>.

⁴² Syahrani and Auliya, "The Position of Women Witnesses in Islamic Law."

⁴³ Sulastrri Caniago et al., "Gender Integration in Islamic Politics: Fiqh Siyasah on Women's Political Rights since Classical to Contemporary Interpretations," *MILRev: Metro Islamic Law Review* 3, no. 2 (2024): 411–31, <https://doi.org/10.32332/milrev.v3i2.9962>.

⁴⁴ Husni Mubarrak, "In Search of Islamic View of Justice on Women Testimony," *IJTIHAD Journal of Islamic Law and Humanitarian Law Discourse* 16, no. 2 (2017): 281, <https://doi.org/10.18326/ijtihad.v16i2.281-296>.

a forensic doctor about the cause of a person's death is much more valuable than the testimony of a layman who only sees the incident with the naked eye.⁴⁵ Similarly, in the case of corruption or financial disputes, the testimony of an auditor who understands the intricacies of financial transactions is more relevant than the testimony of someone who has no expertise in the field. In the classical fiqh tradition itself, the concept of expertise-based testimony actually exists, where scholars recognize expert testimony (ahl al-khibrah) in certain cases such as the assessment of defects in goods in buying and selling or determining the value of property.⁴⁶ This means that Islamic law has actually provided space for competency-based testimony, and this principle can continue to be developed to be more in line with the challenges of the times.

This approach also has a significant impact on the role of women in the Islamic justice system. In some classical schools, women's testimony in certain cases is often valued less than that of men, even in matters concerning their own lives. However, a professionalism-based approach can correct this view by asserting that what is more important in testimony is a person's expertise, not his gender. For example, in medical cases, the testimony of a female doctor who has expertise in her field should be valued equally with a male doctor, without the need to consider her gender aspect.⁴⁷ Similarly, in the world of technology or financial law, a woman who specializes in the field must have full authority in giving testimony, just like her male counterpart. In this way, Islamic law is not only more inclusive, but also more relevant in meeting the demands of modern society.

In the end, the professionalism-based approach of testimony provides a solution for the Islamic legal system to remain relevant without having to lose the essence of justice. Many Muslim countries today have adopted this system, in which a person's testimony is judged more on his or her expertise and credibility than on mere biological factors or social status. This proves that Islamic law has enough flexibility to adapt to the changing times, while adhering to the principles of maqashid sharia which are oriented towards benefit and justice.⁴⁸ By understanding testimony as an instrument to uphold justice in a more objective manner, Islamic law can continue to develop as a system that is not only normative, but also able to respond to the challenges of the contemporary era with more just and applicable solutions.

⁴⁵ Moh. Aghief Dzulnasri et al., "CASE REPORT: FORENSIC EXAMINATION IN IMMORAL CASES IN THE FORM OF RAPE UNDER THE GUISE OF SPIRITUAL TREATMENT," *FLEET: Journal of Multidisciplinary Research* 1, no. 10 (2023): 1217–24, <https://doi.org/10.55681/armada.v1i10.898>.

⁴⁶ Setia Untung Arimuladi, "Access to Justice Based on Expert Testimony in Tax Crimes: An Integrated Criminal Justice System Perspective in Indonesia," *Pandecta Research Law Journal* 17, no. 1 (2022): 29–36, <https://doi.org/10.15294/pandecta.v17i1.32622>.

⁴⁷ Ibn Akbar Maliki et al., "A Gender-Based Maqashid Sharia Study of Penghulu in Indonesia (A Study of Jasser Auda's Views)," *Conscience: Journal of Sharia and Society Studies* 23, no. 1 (2023): 51–68, <https://doi.org/10.19109/nurani.v23i1.16447>.

⁴⁸ Ane Fany Novitasari et al., "The Importance of Maturity in Marriage from an Islamic Legal Perspective," *Journal of Legal Studies* 33, no. 47 (2024): 99–108, <https://doi.org/10.2478/jles-2024-0006>.

2. Education Level Approach

In the classical Islamic legal system, a person's testimony is judged more on the number of witnesses or gender factors, without taking into account his level of education and academic expertise. However, in an increasingly science-based world, this approach needs to be updated to be more relevant and fair. Today, the accuracy of a testimony depends not only on who is giving the testimony, but also on the extent to which the witness has a deep understanding of the case being discussed. The maqashid sharia approach teaches that justice must be supported by strong and knowledge-based arguments.⁴⁹ Therefore, the testimony of a person with a higher level of education and expertise in a particular field should take precedence over considering only biological aspects or the number of witnesses.

In modern legal practice, a person who has a higher level of education in a particular field will be more credible in testifying to cases that are relevant to his or her expertise. For example, in the case of medical malpractice, the testimony of a specialist who has been educated for many years is certainly more weighty than the testimony of a person who has only basic medical experience. Likewise, in financial disputes or business transactions, a professor in the field of Islamic economics who has academic expertise will be better able to explain the complexity of financial contracts than someone who only has limited practical understanding.⁵⁰ Thus, Islamic law in the contemporary context needs to consider this educational factor so that the resulting legal decisions are more objective and based on mature analysis.

The education-level-based approach also has a major impact on the role of women in the Islamic justice system. In some classical views, women's testimony in certain cases is often considered less valuable than men's. However, in today's reality, many women have achieved a high level of education and have expertise in various fields. For example, in cases involving child psychology, a female psychologist with a doctoral degree is certainly more competent in giving testimony than a man who does not have a psychology background.⁵¹ This shows that Islamic law based on maqashid must open space for all individuals—men and women—to give testimony based on their knowledge, not just biological factors or rules that are no longer relevant to the development of the times.

This approach that emphasizes the level of education in Islamic legal testimony not only ensures that legal decisions are more accurate, but also makes the Islamic legal system more flexible and responsive to scientific developments. This is not just following the current of modernity, but rather an effort to maintain the value of justice which is the core of maqashid

⁴⁹ Dawood, "Islamic Law and Gender Equality."

⁵⁰ Ariffin, "A Comparative Analysis on Economic Roles of Government and Principles of Taxation between Public Economics and Siyasaah Shar'iyah."

⁵¹ Dzulnasri et al., "CASE REPORTS."

sharia.⁵² By giving more weight to expertise and education in assessing testimony, Islamic law can continue to be relevant and remain a system that upholds justice, transparency, and professionalism in responding to the challenges of an increasingly complex world.

A Comparative Study with the Contemporary State Legal System

In the contemporary legal world, the testimony system has undergone significant development, moving from a numerical and gender-based approach to a competency-based approach and professionalism. Many countries have adopted this system in various areas of law, ensuring that the testimony given actually has substantive value and is credible. This comparative study aims to understand how the legal system in different countries manage testimony and how these principles can be adapted in the contemporary Islamic legal system oriented towards sharia maqashid.⁵³

1. United States (Common Law System)

The United States applies a Common Law system, where expertise-based testimony is highly valued in the judicial process. In many cases, the testimony of an expert witness can be a major factor in determining the judge's or jury's decision. The testimony of expert witnesses as a determining factor is seen in various cases involving technical and scientific aspects, where judges and juries rely heavily on professional analysis provided by experts in their fields. One well-known example is the case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), in which the U.S. Supreme Court established the Daubert standard for determining the validity of expert testimony in scientific and technical cases. In this system, a forensic doctor in a murder case or a forensic accountant in a financial fraud case has more authority than an ordinary witness. Their testimony is often a decisive factor in shaping legal decisions, especially when faced with complex evidence that requires scientific interpretation. The court will consider the academic and professional credibility of the expert witnesses, including their scientific publications and experience in the field. This shows that the U.S. legal system places more emphasis on the quality of testimony than the number of witnesses or gender factors, by placing expert witnesses as a key element in ensuring more objective and accurate legal decisions.

2. Malaysia (Hybrid Legal System – Syariah and Common Law)

⁵² Zubairin et al., "THE MAQASIDI APPROACH IN ISLAMIC LEGISLATION ACCORDING TO IBN 'ASHUR IN AL-TAHRIR WA AL-TANWIR."

⁵³ Nur Solikin and Moh. Wasik, "The Construction of Family Law in the Compilation of Islamic Law in Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna* 27, no. 1 (2023): 315–40, <https://doi.org/10.20414/ujis.v27i1.708>.

Malaysia has a unique legal system as it combines Common Law with Islamic law in sharia matters. In the Malaysian sharia legal system, expert witnesses (ahl al-khibrah) are beginning to gain a greater role, especially in cases of Islamic economics and Islamic finance. In Islamic finance cases, such as the Tabung Haji Investment Dispute (2018), Malaysian sharia courts use the testimony of Islamic economists to determine whether transactions are in accordance with sharia principles. This shows that Islamic law in Malaysia is increasingly moving towards a professionalism-based approach to assessing testimony, rather than simply relying on the number or gender of witnesses.

3. Tunisia (Sharia Maqashid Based Legal System)

Tunisia is one of the Muslim countries that has carried out Islamic law reforms to be more based on sharia maqashid. In some legal cases, Tunisian courts no longer limit women's testimony in certain cases, but rather consider the competence and professionalism of individuals. For example, in the case of Tunisia's family law reform (2017), the court accepted women's testimony in inheritance and child custody cases without having to rely on the number of male witnesses. This shows that Islamic law can adapt to the times without losing its essence of justice.

From the above comparative study, it is clear that many countries have adopted a testimony system based on competence and professionalism. Countries like the United States have long relied on expert witnesses in various legal cases, while Muslim countries like Malaysia and Tunisia are beginning to implement similar approaches in their sharia justice systems. The contemporary Islamic legal system can draw lessons from this approach to strengthen the principles of sharia maqashid in ensuring justice. Testimony in Islamic law should no longer depend solely on the number or gender of witnesses, but rather on one's level of education, expertise, and credibility in a field. With this approach, Islamic law will be more relevant and able to answer the challenges of the times in a more objective and science-based manner.

Criticism of the Classical Fiqh Paradigm on Women's Testimony

In the classical fiqh tradition, women's testimony is often viewed as inferior to that of men, both in terms of its number and validity. This view is mostly based on literal interpretations of postulates related to testimony, especially in the Qur'anic verses. Al-Baqarah (2): 282, which states that in a debt-receivables transaction, two male witnesses are required, or if there are none, then one man and two women.⁵⁴ This verse is often used by classical scholars to justify that women's testimony is only worth half that of men in a legal context, without considering the socio-historical context and purpose of Islamic law (maqāṣid al-sharī'ah).

⁵⁴ Miswar et al., "Qur'anic Narratives of Women's Competencies and The Consequences of Islamic Law on Their Involvement in Society."

This kind of literal approach ignores the contextual aspect of the verse, namely that the rule was made in 7th-century Arab society, where women generally did not have extensive access to the world of trade and financial administration. Therefore, the existence of two women in the testimony of debt-receivables transactions is not a form of discrimination, but rather a guarantee that women will not be harmed in matters that are not their domain of expertise at that time.⁵⁵ However, in classical fiqh, this verse is interpreted absolutely and is used as a basis for rejecting or degrading women's testimony in various aspects of law, including in criminal and civil cases, without considering the social developments that have occurred in Islamic societies throughout history.

In addition to this verse, certain hadiths are also often used as a basis for limiting women's testimony, such as the narration that states that women have "deficiencies in reason and religion" (nāqīṣāt al-'aql wa al-dīn). This hadith is often used by classical scholars to reinforce the claim that women do not have the same capacity as men to give testimony.⁵⁶ In fact, if analyzed contextually, this hadith is not an absolute statement about women's incapacities, but rather a reflection on the social conditions of women at that time who had limited access to education and public space. Therefore, interpreting these postulates literally without considering maqāṣid al-sharī'ah is contrary to the principle of justice in Islam.

Criticism of this classical paradigm is getting stronger along with the development of science and more contextual Islamic legal thought. Many modern Muslim scholars and thinkers such as Muhammad Abduh, Rashid Ridha, and Fazlur Rahman emphasized that Islamic law must take into account social change and the main goal of sharia, which is justice and benefit.⁵⁷ In the context of the modern world, where women have gained extensive access to education and have expertise in various fields, limiting their testimony to mere literal postulates becomes irrelevant and contrary to the principle of equality upheld by maqāṣid al-sharī'ah. Therefore, a more inclusive and competency-based approach should be applied in assessing women's testimony in contemporary Islamic law.

The Consequences of Injustice in Islamic Marriage Law

The classical paradigm in fiqh that denigrates the position of women's testimony has a wide impact on Islamic marriage law, especially in the aspects of recording, contract validity, and dispute resolution. In many classical fiqh systems, women's testimony in a marriage contract is often considered insufficient without the presence of a male witness. This view not only ignores the role of

⁵⁵ Zinira et al., "Portraying Women's Agential Practices of Ideological Muslimah Community."

⁵⁶ Dahwadin Dahwadin et al., "Revisiting the Role of Women as Witnesses in Fiqh Justice," *AHKAM : Journal of Sharia Science* 19, no. 1 (2019), <https://doi.org/10.15408/ajis.v19i1.11768>.

⁵⁷ Dr. Jabbar Kadhem Al- Mulla and Dr. Haider Shawkan Saeed, "The Origin Is in the Jurisprudential Deduction A Comparative Study between Al- Hilla and A-Hanafi Jurists."

women in managing their own legal affairs, but also creates real unfair consequences in social life, especially for women who want to legally establish their marital status.

This injustice can be seen in cases where women are the disadvantaged parties in the marriage, such as in serial marriage cases that do not have official registration. Because women's testimony is considered less valuable than men's, many women have difficulty proving their marital status in divorce or custody cases. As a result, they often lose their legal rights due to a justice system that still adheres to the classical testimony paradigm that is not based on competence or credibility. In fact, in *maqāṣid al-sharī'ah*, one of the main goals of Islamic law is to maintain the honor and stability of the family (*ḥifẓ al-nasl*), which is supposed to protect all parties fairly without gender-based discrimination.

In addition, in the context of marriage dispute resolution, inequality in women's testimony often leads to the marginalization of their rights in the legal process. For example, in cases of marital guardianship, classical fiqh often requires the presence of a male guardian, even when the woman is mature and capable of making her own decisions. If a woman wants to get married but her guardian refuses without *shari'a* reasons, her own testimony is often not enough to fight for her rights. In fact, in *maqāṣid al-sharī'ah*, the right to choose a spouse is part of *ḥifẓ al-nafs* (protection of individual rights), which should be respected without unfounded obstacles.

In the modern context, some Muslim countries have begun to reform the rules of testimony in marriage in order to avoid this injustice. Tunisia, for example, has abolished the guardianship requirement in the marriage of adult women and recognized women's testimony in various aspects of marriage law. This reform departed from the principle that *maqāṣid al-sharī'ah* demanded justice and protection of individual rights, not simply adherence to textual interpretations that were no longer relevant to social development. Therefore, in order to prevent injustice in Islamic marriage law, there needs to be a reconstruction of fiqh that prioritizes *maqāṣid al-sharī'ah* over non-contextual literal interpretations.

The Transformative Fiqh Paradigm: Testimony as a Function of Expertise, Not Gender

1. Testimony as a Functional Role, Not Just a Formal Requirement

In classical fiqh, testimony is often seen as a formal condition that must be met in a contract or judicial process, without considering the functional aspects of the testimony itself. This perspective departs from a legal-formalistic approach that focuses on the number and categories of witnesses based on gender, rather than on the substance of the testimony given. In the context of a marriage contract, for example, the majority of classical schools stipulate that the testimony must come from two just Muslim men ('*adl*), while women can only be witnesses under certain conditions and often their testimony must be combined with other

female witnesses to have equal weight with men.⁵⁸ This paradigm limits the function of testimony only as a form of compliance with normative rules without taking into account the credibility, expertise, or understanding of the witness to the substance of the contract they witness.

The transformative fiqh paradigm proposes a new approach by positioning testimony as a functional role based on expertise and credibility, rather than simply a formal requirement determined by gender. In the context of a marriage contract, testimony should focus more on the capacity of the witness to understand the rights and obligations contained in the contract, as well as his ability to provide legal verification in the event of a dispute in the future.⁵⁹ For example, in the modern legal world, notaries and marriage registrars have the authority to ensure the validity of a marriage contract because they have in-depth legal knowledge, not just because of their gender. Therefore, in the context of *maqāṣid al-sharī'ah* which emphasizes justice and benefit, testimony in a marriage contract should be seen as a legal instrument based on competence and responsibility, not simply the fulfillment of rigid administrative requirements.

Furthermore, judging testimony based solely on number and gender without considering competency aspects will potentially create legal injustice. If a testimony is only considered valid if given by two men, then there is a high chance that the testimony that is actually more valid, but comes from a woman or a more competent party, will be set aside. This is contrary to *maqāṣid al-sharī'ah* which demands that every legal decision should be based on truth and justice, not just on formal adherence to historically contextual provisions.⁶⁰ Therefore, the transformative fiqh paradigm proposes the idea that testimony should be treated as an objectivity-oriented legal instrument, not just a ritual formality that limits women's participation in the Islamic legal system.

2. Witness Professionalism in Marriage Contracts: A Case Study of Practice in Muslim Countries

Some Muslim countries have adopted legal systems that emphasize the professionalism aspect of marriage contract testimony rather than just gender requirements or the number of witnesses. Tunisia, for example, has removed a provision that limits witnesses to only men and allows women to be key witnesses in marriage contracts. This reform was carried out as a form of adaptation to a more inclusive and gender-justice-based social reality. This decision is also

⁵⁸ Sulastrini Caniogo et al., "Gender Integration in Islamic Politics," 2024.

⁵⁹ Hakim, "Between *Hibah* and *Wasiyat Wājibah* for Non-Muslims."

⁶⁰ Muhammad Amin Sayyad, "THE URGENCY OF MARRIAGE REGISTRATION AS A PILLAR OF MARRIAGE (A CRITICAL STUDY OF THE THOUGHT OF SITI MUSDAH MULIA AND KHOIRUDDIN NASUTION)," *El-Mashlahah* 8, no. 1 (2019), <https://doi.org/10.23971/el-mas.v8i1.1097>.

based on the argument that the validity of the contract depends more on administrative validity and legal certainty than on the number or gender of witnesses.⁶¹ With this system, a woman with legal expertise, such as a notary or family judge, can act as a witness without the need to be combined with other male witnesses.

In Malaysia, the marriage registration system carried out by local religious officials also shows a more functional approach in terms of testimony. Although the classical fiqh system is still applied in some aspects, the Malaysian government has adopted a system in which the recording and verification of marriage contracts is carried out by official officials with legal authority.⁶² This reflects a shift from the old paradigm of relying only on the number of male witnesses to a system that focuses more on legal validity through the involvement of competent parties. This step not only increases legal transparency, but also protects women's rights in marriage, especially in terms of recording and dispute resolution.

In Turkey, marriage law reform has also recognized that women's testimony in marriage contracts has the same weight as men. Turkey's Civil Law, which has been in force since the era of Kemal Atatürk's reforms, confirms that the administrative aspects and the recording of marriages are far more important than just the number of male witnesses present. In this system, the main determinant is the state's authority to supervise and record marriages, not formal gender-based requirements.⁶³ With this model, any individual who has an adequate understanding of the law, both male and female, can become a valid witness in the marriage contract.

From the case study above, it can be seen that Muslim countries that have carried out legal reforms tend to abandon the classic approach that limits the role of women in the testimony of marriage contracts. They replaced it with a more professional and competency-based system, in line with the principles of maqāsid al-sharī'ah which prioritizes justice, legal certainty, and benefit.⁶⁴ Thus, the transformative fiqh paradigm in the testimony of marriage contracts is not just a theoretical idea, but has been applied in real life in various Muslim countries that prioritize the principle of justice in their judicial systems.

Implications of Transformative Fiqh on Islamic Law Reform

⁶¹ Syahnur Aida Alifia et al., "The Validity of Politicians as Marriage Witnesses from the Perspective of Islamic Law."

⁶² Husni Mubarak et al., "The Law of Circumcision for Women According to the Syafi'i Mazhab, Maqashid Sharia, and Constitution," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 10, no. 1 (2024): 125, <https://doi.org/10.29300/mzn.v10i1.2948>.

⁶³ Abd Shomad and Sri Hajati, "Prenuptial Agreement and the Principle of Balanced Justice in the Division of Joint Property in Islamic Marriage Law," *Yuridika* 40, no. 1 (2025): 129–42, <https://doi.org/10.20473/ydk.v40i1.60238>.

⁶⁴ Rukmana et al., "THE ROLE OF FEMALE HADITH NARRATORS."

A transformative fiqh paradigm that emphasizes expertise-based testimony, not just gender or the number of witnesses, has had a major impact on Islamic fatwas and family law legislation. In the classical fiqh system, fatwas related to testimony in family law, including marriage and divorce contracts, tend to rely on textual interpretations that prioritize male witnesses and limit the role of women in legal testimony.⁶⁵ However, in recent decades, a more transformative approach to maqāsidī has prompted various fatwa institutions to adopt a more inclusive and justice-oriented view of substantial justice.

For example, Egypt's Dar al-Ifta' and the Fatwa Assembly in Tunisia have issued fatwas recognizing women's testimony in various aspects of family law, including in marriage contracts, divorce, and the settlement of child custody disputes.⁶⁶ In the context of marriage contracts, some Muslim countries have begun to revise the provision that witnesses must be two men, opening up opportunities for women with legal competence to act as legal witnesses. This reform rests on the argument that the primary purpose of testimony in marriage is to ensure the validity of the contract and the protection of the rights of both parties, not simply to follow the provisions of number and gender rigidly.

At the legislative level, some Muslim countries have accommodated the idea of transformative fiqh in their family law laws. Tunisia, for example, not only removed the guardianship requirement in the marriage of adult women, but also introduced regulations that allow women to testify in divorce and child custody trials with the same weight as men. Similarly, in Jordan, the family justice system has recognized women's testimony in guardianship and divorce cases without the need for additional male witnesses. This shows that the maqāsidī approach in fiqh has not only had an academic influence, but has also been applied in positive legal systems in various Muslim countries.⁶⁷

Furthermore, the implications of transformative fiqh are also seen in the development of Islamic family law in countries with Muslim minorities, such as in the United Kingdom and Canada. In the UK, for example, the Muslim Arbitration Tribunal has begun considering women's testimony in marriage and divorce cases based on the principles of fairness and expertise. By adopting a more professional approach, this system provides space for women with legal understanding to actively participate in the resolution of marriage disputes. This phenomenon proves that transformative fiqh is not only relevant in the context of Muslim

⁶⁵ M. Slamet Yahya et al., "Virtual Reality-Based Interactive Learning Media For Fiqh Ibadah In Indonesian Islamic Education: A Systematic Literature Review," *At-Turats* 19, no. 2 (2025): 194–205, <https://doi.org/10.24260/atturats.v19i2.5037>.

⁶⁶ Dwi Sakti Muhamad Huda et al., "Women's Testimony in the Civil Trial of Islamic Families in Religious Courts," *Widya Borneo Scientific Journal* 7, no. 1 (2024): 31–43, <https://doi.org/10.56266/widyaborneo.v7i1.286>.

⁶⁷ Saiful Amar et al., "Legal Construction of Religious Court Authority in the Determination of Guardians of Adhal According to the Religious Justice System," *Journal Juridisch* 3, no. 1 (2025): 11–25, <https://doi.org/10.26623/jj.v3i1.11379>.

countries, but also has a far-reaching impact in Muslim communities in countries that adopt secular legal systems.

With this reform, it can be concluded that the transformative approach of fiqh opens up space for the development of Islamic law that is more adaptive to social changes. The reform of Islamic family law based on *maqāsid al-sharī'ah* aims not only to adapt Islamic law to the demands of the times, but also to ensure that the principles of justice remain the main foundation in any regulation that is implemented. Therefore, the idea of transformative fiqh must continue to be developed to strengthen the legitimacy of Islamic law in the face of the challenges of modern times.

D. Conclusion

The classical fiqh paradigm regarding women's testimony in marriage contracts is built on the basis of normative interpretations of the text of the Qur'an and hadith which are strongly influenced by the patriarchal socio-cultural context during the formation of Islamic law. The restriction of women as witnesses in marriage contracts is not entirely theological-normative, but also sociological, because it relies on assumptions about the limitations of women's rationality and memory which in the context of modern society are no longer relevant. The literal application of classical fiqh views in contemporary reality has the potential to cause structural injustice and is contrary to the universal values of Islam.

The sharia *maqashid* approach shows that the main purpose of testimony is to maintain legal certainty and prevent disputes, not to assert gender differences. Therefore, when women have adequate expertise, integrity, and intellectual capacity, the rejection of their testimony has the potential to deny the purpose of sharia itself. Criticism of the gender-based approach in classical fiqh becomes relevant in order to build a more just, rational, and contextual Islamic legal system.

Through the transformative fiqh paradigm, the concept of testimony in the marriage contract can be reconstructed by placing expertise (*ahliyyah*), justice (*'adālah*), and professionalism as the main criteria, without gender discrimination. This approach does not deny classical texts, but interprets them contextually and oriented to the substance of sharia values. Thus, the recognition of women's testimony in the marriage contract is a valid form of contemporary *ijtihad* and is in line with the principles of justice, benefit, and equality.

The implications of this transformative fiqh paradigm are very significant for Islamic family law reform. The reconstruction of women's testimony in marriage contracts not only strengthens the protection of women's rights, but also increases the relevance and legitimacy of Islamic law in modern society. Based on sharia *maqashid*, Islamic law can continue to develop

dynamically, inclusively, and responsive to social changes, without losing its normative footing as a law that is just and oriented towards the benefit of the ummah.

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