



The Role of Fiqh Principles in Resolving Contemporary Family Issues

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Abstract: This article examines the role of fiqh principles in addressing contemporary family issues arising from globalization, technological development, and changing social dynamics that increasingly challenge the realization of a *sakinah, mawaddah, wa rahmah* family. Using a qualitative approach with a literature study design, the research analyzes primary sources, including *Ihya' Ulumiddin* and *Al-Faraidul Bahiyah*, supported by books, journal articles, and other scholarly works on Islamic family law. Data were collected through library research and analyzed descriptively to identify the application of relevant fiqh principles to contemporary family disputes. The findings reveal three principal fiqh maxims that provide a methodological framework for judicial decision-making. First, *la darara wa la dirara* justifies divorce in cases of domestic violence to eliminate harm. Second, *al-mashaqqah tajlib al-taysir* enables judges to prioritize children's welfare by allowing flexibility in child custody decisions when strict legal rules create hardship. Third, *dar'u al-mafasid muqaddam 'ala jalb al-masalib* guides judges in balancing competing interests in marriage dispensation cases by prioritizing the prevention of greater harm over the attainment of potential benefits. These principles demonstrate that fiqh maxims remain relevant as adaptive legal instruments for resolving contemporary family issues while preserving the objectives of Islamic law.

Abstrak: Artikel ini mengkaji peran kaidah fikih dalam menyelesaikan permasalahan keluarga kontemporer yang muncul akibat globalisasi, perkembangan teknologi, dan perubahan dinamika sosial yang semakin mempersulit terwujudnya keluarga yang *sakinah, mawaddah, wa rahmah*. Penelitian ini menggunakan pendekatan kualitatif dengan desain studi kepustakaan. Sumber data primer meliputi kitab *Ihya' Ulumiddin* dan *Al-Faraidul Bahiyah*, yang didukung oleh buku, artikel ilmiah, dan jurnal yang membahas hukum keluarga Islam. Data dikumpulkan melalui studi kepustakaan dan dianalisis secara deskriptif untuk mengidentifikasi penerapan kaidah fikih yang relevan dalam penyelesaian sengketa keluarga kontemporer. Hasil penelitian menunjukkan bahwa terdapat tiga kaidah fikih utama yang menjadi kerangka metodologis bagi hakim dalam memutus perkara. Pertama, *la darara wa la dirara* menjadi dasar pembenaran perceraian dalam kasus kekerasan dalam rumah tangga sebagai upaya menghilangkan kemudharatan. Kedua, *al-masyaqqah tajlib al-taysir* memberikan ruang bagi hakim untuk mengutamakan kepentingan terbaik anak melalui fleksibilitas dalam penetapan hak asuh ketika penerapan aturan secara formal menimbulkan kesulitan. Ketiga, *dar'u al-mafasid muqaddam 'ala jalb al-masalib* menjadi pedoman bagi hakim dalam menimbang kepentingan yang saling bertentangan pada perkara dispensasi perkawinan dengan mengutamakan pencegahan kemudharatan yang lebih besar daripada perolehan kemaslahatan yang bersifat potensial. Temuan ini menunjukkan bahwa kaidah fikih tetap relevan sebagai instrumen hukum yang adaptif dalam menyelesaikan permasalahan keluarga kontemporer sekaligus mewujudkan tujuan syariat Islam.

Keywords: Fiqh Principles; Contemporary Family Issues; Islamic Family Law

Introduction

The influence of technology and social media sometimes makes it difficult to create harmony in family life, such as the occurrence of domestic violence, early marriage divorces, and child custody disputes. Considering these cases, there needs to be a way to resolve family problems. Therefore, Islamic family law plays a crucial role in building household harmony with the principle of *sakinah*

mawaddah warahmah (Arifin, 2023) to respond to these dynamics. Hence, Kaidah fikih emerges as a fundamental foundation in solving problems because it is rooted in universal principles to respond to the dynamics that occur without violating the provisions outlined by Allah SWT (Arifin, 2022).

Social media shapes social identity through online social interaction and communication, building empathy and active involvement in social issues (Safitri, 2025). Social media also becomes a new space for public participation (Buckingham, 2013). In social interaction, Islamic law acts as a balance between virtual life and real life; this is a resistance to freedom in interaction so that daily life is carried out according to legal principles, thereby successfully creating a harmonious life guided by syari'at (Samsul Arifin, 2023). Forming a harmonious family according to syari'ah guidance is the goal of a marriage. Everyone wants to build a family that is sakinah mawaddah warahmah (Rizal et al., 2024).

However, Islamic law, which serves as a balance in the way interactions occur on social media, needs to be critically examined. In social media, many people display their private lives, even their family lives. This leads to domestic violence, early-age divorce, and custody disputes. The harmonious family life that is aspired to instead becomes a disaster. Islamic family law, which is the fundamental basis for building a harmonious family, does not provide a significant response to these issues. The response of Islamic family law to current changes is still limited, compounded by a lack of literature related to family law. Family law issues require literature that responds to family dynamics according to current problems (Arifin & Abrari, 2026).

In this regard, the role of fiqh principles needs to be applied in forming new laws amid contemporary family dynamics. Fiqh principles serve as the subject in resolving contemporary family issues. There are three basic principles used; first, *La dharara wa la dirara* "no harm should be inflicted on oneself or others." Second, *al musyaqqah tajlib at-taysir* "difficulty brings ease." Third, *darul mafasid mukaddamul ala jalbil masalih* "preventing harm takes precedence over bringing benefits." (Al-Qasim, 2009)

Therefore, this qualitative research with critical analysis is considered significantly urgent to discuss contemporary family issues using fiqh principles as an analytical tool to address the problems. It is hoped that this research will contribute to those who are confused in seeking the legal basis.

Method

This research uses a qualitative approach with a literature study design. The data sources in this study come from primary and secondary sources. Primary sources consist of books such as *Ihya' Ulumiddin* and *Al-Faraidul Bahiyyah*. Secondary sources include books, scientific journals, and articles discussing Islamic family law and modern marriage issues. Data collection techniques are through literature review. The library data is analyzed to compile a theoretical framework of applicable fiqh principles. This technique is chosen so that the data obtained is in-depth and contextual. The data obtained is described thematically, then analyzed using fiqh principles. The analysis process is carried out by separating relevant data, then narrating it in the form of descriptive analysis, and drawing conclusions by linking marriage issue data to relevant fiqh principles. This approach ensures that the legal solutions offered are not detached from social reality while still adhering to shari'ah principles

Results and Discussion

Relevant Fiqh Principles in addressing marriage issues

The relevance of fiqh maxims in resolving the dynamics of contemporary marriage includes, among others ;

1. *La dhara wa la dirara* (it is not permissible to harm oneself or others)

This principle aims to realize the purpose of law, which is for the benefit by rejecting all harm, even harm that may be caused by beneficial things must be rejected (Buyana, 2014). It means that all actions that cause dharar (harm) either to oneself or to others must be abandoned or eliminated. Prophet Muhammad SAW strongly forbade acting carelessly without considering the consequences that will arise from one's actions. Based on the hadith "there should be no harm and no harming others" (HR. Malik, Ahmad, Ibnu Majah, Hakim, Baihaqi, and al Daruquthi.)

This principle asserts that harm resulting from a decision or action must be eliminated. In the context of marriage, this principle functions to prevent damages caused within the marriage. For example, in a marriage case involving a divorce petition due to domestic violence (KDRT). In dealing with such cases, a judge can apply the principle *La dhara wa la dirara* (one must not harm oneself or others), thereby strengthening the divorce ruling due to domestic violence. This highlights the importance of legal flexibility for judges' decisions for the sake of public interest (Sabani, 2022).

2. *al musyaqqah tajlib at-taysir* "difficulty brings ease"

This principle seeks to provide ease in acting during times of difficulty. However, not all difficulties bring ease because everyone experiences difficulties and their difficulties vary (Nasution, 2020). This does not mean permitting everything. According to al-Ayatibi, *musyaqqah* is divided into two groups;

- a. *Ordinary masyaqqah*, which refers to all difficulties that can be undertaken without obstacles or harm, such as difficulties in performing obligatory worship, earning a living, jihad, and so forth. Such difficulties do not demand legal ease in their application because they aim to preserve worldly welfare only (Agus 2021).
- b. *Extraordinary masyaqqah*, which refers to difficulties that cause suffering to the extent that they cannot be borne and cause harm so that they are not beneficial (Nasrullah, 2019).

The criteria of *al-masyaqqah* that can lead to ease under the following conditions (Sari, 2022):

- a. Difficulties that do not contradict the text; if they do contradict, alternative actions must be determined. If there is a definitive ruling (*nash*) that applies but difficulties arise in its implementation, then the concept of that rule is suspended, and it is recommended to seek other alternatives so as not to contradict the *nash* law (from the *al-Qur'an* or *al-Hadith*).
- b. Difficulties that are beyond human capability.
- c. Difficulties that do not deviate significantly from worship, for example, fatigue when about to perform prayer; such matters cannot constitute *masyaqqah* because it would lead to neglecting obligations.
- d. Difficulties not arising from sharia provisions, for example, difficulty in jihad, undergoing stoning due to zina, and so forth.

Meanwhile, other scholars divide *masyaqqah* based on the severity of the difficulty into three levels (H. A. Djazuli, 2019):

- a. *Al-Masyaqqah al-`Azhimah*, such as fear of losing life and/or limbs, which causes one to be unable to perform worship perfectly. *Masyaqqah* brings about concessions.
- b. *Al-Masyaqqah al-Muthawasithah*, where consideration is required in granting concessions because if it tends to feel heavy, concessions are allowed; otherwise, concessions are not permitted.

- c. Al-Masyaqqah al-Khafifah, for example feeling hungry during fasting, feeling tired during tawaf and sa'i, feeling dizzy during rukuk and sujud, and so on. This kind of masyaqqah can be easily overcome by being patient in performing worship. Because the benefits for this world and the hereafter reflected in worship are more important than the concessions needed in masyaqqah.
3. The current issue in marriage is the provision and child custody at the time of divorce. However, it is still debatable even though it is regulated in the Compilation of Islamic Law regarding who has the right to custody of the child. Article 105 of the KHI states that children under 12 years old have custody rights that fall to the mother unless there are reasons that endanger the child (RI, 2018). Therefore, in this case, the role of the judge is needed to determine who has the right to custody. Hence, the fiqh principle suggests that the child's welfare must be *considered*.
4. *Darul mafasid mukaddamul ala jalbil masalih "preventing harm is prioritized over bringing benefits"*

The principle of *darul mafasid mukaddamul ala jalbil masalih* "preventing harm is prioritized over bringing benefits" is a derivative of the main principle *adhararu yuzalu* "difficulty must be removed." The meaning of this principle is to avoid things that can harm or have a negative impact on others or oneself (Prasetya, 2021). This principle also strives to realize the purpose of law, which is for the welfare by rejecting all harm, even harm that might be caused by beneficial things must be rejected (Buyana, 2014). This means that all actions that cause *dharar* (harm), whether to oneself or others, must be abandoned or eliminated. Prophet Muhammad SAW strongly forbade acting recklessly without considering the consequences of one's actions. Based on the hadith "there should be no harm and no harming others" (HR. Malik, Ahmad, Ibnu Majah, Hakim, Baihaqi, and al Daruquthi.)

This principle asserts that harm caused by a decision or action must be eliminated. In the context of marriage, this principle functions to prevent damages caused within the marriage. For example, in cases of divorce at an early age due to marriage dispensation granted by the court, a judge must consider the damages and problems that will arise afterward; if the damages outweigh the benefits, the marriage dispensation request is rejected. For instance, there is concern about divorce occurring in early-age marriages. This is where legal flexibility is important for the judge's decision for the sake of welfare (Sabani, 2022).

Issues of Contemporary Marriage Dynamics

1. Domestic Violence (KDRT)

Domestic Violence (KDRT) is any act against a person, especially women, that causes physical, sexual, psychological suffering, and/or domestic neglect, including threats, coercion, or unlawful deprivation of liberty within the household (Republic of Indonesia, 2004). KDRT can take the form of physical, psychological, sexual violence, or domestic neglect. These actions can have serious impacts on the physical and mental health of the victim and disrupt family harmony (Indonesia, 2004).

Domestic violence includes physical, psychological, sexual violence, and domestic or economic neglect;

a. Physical Violence

Physical violence is an act that causes injury, harm, or health disorders to the victim, resulting in trauma. It includes hitting, choking, kicking, pushing, and other actions that cause physical suffering. Physical violence in cases of domestic violence (KDRT) is easily recognizable because it leaves marks on the victim's body.

b. Psychological Violence

Psychological violence has quite serious impacts. This psychological violence causes harm to the victims, the perpetrators themselves, and society. The negative impact of psychological violence on victims includes psychological suffering (guilt, loss, trust

issues, stress, depression, trauma, even insanity can be suffered by victims of violence). Meanwhile, in children, it will have a very significant impact on the child's behavior (Fanani, 2018).

c. Sexual Violence

Sexual violence is the act of forcing sexual intercourse or sexual activity that is unwanted by the victim. In cases of sexual violence within the household, it often goes unreported due to the assumption that sexual relations in marriage are an absolute obligation. However, any form of coercion, harassment, or sexual exploitation within the household remains a violation of the victim's rights. Many victims do not realize that they have the right to refuse, even within a husband and wife relationship (Sitompul, 2025).

d. Household Neglect.

Domestic violence is not only physical violence but also relates to psychological (mental) violence, which is mental pressure exerted by one partner. Forms of psychological (mental) violence include neglect within the household. Physical violence such as abuse is easy to recognize and can be transparently proven. However, household neglect can also be proven by the fact that the husband, as the head of the family, allows the life of his wife and children to be threatened, making their future uncertain (Asliani, 2023).

Data on Gender-Based Violence Against Women (GBVtW) Based on complaints received by Komnas Perempuan amounting to 3,682 with the following presentation;

No	Case Type	Presentation
1	Physical Violence	18,93%
2	Psychological Violence	32,48%
3	Sexual Violence	37,51%
4	Economic Violence	11,07%

<https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-peluncuran-catatan-tahunan-kekerasan-terhadap-perempuan-2025>

2. Child Custody

The Civil Code regulates marriage. Marriage is a legitimate bond between a man and a woman for a considerable period. With marriage, a person will be subject to civil relations as stated in Article 26, which declares that there are legitimate civil relations with the condition that the requirements set forth in the Civil Code must be fulfilled. Another article also mentions that marriage can be dissolved for four (4) reasons, namely;

- 1) The death of one party.
- 2) The absence of the husband or wife for 10 years followed by a new marriage.
- 3) The judge's divorce decision after separation of bed and board and civil registration.
- 4) The demand of one party for divorce in the marriage.

At the time of separation or divorce, there are still civil obligations attached, namely related to child custody. The provisions for child custody are explained in the Compilation of Islamic Law Articles 105 and 156 (RI, 2018);

- a. When the child is still in a state of not being mumayyiz or under 12 years old, child custody is assigned to the mother.
- b. When the child is already mumayyiz or over 12 years old, custody rights can be given to the child to choose to be cared for by the father or mother.
- c. The maintenance costs are borne by the father.

However, if the mother dies, custody rights follow the order stipulated in Article 156 of the KHI.

However, child custody can be revoked through the Religious Court based on the provisions of Law No. 1 of 1974 concerning marriage. The religious court can revoke guardianship rights if the parent is a drunkard, gambler, spendthrift, insane, neglects their duties towards the children, behaves badly, and abuses authority rights.

3. Marriage Dispensation

The conditions for a valid marriage are regulated in Law Number 1 of 1994, including material and formal requirements. Material requirements concern the prospective bride and groom themselves, while formal requirements relate to the procedures that must be fulfilled before and during the marriage. The material requirements themselves include those that apply generally to all marriages and those that apply specifically to certain marriages only (Asmin, 1986).

General material requirements include:

- a. There must be consent from both prospective spouses.
- b. The prospective spouse must be at least 19 years old.
- c. Not bound by marriage ties to another person except in cases permitted as regulated in Law Number 1 of 1974.
- d. The waiting period for women who have divorced is:
 1. 130 days for marriages ended due to death.
 2. 3 clean menstrual cycles or at least 90 days if ended due to divorce and menstruation is still occurring.
 3. 90 days if the marriage is dissolved due to divorce but no monthly visitation occurs.
 4. Waiting period until childbirth, if the widow is pregnant.
- e. No waiting period if there has never been sexual intercourse.
- f. Calculation of the waiting period starts from the date of the court decision that has permanent legal force for a divorce and from the day of death if the marriage ends due to death.

Specific material requirements apply:

- a. Not violating the marriage prohibitions as regulated in articles 8, 9, and 10 of Law number 1 of 1974, which include among others:
 1. Blood relations in a direct line of descent downwards and upwards.
 2. Blood relations in collateral lines.
 3. Milk kinship relations.
 4. Relations as aunt or nephew through the wife.
 5. Still bound by marriage ties to another person.
- b. Parental permission for those under 21 years old.

Formal marriage requirements include:

- a. Notification of the intention to marry to the marriage registrar.
- b. Announcement by the marriage registrar.
- c. Marriage conducted according to the religious law and beliefs of each party.

d. Marriage registration by the marriage registrar.

However, within society, some do not meet the material or formal marriage requirements, for example, their age has not reached 19 years, so marriage registration cannot be carried out. Such cases can be submitted for a marriage dispensation request to the religious court by the parents. In this case, the religious court may accept the request based on the fiqh principle *Addararu yuzalu* (harm must be eliminated), meaning that if the request is not legally granted by the state, it could have consequences for the family's life, such as not receiving legal protection rights when undesirable events occur. Therefore, the state, especially the religious court, is present to resolve these issues by granting marriage dispensations. Al Ghazali argues in the book *Ihya' Ulum ad-Din* that marriage dispensation is important for several reasons;

1. To obtain legitimate offspring,
2. To prevent fornication.
3. Pleasant and soothing to the soul.
4. Managing the household.
5. Effort to seek lawful sustenance.
6. Cultivating a sense of responsibility from the husband. (Hamid, 1989)

However, there are several mechanisms that must be carried out when submitting a marriage dispensation application by the parents.

1. Submit a request letter to the prameja to get an explanation on how to proceed with the case, how to make a request letter, and at the prameja, you can ask for help to have the request letter made.
2. The request letter that has been made and signed is submitted to the applicant sub-clerkship, and the applicant faces the first desk which will inquire about the case fees and write them on the power of attorney letter to pay it (SKUM).
3. Then the applicant faces the cashier by submitting the request letter and SKUM and pays the case fees.
4. After obtaining the SKUM paid receipt signature from the cashier and getting the case number, the applicant then faces desk II by submitting the request letter and the paid SKUM.
5. Then the process of resolving the marriage dispensation case is carried out at the Religious Court (Ahyani, 2016).

Marriage Dispensation Data at the Religious Court.

YEAR	NUMBER OF CASES	DATA STATUS
2024	1,035	Remaining
2025	56,162	Enter
2025	53,646	Cut
2025	2,962	Pull out
2025	589	Remaining

https://pusatdata.badilag.net/perkara/Pencarian_smart/direktoriDataset_form_download/8d63bcfb54e3c029647ac520a8633959228bbe300218db4740bc0ce1867092f5/1

The national commission against violence towards women recorded as many as 3,682 reports of domestic violence that have entered the divorce application stage in the Religious Court. Domestic violence as regulated in Law No. 23 of 2024 includes physical, psychological, sexual violence, as well as neglecting the family. If left continuously, these actions constitute unlawful acts and cause harm to the victims. Violence cannot be justified legally or religiously. Therefore, the authorized institution has a constitutional obligation to take quick, effective action and provide protection to the victims. In the realm of the religious court, judges are not only bound by positive law but also by substantive justice values that live within the Islamic community. Judges are required to be responsive and firm in delivering decisions, especially when maintaining the marital bond. It should not potentially increase the risk to the life and psychological safety of the victim. Thus, as a way of resolution, a judge's decision must be based on maqashid as syari'ah with the application of the fiqh principle *La dhara wa la dirara* (no harm to oneself or others). This principle serves as the conceptual basis that the purpose of marriage is *sakinah mawaddah warahmah* (tranquility, love, and mercy). When this purpose is lost and replaced by domestic violence, the marriage has caused *darar* or harm. Therefore, a divorce decision issued by a judge on the basis of domestic violence is not a form of marital failure but rather an implementation of syari'at to eliminate harm. This model places safety as the top priority, above the principle of formally maintaining the marriage.

Compilation of Islamic Law 105 establishes the principle of prioritizing the mother in holding custody rights over children who are not yet *mumayyiz* or under 12 years old. This principle aims to provide protection and maternal affection at an early age. However, in the practice of religious courts, realities often arise that cause *masyaqqah* or difficulties. For example, a mother who formally has custody rights may remarry, suffer from mental disorders, work as a migrant worker abroad, or be unable to meet the basic needs of the child. Forcing the child to remain under such custody could potentially cause new harm. Therefore, Islamic law provides room for adjustments through the principle of ease. As stated in the fiqh maxim *al musyaqqah tajlib at-taysir*, "difficulty brings ease." This maxim states that any law that causes extraordinary difficulty will be eased or facilitated by the shari'ah so that the law can run smoothly. In the realm of child custody rights, this maxim functions as an instrument for judges not to be trapped by legal formalities. When prioritizing the mother's principle actually causes difficulties for the child's growth and development, the judge is obliged to transfer custody rights as a form of *taysir* to realize the child's welfare.

The legal marriage age is 19 years for both males and females based on marriage law. This norm is established to prevent the negative impacts of early marriage, such as dropping out of education, poverty, and reproductive risks. However, on the other hand, religious courts receive many requests for marriage dispensation with urgent reasons, such as pregnancy out of wedlock or to prevent repeated acts of fornication. This situation places judges in a dilemma. Rejecting dispensation has the potential to cause social and psychological harm to the child. Therefore, to resolve this issue, judges can use a fiqh principle *Darul mafasid mukaddamul ala jalbil masalih* "preventing harm is prioritized over bringing benefits" as the legal basis. Because this principle provides methodological guidance that when there are two conflicting benefits, the greater one is prioritized. Likewise, when there are two conflicting harms, the lesser harm is chosen to avoid the greater harm. In the context of marriage dispensation, this principle obliges judges to carry out a *muzanah* process or weighing between the harms if the marriage is carried out and the harms if the marriage is not carried out.

Conclusion

There are three fiqh principles that serve as the foundational basis in resolving contemporary family issues; 1. *La dhara wa la dirara* (no harm to oneself or others). This principle serves as the conceptual foundation that the purpose of marriage is *sakinah mawaddah warahmah* (tranquility, affection, and mercy). When this purpose is lost and replaced by domestic violence (KDRT), the

marriage has caused harm or danger. Thus, a divorce decision made by a judge on the basis of domestic violence is not a form of household failure but rather an implementation of shari'a to eliminate harm. 2. *al musyaqqah tajlib at-taysir* ("difficulty brings ease"). This principle states that any law causing extraordinary difficulty will be eased or facilitated by shari'a so that the law can function smoothly. In the realm of child custody, this principle serves as an instrument for judges to avoid being trapped by legal formalities. When prioritizing the mother's right causes difficulties for the child's growth and development, the judge must transfer custody as a form of taysir (facilitation) to realize the child's welfare. 3. *Darul mafasid mukaddamul ala jalbil masalih* ("preventing harm takes precedence over bringing benefits"). This principle provides methodological guidance that when two benefits conflict, the greater benefit is prioritized. Similarly, when two harms conflict, the lesser harm is chosen to avoid the greater harm. In the context of marriage dispensation, this principle obliges judges to conduct a *muazanah* process or weighing between the harms of allowing the marriage and the harms of not allowing the marriage.

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