



# The Concept of Mubadalah as the Basis for the Protection of Human Rights in Islamic Family Law

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**Abstract:** *Islamic family law regulations in Indonesia are still influenced by traditional understandings that tend to be textual-normative, especially in issues of child marriage, polygamy, financial responsibility, child custody, and inheritance distribution. This condition poses challenges in realizing gender justice and the protection of human rights. This study aims to analyze the concept of mubadalah as a humanistic and equitable approach to interpretation, as well as its potential as a basis for the protection of human rights in Islamic family law. This study is a literature study with a normative juridical approach. Data was obtained through a review of legislation, the Compilation of Islamic Law (KHI), the Qur'an, hadith, classical books, journal articles, and other relevant literature. The analysis was conducted descriptively and qualitatively by interpreting religious texts contextually. The results of the study show that the concept of mubadalah emphasizes reciprocity, justice, and shared responsibility between men and women. In the context of Islamic family law, this approach emphasizes the protection of children in child marriages, makes justice the benchmark in polygamy, interprets alimony as a shared responsibility, emphasizes joint custody and the best interests of the child, and opens up room for ijtihad in the distribution of inheritance. Thus, the concept of mubadalah can be used as a conceptual basis for reforming*

*Islamic family law to bring it into line with the principles of gender justice and human rights protection.*

**Keywords:** *Human Rights, Islamic Family Law; Mubadalah*

**Abstrak:** Regulasi Hukum keluarga Islam di Indonesia masih dipengaruhi oleh pemahaman tradisional yang cenderung tekstual-normatif, terutama dalam isu perkawinan anak, poligami, tanggung jawab nafkah, hak asuh anak, dan pembagian harta warisan. Kondisi ini menimbulkan tantangan dalam mewujudkan keadilan gender dan perlindungan hak asasi manusia (HAM). Penelitian ini bertujuan menganalisis konsep *mubadalah* sebagai pendekatan tafsir yang humanis dan berkeadilan, serta potensinya sebagai landasan perlindungan HAM dalam hukum keluarga Islam. Penelitian ini merupakan penelitian kepustakaan dengan pendekatan yuridis normatif. Data diperoleh melalui kajian terhadap peraturan perundang-undangan, Kompilasi Hukum Islam (KHI), al-Qur'an, hadis, kitab klasik, artikel jurnal, dan literatur relevan lainnya. Analisis dilakukan secara deskriptif-kualitatif dengan menafsirkan teks-teks keagamaan secara kontekstual. Hasil penelitian menunjukkan bahwa konsep *mubadalah* menekankan adanya kesalingan, keadilan, dan tanggung jawab bersama antara laki-laki dan perempuan. Dalam konteks hukum keluarga Islam, pendekatan ini menegaskan pada perlindungan anak dalam perkawinan anak, menjadikan keadilan sebagai tolak ukur dalam poligami, memaknai nafkah sebagai tanggung jawab bersama, menitikberatkan hak asuh secara bersamaan dan kepentingan terbaik untuk anak, serta membuka ruang ijtihad dalam pembagian warisan. Dengan demikian, konsep *mubadalah* dapat dijadikan landasan konseptual dalam pembaruan hukum keluarga Islam agar selaras dengan prinsip keadilan gender dan perlindungan HAM.

**Kata kunci:** *Hak Asasi Manusia (HAM), Hukum Keluarga Islam; Mubadalah*

## Introduction

Islamic family law in Indonesia occupies a very important position in the national legal system because it forms the basis for regulating civil relations among Muslims.<sup>1</sup> This area of law covers various issues related to family life, such as marriage, divorce,

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<sup>1</sup> Agus Salim, "Formulasi Hukum Keluarga Sebagai Positifisasi Hukum Islam Di Indonesia," *Syariat: Jurnal Studi Al-Qur'an Dan Hukum* 8, no. 2 (2022): 229–42, <https://doi.org/10.32699/syariat.v8i2.3429>.

reconciliation, inheritance, wills, gifts, and guardianship.<sup>2</sup> More than just legal rules, Islamic family law serves as a social guideline that directs Muslims in building a fair, harmonious, and balanced family life. Through the application of this law, it is hoped that families will not only be legally orderly, but also in harmony with the values of humanity and justice that are at the core of Islamic teachings.<sup>3</sup>

Legally, the legal basis for Islamic families in Indonesia is based on Law Number 1 of 1974 concerning Marriage, which has been updated to Law Number 16 of 2019.<sup>4</sup> For Muslims, more detailed regulations are contained in Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI), which has since become the main reference for religious courts in resolving family cases.<sup>5</sup> In addition, the application of Islamic family law is also reinforced by various Supreme Court Circular Letters (SEMA) and Supreme Court Regulations (PERMA) that regulate technical aspects and ensure uniformity in the application of law in the religious court system.<sup>6</sup> Thus, the Islamic family law system in Indonesia is a harmonious blend of Islamic sharia values and positive state law, both of which aim to achieve benefits, justice, and order for the Muslim community.

Although Islamic family law in Indonesia has a solid normative foundation, there are still a number of issues in its application, especially those related to gender equality. One of the problems that often arises is the imbalance in the relationship between men and women, both in terms of fulfilling rights and carrying out obligations

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<sup>2</sup> Sapriadi et al., “Sistematika Hukum Islam Di Indonesia,” *Al-Ahkam: Jurnal Hukum Pidana Islam* 4, no. 2 (2022): 150–59, <https://doi.org/10.47435/al-ahkam.v4i2.1216>.

<sup>3</sup> Mahmudah and Usep Saepullah, “Hakikat Keluarga Muslim Dan Hukum Keluarga Islam,” *Jurnal Syntax Fusion: Jurnal Nasional Indonesia* 2, no. 8 (2022): 617–30, <https://doi.org/10.54543/fusion.v2i08.209>.

<sup>4</sup> Tirmidzi, “Kajian Analisis Undang-Undang No. 16 Tahun 2019 Sebagai Perubahan Atas Undang-Undang No. 1 Tahun 1974,” *USR AH: Jurnal Hukum Keluarga Islam* 1, no. 1 (2020): 38–48, <https://doi.org/10.46773/usrah.v1i1>.

<sup>5</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* 07, no. 02 (2025): 165–90, <https://doi.org/10.33367/legitima.v7i2.7101>.

<sup>6</sup> Amran Suadi, “The Role Of Religious Court In Islamic Law Reform In Indonesia,” *Ay-Syari’ah* 21, no. 2 (2019): 125–34, <https://doi.org/10.15575/as.v21i2>.

after marriage. The historical development of marriage law in Indonesia shows the strong influence of patriarchal values that place men as the main authority in the family. This view is reflected in a number of legal provisions that still differentiate the roles of husbands and wives, whether in the economic sphere, social life, or in decision-making within the household.<sup>7</sup> For example, Article 31 paragraph (3) of the Marriage Law states that the husband acts as the head of the family, while the wife acts as the housewife. This formulation is often used as a basis for reinforcing the position of women in a more subordinate role within the marriage bond.<sup>8</sup> Meanwhile, in the field of inheritance, the provision of a two-to-one ratio between men and women in the distribution of property is still a subject of debate among academics and Islamic law practitioners.<sup>9</sup>

Criticism of gender bias in Islamic family law is not intended as a rejection of religious teachings or texts, but rather as an effort to reinterpret Islamic values so that they remain in harmony with today's social reality. The principle of justice in Islam is essentially universal and flexible, so that it can be understood and applied contextually in accordance with changes in time, place, and community needs.<sup>10</sup> Therefore, the reform of Islamic family law in Indonesia should not stop at the normative level, but also needs to be realized in practice through improving the competence of religious court officials, empowering communities through legal education, and mainstreaming a gender equality perspective in national legal policy.

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<sup>7</sup> Uchi Novitasari and Novita Nur Anggraeni, "Hak Dan Kewajiban Suami Istri Dalam Hukum Perkawinan Indonesia: Perspektif Keadilan Gender," *Central Publisher* 1, no. 12 (2023): 1377–82, <https://doi.org/10.60145/jcp.v1i12.312>.

<sup>8</sup> Aufi Imaduddin and Mir'atul Firdausi, "Istilah 'Suami Sebagai Kepala Keluarga Dan Istri Sebagai Ibu Rumah Tangga' Dalam Undang-Undang Perkawinan Dan Kompilasi Hukum Islam Perspektif Feminisme," *The Indonesian Journal of Islamic Law and Civil Law* 4, no. 2 (2023): 156–68, <https://doi.org/10.51675/jaksya.v4i2.576>.

<sup>9</sup> Rahmad Setyawan and Muhamad Taufik Kustiawan, "Najmuddin Al-Tūfi's Thoughts on The Dynamics of Inheritance Law 2:1 Perspective of Maṣlaḥah," *AL-HUKAMA The Indonesian Journal of Islamic Family Law* 11, no. 02 (2021): 85–114, <https://doi.org/10.15642/alhukama.2021.11.2.85-114>.

<sup>10</sup> Alfitri, "Women's Rights And Gender Equality Issues In Islamic Law In Indonesia: The Need To Re-Read Women's Status In The Islamic Religious Texts," *Mazabib: Jurnal Pemikiran Hukum Islam* 13, no. 1 (2014): 23–38, <https://doi.org/10.21093/mj.v13i1.349>.

Thus, the biggest challenge ahead is not merely to maintain the existence of Islamic family law in the national legal system, but to develop it into a legal framework that is more inclusive, responsive to social dynamics, and oriented towards true justice. Islamic family law in Indonesia is expected to not only be a means of enforcing religious teachings, but also a pillar for strengthening universal human values, such as justice, gender equality, human rights, and protection for vulnerable groups in family life.

Based on this thinking, contemporary scholars have ample opportunity to reexamine and discuss various Islamic family law decisions that are considered incompatible with the dynamics of modern life. This effort is important so that the values of justice and benefit, as the main objectives of the application of Islamic law, can be actualized and provide tangible benefits to society.

Sahal Mahfudz emphasized that Islamic law (*fiqh*) should be able to respond to the needs of today's society without abandoning its spiritual roots, which are derived from the Qur'an and Hadith.<sup>11</sup> Therefore, *ijtihad* (independent reasoning) on the sources of Islamic law, such as the Qur'an, Hadith, *Ijma'* (consensus), and *Qiyas* (analogy),<sup>12</sup> in the field of family law should not be limited to a textual approach alone. *Ijtihad* needs to be directed towards efforts to find the rational basis of a law (*'illat al-Hukm*), understand the main objectives of the application of Sharia (*maqasid as-Syari'ah*), and relate it to the ever-evolving social reality.<sup>13</sup> One approach that can be used in reinterpreting Islamic family law is the *mubadalah* method. This method of interpretation is based on the principles of reciprocity and cooperation between men and women in realizing goodness and eliminating evil in communal life.<sup>14</sup>

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<sup>11</sup> Sahal Mahfudz, *Nuansa Fiqih Sosial*, ed. Hairus Salim HS and Nuruddin Amin (Yogyakarta: LKiS, 1994), hlm. xxiv-xxv.

<sup>12</sup> Rahmad Setyawan et al., "Contemporary Ijtihad Deconstruction in The Supreme Court: Wasiat Wajibah as An Alternative for Non-Muslim Heirs in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (2024): 25–40, <https://doi.org/10.30984/jis.v22i1.2968>.

<sup>13</sup> Faqihuddin Abdul Kodir, *Qira'ah Mubadalah* (Yogyakarta: IRCiSoD, 2019), hlm. 119.

<sup>14</sup> Faqihuddin Abdul Kodir, *Dari Aborsi Sampai Childfree: Bagaimana Mubadalah Berbicara?* (Bandung: Afkaruna.id, 2024), hlm. vii-ix.

Simply put, *mubadalah* seeks to explore the main message of a text and trace its connection to the fundamental values of Islam. The focus is on the substance of the meaning contained in the text, not on gender aspects. Thus, the application of the *mubadalah* method in reinterpreting Islamic family law in Indonesia is highly relevant for producing legal provisions that are fair, gender-equitable, and in line with human rights.

Based on the above description, this study focuses on elaborating the concept of *mubadalah* as the basis for the protection of human rights in Islamic family law. Through this approach, it is hoped that it will be clearly illustrated how the concept of *mubadalah* is able to unravel the issue of relations between men and women, demonstrate its connection with human rights values, and explain its application in strengthening the protection of human rights in the realm of Islamic family law in Indonesia

In the context of studies on Islamic family law in Indonesia, there have been a number of studies conducted by previous researchers. Based on the author's research, there is a study conducted by Anis Hidayatul Mumtahanah, with a focus on elaborating family law issues through the *mubadalah* principle approach. This research aims to reduce practices of domination, subordination, and violence that still often occur in domestic life.<sup>15</sup> Ade Daharis, Sandi Yoga Pradana, Kalijunjung Hasibuan, Lia Fadrijani, and Hamzah Mardiansyah, in their research, examine the importance of the concept of *mubadalah* in husband-wife relationships according to Islamic family law.<sup>16</sup>

Meanwhile, research conducted by Miswanto, Arif Fikri, and Edi Susilo focused on examining the concept of husband-wife relationships in the KHI from the perspective of *mubadalah*.<sup>17</sup> Meanwhile, research conducted by Muhammad Sahli Ali and Muhammad Nafi focused more on the *mubadalah* method as a solution

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<sup>15</sup> Anis Hidayatul Imtihanah, "Hukum Keluarga Islam Ramah Gender: Elaborasi Hukum Keluarga Islam Dengan Konsep Mubadalah," *Kodifikasia* 14, no. 2 (2020): 263–82, <https://doi.org/10.21154/kodifikasia.v14i2.2197>.

<sup>16</sup> Ade Daharis et al., "The Relevance of the Concept of Mubadalah in Husband-Wife Relations According to Islamic Family Law," *Jurnal Kolaboratif Sains* 8, no. 3 (2025): 1557–63, <https://doi.org/10.56338/jks.v8i3.7201>.

<sup>17</sup> Miswanto, Arif Fikri, and Edi Susilo, "Relasi Suami-Istri: Telaah Kompilasi Hukum Islam Perspektif Teori Mubadalah," *Bulletin of Community Engagement* 4, no. 2 (2024): 370–79, <https://doi.org/10.51278/bce.v4i2.1394>.

for judges in their efforts to deliver Islamic family law dispute rulings that are gender-equitable.<sup>18</sup> Furthermore, Habib Shulton Asnawi and Habib Ismail examine discrimination against wives from the perspective of CEDAW and Islamic *Mubadalah*.<sup>19</sup>

However, this study differs from previous studies in several ways. The main focus of this study is on the concept of *mubadalah* as the basis for the protection of human rights in Islamic family law, with the aim of creating a new paradigm in the discourse on Islamic family law in Indonesia. By using the concept of *mubadalah* as a framework for analysis, this study seeks to emphasize the importance of a contextual reading of Islamic family law texts in order to be in line with the values of substantive justice and the protection of human rights.

## Research Method

Methodologically, this research is library research with a normative juridical approach, which aims to examine the concept of *mubadalah* as the basis for the protection of human rights in Islamic family law in Indonesia. Research data was collected through comprehensive literature study, including laws and compilations of Islamic law (KHI), the Qur'an, hadith, classical *fiqh* and tafsir books, scientific journal articles, research reports related to family law and human rights, government policy documents, dictionaries, encyclopedias, and relevant contemporary legal literature.

The analysis was conducted using descriptive-qualitative methods with the following steps: 1) identifying and classifying research literature; 2) interpreting religious texts and legal literature related to the principles of *mubadalah* and the protection of human rights; 3) relating the results of the interpretation to the context of Islamic family law in Indonesia, especially on the issues of child marriage, polygamy, financial responsibility, child custody, and the distribution of inheritance. The systematic writing of this article

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<sup>18</sup> Mohammad Sahli Ali and Muhammad Nafi, "Mubadalah: Methods of Gender Justice Interpretation for Religious Court Judges in Deciding Family Law Concerns," *Equality: Journal of Law and Justice* 1, no. 2 (2024): 137–58, <https://doi.org/10.69836/equality-jlj.v1i2.139>.

<sup>19</sup> Habib Shulton Asnawi and Habib Ismail, "Discrimination against Wife in the Perspective of CEDAW and Islam Mubāadalah," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 2 (2020): 253–68, <https://doi.org/10.18326/ijtihad.v20i2.253-268>.

includes an introduction, a discussion of the principle of *mubadalah* in male-female relations, its relationship to human rights, the implementation of *mubadalah* as the basis for the protection of human rights in Islamic family law in Indonesia, and conclusions containing research findings, novelty, and contributions to the renewal of Islamic family law that is inclusive, fair, and provides protection for human rights.

## Results and Discussion

### The Concept of *Mubadalah* in Male-Female Relationships

The birth of the concept of *mubadalah* as a method of interpretation based on the principles of reciprocity and cooperation was motivated by two main factors, namely social and linguistic factors. Social factors are closely related to the way society understands religious texts, which have so far mostly represented the experiences of men. Sahal Mahfudz highlights that bias against women in the Indonesian social context is rooted in a number of cultural assumptions that have developed in society, which ultimately place women in a position of inequality.<sup>20</sup>

Meanwhile, linguistic factors relate to the characteristics of Arabic as the primary language of Islamic law, which grammatically always distinguishes between men and women, whether in nouns, verbs, or pronouns, singular or plural.<sup>21</sup> This linguistic reality has contributed to the emergence of Islamic legal products that often place men and women in separate and unequal positions, even though both are normatively equal subjects in the teachings of the Qur'an and Hadith.

Therefore, the concept of *mubadalah* in interpreting religious texts focuses on the main meaning contained in the text, while emphasizing the importance of a balanced and fair perspective between men and women.<sup>22</sup> As an illustration, in today's social view, the teaching about the importance of being a righteous wife is often only addressed to women. Meanwhile, similar exhortations to men to be righteous

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<sup>20</sup> Husein Muhammad, *Fiqh Perempuan* (Yogyakarta: IRCiSoD, 2021), hlm. 7.

<sup>21</sup> Kodir, *Qira'ah Mubadalah*, hlm. 104.

<sup>22</sup> *Ibid.*, hlm. 111.



husbands to their wives are rarely conveyed. This tendency is implicitly reflected in Article 79 paragraph (1) of the Compilation of Islamic Law (KHI), which places the husband as the head of the household and the wife as the housewife. This formulation is often interpreted to mean that wives must submit and obey their husbands in all circumstances. This understanding is generally based on a number of hadiths that are interpreted non-reciprocally, resulting in an unbalanced relationship between the two. The following are the hadiths:

عن ابن عباس قال: قال رسول الله ﷺ ألا أخبرك بخَيْر ما يَكْنِزُ الْمَرْءُ؟ الْمَرْأَةُ الصَّالِحَةُ، إِذَا نَظَرَ إِلَيْهَا سَرَّتْهُ، وَإِذَا أَمَرَهَا أَطَاعَتْهُ، وَإِذَا غَابَ عَنْهَا حَفِظَتْهُ

*“From Ibn Abbas, he said: The Prophet Muhammad said: “Shall I tell you the best treasure a man can have? It is a righteous wife, who, when her husband looks at her, makes him happy; when he commands her, she obeys him; and when he is away, she safeguards his property.”*

If the above hadith is interpreted using the *mubadalah* method, then the main focus is on the core meaning or main message contained therein, namely the call to be a person who brings happiness, fulfills the needs of one's spouse, maintains self-respect, preserves wealth, and protects the family.<sup>23</sup> Thus, both men and women have the same responsibility to be righteous and pious, while respecting and obeying one another in order to create a harmonious and just household relationship.

In establishing relationships based on reciprocity, including between men and women, the concept of *mubadalah* is based on three main principles, namely dignity, fairness, and *mashlahab*. The principle of dignity emphasizes that every individual must view themselves and others as human beings with value and honor, and therefore deserve to be treated with kindness and respect. The principle of fairness means that when there are differences in capacity or conditions between two parties, the party with greater ability should play a role in protecting, supporting, and empowering the less fortunate party, whether physically, economically, knowledgeably, or socially. The principle of *mashlahab* guides both parties to think and act for the sake of achieving

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<sup>23</sup> Kodir, *Dari Aborsi Sampai Childfree: Bagaimana Mubadalah Berbicara?*, hlm. xv-xx.

mutual goodness and benefit.<sup>24</sup> By adhering to these three principles, the relationship between the two parties is no longer based on feelings of superiority or inferiority, but grows on the basis of mutual respect and mutual need in realizing mutual goodness.

These principles, in addition to being in line with the social realities of modern society, are also deeply rooted in the theological foundations of Islam, which are derived from the Qur'an. Sa'id Ramadhan al-Buthi emphasizes the equality of roles and positions between men and women. This view is based on his understanding of a number of verses in the Qur'an that place the two in equal positions.<sup>25</sup> One of them is as stated in QS. al-Ahzab verse 35:

إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّابِغِينَ وَالصَّابِغَاتِ وَالْحَفَاطِينَ وَالْحَفَاطَاتِ وَالذَّكِرِينَ وَالذَّكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا

*“Indeed, Muslim men and women, believing men and women, obedient men and women, truthful men and women, patient men and women, humble men and women, charitable men and women, fasting men and women, men and women who guard their chastity, men and women who remember Allah often, for them Allah has prepared forgiveness and a great reward.”*

Judging from the context in which it was revealed, the above verse is Allah's response to the concerns expressed by Ummu 'Immarah al-Anshari to the Prophet Muhammad (peace be upon him). She said that in the various provisions mentioned, most of them seemed to be addressed to men, while women were rarely mentioned explicitly. In response to this, this verse was revealed as a form of divine affirmation and justice that includes men and women equally.<sup>26</sup> According to al-Baidhowi, this verse is a form of Allah's promise to women for their obedience and righteous deeds. Thus, the Qur'an affirms that both men and women have the same position as active agents in doing good deeds, and both are entitled to the promised

<sup>24</sup> Ibid., hlm. 24-25.

<sup>25</sup> Ali Ahmad, Ismail Birrur Rohman, and Ahmad Fauzi, “Eksistensi Kesetaraan Gender Dalam Kepemimpinan Perspektif Said Ramdhan Al-Buthi,” *Syariah: Journal of Fiqh Studies* 3, no. 1 (2025): 97–116, <https://doi.org/10.61570/syariah.v3i1.136>.

<sup>26</sup> Q. Shaleh dan A. Dahlan, *Asbabun Nuzul Latar Belakang Historis Turunnya Ayat-Ayat Al-Qur'an* (Bandung: Diponegoro, 2017), hlm. 430.

reward.<sup>27</sup> The discussion of equality and dignity between men and women is also reaffirmed in Q.S. al-Hujurat verse 13:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ ۗ إِنَّ اللَّهَ عَلِيمٌ حَبِيرٌ

*“O mankind, indeed We have created you from a male and a female and made you into nations and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted.”*

The above verse emphasizes that human dignity is not measured by any aspect, but rather by one’s piety towards Allah SWT. Ali as-Shabuni explains that a person’s virtue is not determined by their lineage or social status, but rather by the degree of piety they possess.<sup>28</sup> Therefore, piety becomes the primary measure for determining nobility in the sight of Allah SWT, without distinguishing whether a person is male or female.

When the above verses are applied to the relationship between husband and wife, both have equal status and equally active roles in building family life. Husbands and wives are seen as partners who complement each other and work together to achieve mutual good. The noble goal of marriage is to create a household filled with tranquility (*sakinah*), warmth of love (*mawaddah*), and compassion (*rahmah*), as explained in Q.S. ar-Rum verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۗ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

*“Among His signs is that He created for you mates from yourselves, that you may find comfort in them. He has placed love and compassion between you. Indeed, in this are signs for a people who give thought.”*

According to Husein Muhammad, Q.S. ar-Rum verse 21 is one of the foundations that affirms equality between men and women. This

<sup>27</sup> Nashiruddin Abi Sa’id Abdullah bin Umar bin Muhammad as-Syairozi Al-Baidhowi, *Tafsir Al-Baidhowi Al-Musamma Anwar at-Tanzil Wa Asroru at-Ta’wil* (Beirut: Dar al-Kutub al-Ilmiyah, 1999), hlm. 246.

<sup>28</sup> Muhammad Ali As-Shabuni, *Shofvat At-Tafasir* (Beirut: Dar al-Quran al-Karim, 1981), hlm. 236-237.

verse does not indicate that women were created solely for or from men, but rather describes that humans were created in pairs, men for women and women for men, with mutual attraction between them.<sup>29</sup> Therefore, this verse cannot be used as a basis for interpretations that place women in a subordinate position in domestic life. Meanwhile, Faqihuddin Abdul Kodir interprets this verse as a description of the common goals and ideals of men and women in marriage, namely to achieve tranquility, peace, and happiness together amid the dynamics of a life full of challenges.<sup>30</sup>

Various interpretations of the above verses show that scholars are trying to understand religious texts in a more balanced and complementary way. The *mubadalah* approach doesn't just rely on men's experiences, but also takes women's experiences into account, because both are equally addressed by the Qur'an and Hadith. This perspective reflects an advanced method of examining religious texts, which aims to produce fair Islamic law, gender equality, guarantee human rights, and protect vulnerable groups in family life.

In the context of male-female relations, the interpretation of *mubadalah* with its principles and working methods plays an important role in shaping the construction of Islamic family law reform in Indonesia. This is because several provisions in Islamic family law that are still textual-normative in nature have the potential to hinder the realization of an ideal family that is full of tranquility (*sakinah*), warmth of love (*mawaddah*), and compassion (*rahmah*). Such a textual-normative perspective can structurally weaken the position of women, placing them in an unequal position in domestic relationships.

## **The Concept of *Mubadalah* and Human Rights**

The presence of the concept of *mubadalah*, with its main principles emphasizing the value of reciprocity, has made a significant contribution to understanding human relationships in general, and family relationships in particular. Through the *mubadalah* interpretive approach, which views each individual as a being with their own existence and role, a more universal and mutually respectful Islamic legal construct has emerged, highlighting the values of equality, justice, and non-discrimination. Thus, the concept of *mubadalah* is not only in

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<sup>29</sup> Muhammad, *Fiqh Perempuan*, hlm. 78-79.

<sup>30</sup> Kodir, *Qira'ah Mubadalah*, hlm. 333.

line with Islamic teachings at the ideal and normative levels, but also in harmony with the principles of human rights inherent in every human being, both male and female, whose existence is universally recognized and must be protected.<sup>31</sup> More profoundly, the concept of human rights covers various important aspects that aim to protect and guarantee respect for the right to life of every individual.

1. Civil and political rights, which include the basic freedoms of every human being to live in peace and independence. Both men and women have the same rights to feel safe, express themselves, and develop their potential. Furthermore, both have the right to freely express their opinions, including in matters of belief, and have equal rights to participate in choosing leaders they trust.
2. The right to economic, social, and cultural well-being is a form of guarantee that every human being can fulfill their basic needs and develop with dignity. Every individual has the right to obtain decent work to support their livelihood, receive a quality education, have adequate housing, and obtain adequate health services. In short, both men and women have the same rights to enjoy life with a decent and humane standard of well-being.
3. The right to non-discrimination is a fundamental principle that affirms the value of equality in every human being. This means that no human being is superior or inferior to another, whether male or female. Everyone has the right to fair and equal treatment before the law and in everyday life. Factors such as skin color, religion, gender, race, or physical condition cannot be used as valid reasons to discriminate against a person's rights and human dignity.
4. The right to participation and involvement, affirming that every individual has the right to be actively involved and have their voice heard in every decision-making process that affects their shared life, both within the family environment and in the wider social sphere.
5. The right to freedom and autonomy, namely that every human being has the right to determine their own life choices, whether in terms of beliefs, views, or ways of living. This right affirms that every individual has the right to independently manage and make

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<sup>31</sup> Hanif Maulana Yusuf et al., "Hak Asasi Manusia (HAM)," *Advances In Social Humanities Research* 1, no. 5 (2023): 511–19, <https://doi.org/10.46799/adv.v1i5.58>.

decisions about themselves, as long as those choices do not cause harm to others.

6. The right to state responsibility is a right that is realized through the tangible protection of its citizens. In this case, the state has an obligation to be an active protector by formulating policies and regulations that uphold human rights values, prevent various forms of violations, and ensure easy and fair access for every citizen when their rights are violated.<sup>32</sup>

In principle, the concept of *mubadalah* and the principles of human rights (HAM) are similar in substance. Both seek to uphold and protect the rights inherent to every individual so that they are not taken away or ignored. In a broader context, the *mubadalah* approach, with all its values and objectives in building relations between men and women, has similarities with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which also seeks to protect and eliminate all forms of discrimination against women.<sup>33</sup> The principles upheld by CEDAW, such as equality, non-discrimination, and state responsibility, are in line with the values promoted by the concept of *mubadalah*, namely respect for dignity, justice, and benefit in building a mutually respectful relationship between men and women. Ultimately, these principles are not only relevant in the context of relationships between men and women in general, but also apply in the more specific sphere of Islamic family law, such as the relationship between husband and wife in marriage, in order to create a household filled with tranquility (*sakinah*), warmth of love (*mawaddah*), and compassion (*rahmah*).

In the context of Islamic family law, the *mubadalah* approach seeks to reinterpret religious texts in a more equitable, contextual, and humane manner. This approach opens up space for women's experiences, which have often been neglected in classical interpretations, thus becoming an important step in making *mubadalah* one of the epistemological foundations of Islam that is in line with the principles of human rights. Through its values that emphasize reciprocity, equality, justice, and respect for human dignity, the concept

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<sup>32</sup> Yusuf et al, hlm. 515-516.

<sup>33</sup> Asnawi and Ismail, "Discrimination against Wife in the Perspective of CEDAW and Islam Mubādalāh, hlm. 257.

of *mubadalah* shows that the core teachings of Islam are not actually at odds with the spirit and universal values of human rights.

### **Implementation of the Concept of *Mubadalah* as the Basis for the Protection of Human Rights in Islamic Family Law in Indonesia**

The concept of *mubadalah* as an approach to interpretation in Islam presents a more humane, fair, and relevant framework of understanding in the context of modern life, especially in the context of Islamic family law in Indonesia. This approach places men and women as two interconnected subjects who have equal responsibilities, rights, and roles in building their household and social lives. By upholding the values of reciprocity, justice, equality, and benefit, the concept of *mubadalah* seeks to reconstruct the understanding of religious texts that have often been interpreted unilaterally and with gender bias.

In the context of Islamic family law in Indonesia, the principles of *mubadalah* are of great significance in strengthening the protection of human rights, especially for women and children. Through a perspective of mutual respect and justice, the concept of *mubadalah* encourages the renewal of family law to be more sensitive to social dynamics and current human needs, without neglecting the core values of Islamic teachings.

Several crucial issues that can be addressed through *mubadalah* as a basis for protecting human rights in Indonesian Islamic family law include child marriage, polygamy, financial responsibility, child custody (*hadhanah*), and inheritance distribution. Each of these issues requires a more open and fair interpretation so that Islamic family law can truly become an instrument that brings benefits and guarantees the dignity of every family member, whether male, female, or child, equally.

#### **1. Child Marriage**

The debate on Islamic family law issues in Indonesian society is still characterized by a dichotomous view. In many cases, society tends to prioritize religious legitimacy over positive law, especially when dealing with issues of sexual morality, such as pregnancy outside of marriage. Muhammad Latif Fauzi highlights this phenomenon by stating that most Indonesians judge the validity of marriage from a religious perspective, rather than from a formal

legal standpoint.<sup>34</sup> This situation also has an impact on the practice of child marriage, which is considered valid and acceptable, even though the state has legally set the minimum age for marriage at 19 years for both men and women. Therefore, the interpretation of religious texts related to marriage needs to be reexamined in depth in order to address the issue of child marriage and its impact on domestic relations.

In classical Islamic law, child marriage is considered to have a basis of legitimacy that refers to several religious sources, both from the Qur'an and the Hadith. One of the verses that is often used as the legal basis for the validity of child marriage in the classical view is Q.S. at-Thalaq verse 4:

وَالَّذِي يَبَسِّنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّذِي لَمْ يَحِضْنَ وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا

*“As for women who are no longer capable of menstruating (menopausal) among your wives, if you are in doubt (about their waiting period), then their waiting period is three months. The same applies to women who do not menstruate (who are not yet mature). As for pregnant women, their waiting period lasts until they give birth. Whoever fears Allah, He will make things easy for them in their affairs.”*

Explicitly, the above verse explains the *iddah* period for women who have reached menopause and for young women who have not yet experienced menstruation, which is three months. From this explanation, some scholars understand that marriages involving children at an early age are considered valid according to religious law. In fact, Ibn Mundzir mentions that this has become an agreement among fiqh scholars.<sup>35</sup> In addition, the justification for the practice of child marriage is often linked to the hadith that narrates the marriage of the Prophet Muhammad to Aisha, where it is mentioned that Aisha was married at the age of six and began living with the Prophet Muhammad at the age of nine.

<sup>34</sup> Pidato Penguukuhan Guru Besar Prof. Dr. Muhammad Latif Fauzi, SHI., M.Si., M.A., dalam Bidang Pemikiran Hukum Keluarga Islam, disampaikan di Hadapan Sidang Senat Terbuka Universitas Islam Negeri Raden Mas Said Surakarta, tanggal 15 April 2025.

<sup>35</sup> Muhammad, *Fiqh Perempuan*, hlm. 149.



However, when viewed from the perspective of *maqasid as-Syari'ah*, which also forms the methodological basis of the mubadalah approach to interpretation (*maqasid as-Syari'ah cum-mubadalah*), the practice of child marriage based on religious legal legitimacy actually contradicts the main objectives of Islamic sharia itself. From the perspective of *hifz ad-Din* (preserving religion), child marriage can hinder their ability to understand and practice religious teachings, especially those related to ethics and morals in relationships. From the perspective of *hifz al-'Aql* (preserving reason), child marriage has the potential to interrupt the process of education and learning, thereby hindering intellectual development and personal potential. From the perspective of *hifz al-Mal* (preserving wealth), couples who marry at an early age are generally not yet economically independent, unable to earn a decent income, and even at risk of falling into financial difficulties or dependence on others.

Meanwhile, from the perspective of *hifz al-'Irdh wa an-Nasl* (preserving honor and lineage) and *hifz an-Nafs* (preserving life), child marriage can have adverse effects on their physical, mental, and reproductive health.<sup>36</sup> Thus, from the perspective of (*maqasid as-Syari'ah cum-mubadalah*), child marriage is not in line with the principles of protection, benefit, and preservation of human dignity, which are at the core of Islamic teachings. Therefore, the concept of *mubadalah* emphasizes mutual maturity that supports a minimum marriage age of 19 years for both male and female spouses in order to protect the interests of children who marry.

## 2. The Practice of Polygamy in Marriage

The dichotomous view of family law in Indonesia also contributes to the prevalence of polygamy in society. In principle, marriage is based on the principle of monogamy. However, Law No. 1 of 1974 on Marriage allows husbands to practice polygamy under strict conditions, including the consent of the wife and the

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<sup>36</sup> Faqihuddin Abdul Kodir, *Fiqh Al-Usrah Fondasi Akhlak Mulia Dalam Hukum Keluarga* (Bandung: Afkaruna.id, 2024), hlm. 78-79.

husband's ability to ensure that the needs of his wives and children are adequately met.<sup>37</sup>

Similarly, Article 59 of the Compilation of Islamic Law (KHI) stipulates that a husband who wishes to marry more than one wife must obtain permission from the Religious Court. In addition, the KHI also sets strict additional conditions for the practice of polygamy, such as when the wife is infertile, or her physical and mental condition does not allow her to carry out her household duties properly.

In the author's view, the existence of polygamy provisions with various strict conditions indicates that this practice has the potential to cause harm or negative impacts on domestic life. Husein Muhammad, citing the opinion of Wahbah Zuhaili, asserts that a marriage that has the potential to cause suffering or injustice to the wife is haram, even if the marriage is intended to avoid adultery or infidelity.<sup>38</sup>

From the perspective of *mubadalah*, which is based on the principle of reciprocity, there are three important things to consider when addressing the issue of polygamy. First, the principle of reciprocity demands balance in terms of patience as a noble character trait beloved by Allah SWT. Thus, not only are wives expected to be patient in accepting their husbands' decision to practice polygamy, but husbands must also exercise restraint by choosing to be faithful and content with one wife as a form of noble patience. Second, women have the full right to refuse polygamy if it has the potential to cause harm, whether mentally, economically, or socially, to themselves or their families. Third, if the husband still insists on practicing polygamy, women have the right to file for divorce in order to protect their dignity and well-being.<sup>39</sup>

### 3. Responsibility for Financial Support in the Household

Although some Indonesians still place more trust in religious legal authorities than in national family law, the concept of *mubadalah* is significant in efforts to reform Islamic family law in

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<sup>37</sup> Esther Masri, "Poligami Dalam Perspektif Undang-Undang Nomor I Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (KHI)," *Jurnal Krtha Bhayangkara* 13, no. 2 (2019): 223–41, <https://doi.org/10.31599/krtha.v13i2>.

<sup>38</sup> Husein Muhammad, *Poligami* (Yogyakarta: IRCiSoD, 2020), hlm. 85-86.

<sup>39</sup> Kodir, *Qira'ah Mubadalah*, hlm. 419-423.

Indonesia. In the context of domestic relations, classical Islamic law strictly and hierarchically distinguishes between the roles and obligations of husbands and wives. In contrast to classical provisions, the concept of *mubadalah* emphasizes the principle of reciprocity based on the spirit of mutual assistance (*ta'awun*) and treating one's spouse kindly (*mu'asyarah bi al-Ma'ruf*). From this principle, an understanding has grown that women have the space and right to play an active role, including in working and sharing the economic burden of the family. However, when a woman is performing her reproductive functions, which prevent her from working optimally, the responsibility for providing for the family shifts entirely to the husband.<sup>40</sup> Thus, from the perspective of *mubadalah*, providing for the family is understood as a shared responsibility that is carried out fairly and proportionally, not a one-sided burden borne solely by men.

#### 4. Child Custody (*hadbanah*)

From a *mubadalah* perspective, the family is understood as a trust that must be carried out jointly by all its members. Responsibilities within the family are not merely obligations, but rather a form of moral commitment carried out with good intentions and in a positive manner, in order to avoid harm and bring about goodness for all. This also includes the aspect of child rearing, which in the perspective of *mubadalah* cannot be entirely imposed on women simply because they are mothers. Instead, child rearing is a shared responsibility between fathers and mothers, where both are obliged to play an active role in educating, guiding, and shaping the character of their children.<sup>41</sup> Thus, women's emotional closeness to children is not a reason for men to relinquish their responsibility for the care and education of children. In addition, *mubadalah* emphasizes that the best interests of the child are the top priority. This means that child care is not solely a matter of the authority of the father or mother, but rather how to ensure that children can grow and develop into good and prosperous individuals.

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<sup>40</sup> Faqihuddin Abdul Kodir, *Fiqh Al-Ushrah Fondasi Akhlak Mulia Dalam Hukum Keluarga* (Bandung: Afkaruna.id, 2024), hlm. 150.

<sup>41</sup> Kodir, *Qira'ah Mubadalah*, hlm. 432.

## 5. Formulation of Inheritance Distribution

The principle of reciprocity, which is central to the concept of *mubadalah* in understanding Islamic family law, also covers inheritance issues. In classical Islamic law and the Compilation of Islamic Law (KHI), Islamic inheritance provisions are often considered to not fully take into account the position and existence of women, especially in the two-to-one (2:1) distribution, where men receive a larger share than women.<sup>42</sup>

Through a reciprocal approach and in-depth study of classical Islamic literature, the concept of *mubadalah* explains that this provision arose from the social context of the past, when men bore economic responsibility for their wives and families, while women had no similar obligations. Therefore, from the perspective of *mubadalah*, the two-to-one (2:1) division of inheritance is not an absolute law, but rather functional and contextual. In certain social situations, where women also play an active role in supporting the family economy, the distribution of inheritance can be given in an equal formula, namely one to one (1:1) as a form of justice that is in line with Islamic values that uphold benefit and equality.<sup>43</sup>

Overall, the application of the concept of *mubadalah* to the five issues of Islamic family law above confirms the direction of legal reform that is fair and in line with the perspective of human rights. In the case of child marriage, the concept of *mubadalah* emphasizes the importance of mutual maturity in marriage and protection for children. Regarding polygamy, the concept of *mubadalah* promotes the principles of justice and equality, even rejecting polygamy that is detrimental to women. Meanwhile, in matters of financial support, the concept of *mubadalah* views financial support not as a one-sided burden, but as something that can be shared fairly.

Meanwhile, in terms of child custody, the concept of *mubadalah* emphasizes that fathers and mothers have equal obligations in educating, guiding, and shaping their children's characters. In addition,

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<sup>42</sup> Muhammad Asyrofudin et al., "Contextualization of the 2:1 Distribution of Inheritance from the Perspective of Mubadalah," *Syariah: Journal of Fiqh Studies* 3, no. 2 (2025): 45–62, <https://doi.org/10.61570/syariah.v3i2>.

<sup>43</sup> Kodir, *Qira'ah Mubadalah*, hlm. 265-269.

*mubadalah* also emphasizes that the best interests of the child are the top priority. In the distribution of inheritance, the concept of *mubadalah* opens up opportunities for *ijtihad* that are relevant to the modern socio-economic context. Thus, the concept of *mubadalah* is not merely an alternative interpretation of religious texts, but also plays a real role in realizing Islamic family law that is inclusive, fair, gender-equitable, and consistent with human rights values.

## Conclusion

The application of the concept of *mubadalah* in Islamic family law in Indonesia shows a direction of legal reform that is in line with the principles of human rights. This concept emphasizes reciprocity, justice, and shared responsibility between men and women, which is reflected in several issues of Islamic family law, such as child marriage, the practice of polygamy, financial responsibility, child custody, and the division of inheritance. First, the concept of *mubadalah* emphasizes the importance of reciprocity in the minimum age of marriage of 19 years and the protection of children in marriage. Second, it promotes justice and equality in polygamy. Third, it makes financial support a shared responsibility. Fourth, it emphasizes joint custody and the best interests of the child. Fifth, it opens up room for *ijtihad* in the distribution of inheritance in accordance with the modern socio-economic context. Thus, the concept of *mubadalah* is not merely an alternative interpretation, but a normative basis for realizing Islamic family law that is inclusive, gender-equitable, and oriented towards the protection of human rights.

Academically, this research presents a new perspective by integrating the concepts of *mubadalah* and human rights into Islamic family law, creating a progressive approach that is responsive to contemporary issues such as child marriage, polygamy, and the rights of women and children. The contribution of this research lies in providing a normative framework that can serve as the basis for reforming Islamic family law in Indonesia, which is not only based on religious texts, but also upholds dignity, justice, gender equality, and the protection of human rights.

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