

A Review of Islamic Legal Philosophy on the Formation of Gender Roles

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Abstract

Gender roles in Muslim society cannot be separated from the philosophical foundations that shape them through the tradition of Islamic law. This article comprehensively analyses how Islamic legal philosophy, encompassing the concepts of maqashid al-shariah, ijtihad, maslahah, and justice, contributes to the formation, maintenance, and transformation of gender role constructions in both historical and contemporary contexts. Employing a qualitative-normative approach based on library research and a critical analysis of primary sources of Islamic law and recent academic literature, the study finds that the relationship between Islamic legal philosophy and gender roles is dialectical and non-monolithic. On the one hand, classical fiqh traditions often reinforce gender hierarchies through textual interpretation; on the other, a philosophical approach oriented towards maqashid opens opportunities for more egalitarian reinterpretation. In the contemporary context, a significant shift is visible as reformist scholars and Muslim intellectuals draw on the framework of Islamic legal philosophy to respond to demands for gender justice. The article concludes that Islamic legal philosophy, when understood comprehensively and non-reductively, has sufficient methodological capacity to accommodate the evolving dynamics of gender roles without compromising the fundamental normative principles of Islam.

Keyword : Islamic legal philosophy, gender roles, maqashid al-shariah, gender justice, contemporary ijtihad

Abstrak

Peran gender dalam masyarakat Islam tidak dapat dipisahkan dari fondasi filosofis yang membentuknya melalui tradisi hukum Islam. Tulisan ini menganalisis secara komprehensif bagaimana filsafat hukum Islam, yang mencakup konsep *maqashid al-syariah*, *ijtihad*, *maslahah*, dan keadilan, berkontribusi dalam membentuk, mempertahankan, serta mentransformasikan konstruksi peran gender, baik dalam konteks historis maupun kontemporer. Dengan menggunakan pendekatan kualitatif-normatif berbasis studi kepustakaan serta analisis kritis terhadap sumber-sumber primer hukum Islam dan literatur akademik mutakhir, kajian ini menunjukkan bahwa hubungan antara filsafat hukum Islam dan peran gender bersifat dialektis serta tidak bersifat tunggal. Di satu sisi, tradisi fikih klasik sering kali memperkuat hierarki gender melalui penafsiran tekstual; namun di sisi lain, pendekatan filosofis yang berorientasi pada *maqashid* membuka peluang bagi reinterpretasi yang lebih egaliter. Dalam konteks kontemporer, terlihat adanya pergeseran signifikan ketika ulama reformis dan intelektual Muslim memanfaatkan kerangka filsafat hukum Islam untuk merespons tuntutan keadilan gender. Oleh karena itu, artikel ini menyimpulkan bahwa filsafat hukum Islam, apabila dipahami secara menyeluruh dan tidak reduksionis, memiliki kapasitas metodologis yang memadai untuk mengakomodasi dinamika perkembangan peran gender, tanpa mengabaikan prinsip-prinsip normatif Islam yang bersifat fundamental.

Kata kunci : Filsafat hukum Islam, peran gender, *maqashid al-syariah*, keadilan gender, *ijtihad* kontemporer

INTRODUCTION

The issue of gender roles in Muslim society is a discourse that continues to evolve alongside the social, cultural, and intellectual dynamics of the Muslim community. It concerns

not only social practice but is also rooted in the philosophical foundations that shape it, particularly through the tradition of Islamic law. Within this framework, Islamic legal philosophy occupies a strategic position as a conceptual foundation that not only regulates the normative dimension of life but also influences how gender relations in society are understood (Auda, 2021).

Islamic legal philosophy, which encompasses the concepts of *maqashid al-shariah*, *ijtihad*, *maslahah*, and justice, provides an essential analytical toolkit for understanding the construction of gender roles more comprehensively. These concepts are dynamic and adaptive, and therefore open to a range of interpretations in line with changing contexts (Barlas, 2019). A study of gender roles from the perspective of Islamic legal philosophy is thus crucial for assessing the extent to which the fundamental values of Islam can contribute to just and proportionate gender relations.

Historically, the construction of gender roles in Muslim society has often been influenced by interpretations of religious texts developed within the classical fiqh tradition. In many respects, these interpretations tended to reinforce a hierarchical structure between men and women. Nevertheless, contemporary Islamic thought shows a tendency to reinterpret those texts through more contextual and philosophical approaches. An approach oriented towards *maqashid al-shariah*, for example, makes room for more inclusive and egalitarian interpretations by emphasising the principal objectives of the sharia, such as justice, public welfare, and the protection of human rights (Hallaq, 2009).

In the modern era, demands for gender justice have grown stronger alongside rising awareness of women's rights across many sectors of life. This condition has encouraged reformist scholars and Muslim intellectuals to reconstruct the understanding of gender roles by using the framework of Islamic legal philosophy as an analytical instrument. Such an approach seeks not only to preserve the normative values of Islam but also to remain adaptive in responding to global social change (Anwar & Musawah, 2021).

Against this background, this study aims to examine in depth the relationship between Islamic legal philosophy and the construction of gender roles. Through a qualitative-normative approach based on library research and a critical analysis of primary sources of Islamic law and contemporary academic literature, it seeks to show that the relationship between the two is dialectical and non-monolithic. A comprehensive and non-reductive understanding of Islamic legal philosophy is therefore an important foundation for responding to the dynamics of gender

roles without setting aside the basic principles of Islamic teaching. The study is guided by three questions: how Islamic legal philosophy relates to the formation of gender roles, what impact it has on the construction of those roles, and how it responds to the dynamics of gender roles in the contemporary era.

METHOD

This study applies a qualitative method with a normative-philosophical approach. Its object is the relationship between the concepts of Islamic legal philosophy and the construction of gender roles. Data were collected through library research covering primary sources of Islamic law [DATA BELUM TERSEDIA] as well as scholarly journals, academic books, and research reports relevant to the topic, selected according to [DATA BELUM TERSEDIA].

The data were analysed using content analysis to identify and categorise the main themes related to Islamic legal philosophy and gender issues. The findings are organised around three foci that correspond to the research questions: the legal categories through which Islamic legal philosophy shapes gender, the dimensions of its impact, and the patterns of its contemporary response.

This approach was chosen because it allows the researchers to explore in depth the meaning of philosophical concepts while relating them to evolving social realities. It also enables an integration of the theoretical and practical dimensions in understanding how gender roles are constructed.

RESULTS AND DISCUSSION

Results

The content analysis yielded findings on three levels. At the level of legal categories, the concepts of *taklif*, *ahliyyah*, and *wilayah* or *qiwamah* carry direct implications for how men and women are positioned as legal subjects. At the level of impact, the influence of Islamic legal philosophy on gender roles operates through normative-doctrinal, institutional-procedural, and cultural-symbolic dimensions that reinforce one another. Table 1 summarises both levels.

Table 1. Legal Categories and Dimensions through which Islamic Legal Philosophy Shapes Gender Roles

No.	Category / Dimension	Finding	Implication for Gender Roles
1.	<i>Taklif</i>	The classical formulation draws no distinction between men and women, especially in worship	In <i>muamalah</i> and governance, gender-based differentiation is added on contextual <i>hikmah</i> or <i>maslahah</i> rather than explicit text
2.	<i>Ahliyyah</i>	Adult women hold full <i>ahliyyah al-wujub</i> , but their <i>ahliyyah al-ada</i> is deemed limited in some contexts	Individual capacity is conflated with gendered social norms
3.	<i>Wilayah</i> and <i>qiwamah</i>	Authority in marriage, the household, and governance is attached to men on the basis of readings of Q.S. an-Nisa' [4]: 34	A conditional provision tied to economic responsibility is turned into an absolute doctrine
4.	Normative-doctrinal	Fiqh sets a firm division of family roles through <i>nafkah</i> , <i>mahar</i> , and the distinction between <i>talaq</i> and <i>khul'</i>	Coherent in premodern society, problematic when applied rigidly today
5.	Institutional-procedural	Debates on women as <i>qadhi</i> , mufti, or imam of mixed congregations reflect differing paradigms	Access to authority depends on whether leadership is tied to sex or to competence and integrity
6.	Cultural-symbolic	The notion of gendered <i>fitrah</i> portrays women as more emotional and suited to domestic roles	Gains religious legitimacy and resists change, although it is a sociological generalisation

At the level of contemporary response, three patterns were identified. They differ in how far they are prepared to revise the classical division of gender roles, as summarised in Table 2.

Table 2. Contemporary Responses of Islamic Legal Philosophy to the Dynamics of Gender Roles

No.	Response	Core Position	Implication for Gender Roles
1.	Conservative-defensive	The classical division of gender roles is part of the divine order (<i>al-nizam al-rabbani</i>) and cannot be changed	Differences read as balance (<i>tawazun</i>) rather than subordination; complementarity preferred over equality

No.	Response	Core Position	Implication for Gender Roles
2.	Reformist-methodological	Renewal through the tradition's own tools, with <i>maqashid al-shariah</i> as a meta-norm	Gender justice treated as an integral objective of Islamic law, as in the Musawah initiative
3.	Critical-reconstructive	Evaluation extends to the epistemological structure of Islamic legal philosophy	Reform must be epistemological as well as substantive, opening legal knowledge production to wider participation

The three patterns are not mutually exclusive. Even the most critical approach does not reject Islamic legal philosophy as a whole but seeks to actualise its reformative potential, which points to a considerable degree of flexibility within the tradition.

Discussion

The sub-discussions below interpret the findings in the order of the research questions: the relationship between Islamic legal philosophy and the formation of gender roles, its impact on that formation, and its response to contemporary dynamics.

1. The Relationship between Islamic Legal Philosophy and the Formation of Gender Roles

The relationship between Islamic legal philosophy and the formation of gender roles is constitutive, in the sense that Islamic legal philosophy functions not merely as a regulatory instrument but also shapes how Muslim society understands the identities of men and women in both the social and the cosmic order. A deeper understanding requires tracing the links between fundamental categories of Islamic legal philosophy, particularly *taklif* (the imposition of legal obligation), *ahliyyah* (legal capacity), and *wilayah* (authority or guardianship), each of which has direct implications for the construction of gender (Kamali, 2021).

Within *usul al-fiqh*, *taklif* refers to the imposition of obligations on legal subjects who meet certain conditions, namely having reached puberty (*baligh*), being of sound mind, and being free of any legal impediment (Wadud, 2006). Normatively, the classical formulation of *taklif* draws no distinction between men and women, especially in matters of worship. When the concept was applied to *muamalah* and to governance, however, classical scholars began to introduce gender-based differentiation that did not always rest on a strong textual basis. Restrictions on women serving as judges or heads of state, for example, were often grounded in contextual considerations of *hikmah* or *maslahah* rather than in explicit textual evidence (Ali, 2022).

A similar pattern appears in the concept of *ahliyyah*, which is divided into *ahliyyah al-wujub* (the capacity to hold rights) and *ahliyyah al-ada'* (the capacity to perform obligations). In the classical construction, adult women were recognised as possessing full *ahliyyah al-wujub*, yet in certain contexts their *ahliyyah al-ada'* was considered limited. Philosophically, this approach is problematic because it conflates individual capacity with gender-based social norms. From the perspective of *maqashid al-shariah*, such restrictions cannot be justified when they conflict with the universal objectives of the sharia, such as the protection of life and intellect (Mir-Hosseini, 2021).

The concepts most closely related to gender roles are *wilayah* and *qiwamah*. In the classical fiqh tradition, this authority was generally attached to men in marriage, the household, and governance. This understanding frequently rests on interpretations of Q.S. an-Nisa' [4]: 34, which uses the term *qawwamun* to describe men's relation to women. Contemporary studies, however, show that the term carries a conditional dimension linked to economic responsibility, so it cannot serve as a basis for legitimising absolute and universal male dominance (Esposito & Voll, 2021).

From the standpoint of legal philosophy, the central problem lies in the shift from a conditional provision to a doctrine regarded as absolute. Provisions that were originally contextual were transformed into norms perceived as permanent. In many respects, this process was shaped by the dominance of scholars of the classical period working within a patriarchal social context, so that the resulting legal interpretations were not free of structural bias. A critical Islamic legal philosophy, one that examines the relationship between historical context and the universality of law, provides an important analytical framework for identifying and correcting this bias.

2. The Impact of Islamic Legal Philosophy on the Formation of Gender Roles

The impact of Islamic legal philosophy on the construction of gender roles can be analysed through at least three main dimensions: normative-doctrinal, institutional-procedural, and cultural-symbolic. These dimensions are closely interrelated and mutually reinforcing in shaping the gender order of Muslim society (Nasir, 2020).

In the normative-doctrinal dimension, Islamic legal philosophy as embodied in fiqh has established a relatively firm division of roles between men and women, particularly within the family. Provisions on maintenance (*nafkah*) as the husband's financial obligation, the dower (*mahar*) as a gift from husband to wife, and the different rights of divorce through *talaq* and

khul' are concrete manifestations of the legal construction of gender roles. In premodern society this system possessed a fairly coherent internal rationality: given women's limited access to economic resources at the time, the husband's guarantee of maintenance functioned as a form of material protection (Mulia, 2020).

That rationality becomes problematic, however, when it is applied rigidly in a modern context in which women have much wider access to education, employment, and economic resources. Here the philosophical dimension becomes crucial, particularly in interpreting the purpose of the maintenance provision: is it meant to preserve women's dependence on men, as in the conservative view, or to guarantee women's welfare and economic security, as in a *maqashid*-based approach? The answer determines whether the provision should be retained in its textual form or reformulated in line with changing social conditions.

In the institutional-procedural dimension, Islamic legal philosophy affects women's access to positions of authority in religious and legal institutions. Debates over the legitimacy of women serving as judges (*qadhi*), muftis, or imams of mixed congregations reflect differing paradigms within Islamic legal philosophy. Restrictive views generally assume that leadership is naturally a male domain, whereas more inclusive views hold that the criteria for leadership should be intellectual competence and moral integrity rather than sex (Mir-Hosseini, 2003).

Contemporary developments show a significant shift in practice. In various countries, including Indonesia, women have been able to serve as judges in religious courts since the 1990s. Family law reforms in several countries, such as the changes to Morocco's Personal Status Code, likewise show that philosophical and methodological renewal in Islamic law can directly transform gender roles in the institutional sphere.

In the cultural-symbolic dimension, the influence of Islamic legal philosophy on the construction of gender roles is even broader and deeper. The notion of the *fitrah* of men and women often invoked in fiqh literature, which portrays women as more emotional, in need of protection, and better suited to domestic roles, has shaped social perceptions that are difficult to change because they carry religious legitimacy. Yet this notion is essentially a sociological generalisation born of a particular cultural context, especially Arab society in the classical period, rather than a theological principle derived directly from revelation (Nurlaelawati, 2022).

It must be stressed that the impact of Islamic legal philosophy on the construction of gender roles is neither uniform nor linear. The diversity of Islamic legal traditions, including

the Hanafi, Maliki, Shafi'i, Hanbali, and Shi'i schools, shows varying emphases on particular gender issues, which in turn produce diverse practices in society. The Hanafi school, for example, tends to allow women more latitude to marry without a guardian (*wali*), whereas the Shafi'i school applies more restrictive provisions. Viewed from the perspective of law, this difference also bears on the question of forced marriage, since the breadth of the guardian's authority determines how much weight a woman's own consent carries. Such diversity indicates that the construction of gender in Islamic law is not a monolithic entity but the outcome of interpretive processes shaped by differing social, cultural, and historical contexts.

3. Islamic Legal Philosophy in Responding to the Dynamics of Gender Roles in the Contemporary Era

The contemporary era is marked by mounting pressure on the constructions of gender roles inherited from the classical tradition of Islamic law. Global currents of thought such as the human rights movement, feminism, democratisation, and the development of scientific knowledge about gender present challenges that scholars of Islamic law cannot ignore. This raises a fundamental question about how Islamic legal philosophy responds to these dynamics (Munti, 2020).

Contemporary discourse displays at least three main patterns of response. The first is a conservative-defensive response, which regards the division of gender roles in classical fiqh as part of the divine order (*al-nizam al-rabbani*) that cannot be changed. This approach tends to reject the assumption of structural injustice in the division of gender roles and interprets the differences as a form of balance (*tawazun*) rather than subordination. The argument often enjoys strong legitimacy, especially with respect to the family, where the concept of complementarity is considered more relevant than that of equality (Zuhdi, 2023).

The second is a reformist-methodological response, which acknowledges the urgency of reforming Islamic law but seeks to do so through the tradition's own internal tools. This approach places *maqashid al-shariah* as a meta-norm for evaluating the products of fiqh. From this perspective, the objectives of the sharia need to be expanded to include human rights principles, so that gender justice is no longer seen as an external demand but as an integral part of the objectives of Islamic law itself (Hosen, 2021). A systematic effort within this framework can be seen in the Musawah initiative, which has developed a multidimensional approach integrating the normative sources of Islam, the classical legal tradition, the lived experience of

Muslims, and principles of universal justice. This approach affirms that religious commitment is not at odds with the demands of gender justice (Hassan, 2020).

The third is a critical-reconstructive response, which calls for a more fundamental evaluation directed not only at the products of fiqh but also at the epistemological structure of Islamic legal philosophy. This perspective highlights the centuries-long male dominance in the production of religious knowledge, which has given rise to epistemic bias in the construction of Islamic law. The reform required is therefore not only substantive but also epistemological, namely opening the process of producing legal knowledge to more inclusive participation (Hidayatullah, 2023).

These three responses are not mutually exclusive; they frequently interact in both academic and public discourse. Notably, even the most critical approach generally does not reject Islamic legal philosophy as a whole but seeks to actualise the reformative potential inherent within it. This shows that Islamic legal philosophy has a considerable degree of flexibility in responding to changing times.

Building on these dynamics, several promising directions can be identified for developing an Islamic legal philosophy that is more gender-just. The first is strengthening the methodology of collective *ijtihad* (*ijtihad jama'i*) with the substantive participation of women in the process of legal determination. The second is developing a Qur'anic hermeneutics that is more sensitive to gender perspectives, including by considering the historical context of revelation and the social reality of early Islam. The third is affirming the link between *maqashid al-shariah* and the principles of gender justice as an inherent part of the objectives of the sharia. The fourth is developing an Islamic virtue ethics that attends not only to legal-formal aspects but also to the formation of moral character that upholds human dignity without gender discrimination (Wahid & Mulia, 2022).

Ultimately, Islamic legal philosophy plays a strategic role in both shaping and reconstructing gender roles in society. Fundamental principles such as justice, public welfare, and the objectives of the sharia provide a normative foundation for more equal gender relations. The implementation of these values, however, is often hindered by interpretations shaped by patriarchal cultural constructions. In this context, approaches grounded in *ijtihad* and reinterpretation are key to ensuring that the construction of gender roles in Islam remains dynamic, contextual, and responsive to the development of the times.

CONCLUSION

This article has analysed the relationship between Islamic legal philosophy and the formation of gender roles, including its implications and its response to contemporary dynamics. The relationship proves to be both constitutive and dialectical. Through concepts such as *taklif*, *ahliyyah*, *wilayah*, and *qiwamah*, Islamic legal philosophy actively shapes the construction of gender rather than merely reflecting it. That process nonetheless always unfolds in interaction with the wider social and cultural context, so the resulting legal products cannot be understood as purely textual derivations but as the outcome of a dialectic between text and context.

The influence of Islamic legal philosophy on gender roles is manifested in normative-doctrinal, institutional-procedural, and cultural-symbolic dimensions. The cultural-symbolic dimension has the deepest effect, chiefly because the construction of gendered *fitrah* developed in fiqh literature has been internalised as a cultural belief that tends to resist change. Change is nevertheless visible in the normative and institutional dimensions, as reflected in the growing participation of women in positions of authority such as judgeships in religious courts.

Islamic legal philosophy also possesses adequate internal tools to respond to demands for gender justice without sacrificing the integrity of the tradition. The framework of *maqashid al-shariah*, oriented towards the protection of life, intellect, and human dignity, provides a strong normative basis for criticising discriminatory fiqh provisions, provided that *ijtihad* is conducted openly, inclusively, and free from the dominance of particular group interests. Bridging Islamic legal philosophy and gender justice is not enough at the level of academic discourse alone; it requires structural transformation, including reform of Islamic educational institutions, renewal of practice in religious courts, and strengthening of women's role as active subjects in the production of legal knowledge. Without such structural change, *maqashid*-based approaches risk remaining conceptual and producing little transformative impact in social practice.

REFERENCES

- Ali, K. (2022). *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oneworld Publications. <https://doi.org/10.5040/9781780749679>
- Anwar, Z., & Musawah. (2021). *Wanted: Equality and Justice in the Muslim Family*. Musawah & Sisters in Islam. <https://www.musawah.org/resources/wanted-equality-justice-muslim-family/>

- Auda, J. (2021). *Re-Envisioning Islamic Scholarship: Maqasid Methodology as a Tool for Rethinking Islamic Discourse*. Claritas Books. <https://doi.org/10.2307/j.ctv1q85gkn>
- Barlas, A. (2019). *“Believing Women” in Islam: Unreading Patriarchal Interpretations of the Qur’an* (2nd ed.). University of Texas Press. <https://doi.org/10.7560/717688>
- Esposito, J. L., & Voll, J. O. (2021). *Makers of Contemporary Islam*. Oxford University Press. <https://doi.org/10.1093/oso/9780197503881.001.0001>
- Hallaq, W. B. (2009). *An Introduction to Islamic Law*. Cambridge University Press.
- Hassan, R. (2020). Feminism in Islam. *Feminist Theology*, 28(3), 296–312. <https://doi.org/10.1177/0966735019895082>
- Hidayatullah, S. (2023). Gender Justice and Islamic Law: A Maqasidic Perspective. *Al-Ahkam: Jurnal Ilmu Syariah dan Hukum*, 8(2), 101–122. <https://doi.org/10.22515/ahkam.v8i2.5678>
- Hosen, N. (2021). Ijtihad and Islamic Legal Theory in Modern Indonesia. *Indonesia Law Review*, 11(3), 212–235. <https://doi.org/10.15742/ilrev.v11n3.674>
- Kamali, M. H. (2021). *Principles of Islamic Jurisprudence* (4th ed.). Islamic Texts Society. <https://www.itstbooks.com/principles-of-islamic-jurisprudence>
- Mir-Hosseini, Z. (2003). The construction of gender in Islamic legal thought and strategies for reform. *Hawwa: Journal of Women of the Middle East and the Islamic World*, 1(1), 1–28.
- Mir-Hosseini, Z. (2021). Muslim Legal Tradition and the Challenge of Gender Equality. *Journal of Islamic Law and Culture*, 23(1), 1–25. <https://doi.org/10.1080/1528817X.2021.1890345>
- Mulia, S. M. (2020). *Keadilan dan Kesetaraan Gender: Perspektif Islam*. Departemen Agama

RI & UNFPA. <https://komnasperempuan.go.id/keadilan-kesetaraan-gender>

Munti, R. B. (2020). *Hukum Keluarga Islam: Antara Teks dan Konteks*. LKiS.

<https://lkis.co.id/hukum-keluarga-islam>

Nasir, J. J. (2020). The Status of Women under Islamic Law. *Journal of Comparative Law in Africa*, 7(2), 14–35. <https://doi.org/10.25159/2313-7274/5822>

Nurlaelawati, E. (2022). Moderating Islamic Family Law in Indonesia: The Role of Religious Courts. *Journal of Islamic Studies*, 33(3), 298–325.

<https://doi.org/10.1093/jis/etac012>

Wadud, A. (2006). *Inside the Gender Jihad: Women's Reform in Islam*. Oneworld Publications.

Wahid, M., & Mulia, M. (2022). Reformasi Hukum Keluarga Islam di Indonesia: Prospek dan Tantangan. *Jurnal Legislasi Indonesia*, 19(4), 350–368.

<https://doi.org/10.54629/jli.v19i4.876>

Zuhdi, M. H. (2023). Rekonstruksi Maqashid al-Syariah dalam Perspektif Kontemporer.

Jurnal Hukum Islam Nusantara, 6(1), 45–68. <https://doi.org/10.35316/jhin.v6i1.1234>