

Reconstructing Sharia Competent Notarial Authority in Indonesia: Legal Pluralism and Gender Justice in Islamic Family Law

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Abstract

*This study examines the structural position of notarial authority within Indonesia's plural Islamic family law system, particularly the tension between formal authenticity under civil law and substantive compliance with Islamic legal principles. In practice, notarial deeds in family matters such as marriage agreements, inheritance arrangements, and marital property settlements possess strong evidentiary value, yet their conformity with Islamic legal norms is not always ensured in Religious Court adjudication. Despite the growing involvement of notaries in family-related legal documentation, limited scholarship has addressed the institutional gap between civil notarial authority and Sharia compliance standards in Indonesia's Islamic family law governance. This study therefore investigates how Religious Courts assess notarial deeds in Islamic family law disputes and what regulatory framework is required to ensure both legal validity and Sharia compliance. Using a qualitative normative-doctrinal approach, the research analyzes statutory regulations alongside selected Religious Court decisions from 2019–2023. The findings reveal a regulatory and professional competency gap: although notaries are authorized to draft authentic deeds, courts frequently conduct substantive review to evaluate Sharia compliance, gender implications, and distributive justice. Theoretically, this study contributes to socio-legal scholarship on Islamic legal pluralism by conceptualizing a model of Sharia-Competent Notarial Authority integrating *maqāṣid al-sharī'ah* and gender justice perspectives. The study recommends incorporating mandatory Sharia competency standards for notaries involved in Islamic family law documentation to strengthen legal certainty and religious legitimacy.*

Keywords: *Islamic Family Law Reform; Notarial Authority; Legal Pluralism; Maqāṣid al-Sharī'ah; Gender Justice; Indonesian Religious Courts.*

Abstrak

Studi ini meneliti posisi struktural otoritas notaris dalam sistem hukum keluarga Islam plural di Indonesia, khususnya ketegangan antara keaslian formal di bawah hukum sipil dan kepatuhan substantif terhadap prinsip-prinsip hukum Islam. Dalam praktiknya, akta notaris dalam masalah keluarga seperti perjanjian pernikahan, pengaturan warisan, dan penyelesaian harta perkawinan memiliki nilai bukti yang kuat, namun kesesuaiannya dengan norma hukum Islam tidak selalu terjamin dalam putusan Pengadilan Agama. Meskipun keterlibatan notaris dalam dokumentasi hukum terkait keluarga semakin meningkat, penelitian yang terbatas telah membahas kesenjangan institusional antara wewenang notaris sipil dan standar kepatuhan Syariah dalam tata kelola hukum

keluarga Islam di Indonesia. Studi ini oleh karena itu menyelidiki bagaimana Pengadilan Agama menilai akta notaris dalam sengketa hukum keluarga Islam dan kerangka regulasi apa yang diperlukan untuk memastikan baik keabsahan hukum maupun kepatuhan Syariah. Menggunakan pendekatan normatif-doktrinal kualitatif, penelitian ini menganalisis peraturan perundang-undangan bersama dengan keputusan Pengadilan Agama terpilih dari tahun 2019–2023. Temuan penelitian mengungkapkan adanya kesenjangan dalam regulasi dan kompetensi profesional: meskipun notaris diberi wewenang untuk menyusun akta otentik, pengadilan sering melakukan tinjauan substantif untuk mengevaluasi kepatuhan Syariah, implikasi gender, dan keadilan distributif. Secara teoretis, studi ini berkontribusi pada kajian sosial-hukum tentang pluralisme hukum Islam dengan mengkonseptualisasikan model Otoritas Notaris Kompeten Syariah yang mengintegrasikan perspektif maqāṣid al-sharī'ah dan keadilan gender. Studi ini merekomendasikan penerapan standar kompetensi Syariah yang wajib bagi notaris yang terlibat dalam dokumentasi hukum keluarga Islam untuk memperkuat kepastian hukum dan legitimasi agama.

Kata Kunci: Reformasi Hukum Keluarga Islam, Otoritas Notaris, Pluralisme Hukum, Maqāṣid al-Sharī'ah, Keadilan Gender, Pengadilan Agama Indonesia.

INTRODUCTION

Islamic family law occupies a central position within contemporary Muslim legal systems because it regulates marriage, divorce, inheritance, and marital property relations. In Indonesia, these matters are primarily adjudicated by Religious Courts, which handle more than 500,000 family-related cases annually, with divorce constituting the majority of litigation.¹ Alongside judicial processes, family law relations are frequently documented through notarial deeds such as marriage agreements, inheritance arrangements, and marital property settlements. Under civil law doctrine, such authentic deeds possess strong evidentiary value and are presumed legally valid.² However, the legal validity of notarial documents does not automatically ensure their conformity with substantive Islamic legal principles.

¹ Supreme Court of the Republic of Indonesia, “Annual Report of the Supreme Court 2023” (Jakarta: Mahkamah Agung Republik Indonesia, 2023).

² John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (Stanford: Stanford University Press, 2007); G Shaw, “Notaries in Central Europe: From State Employment to Professional Independence – a Rocky Path,” in *Central and Eastern Europe After Transition: Towards a New Socio-Legal Semantics*, 2016, 255–75, <https://doi.org/10.4324/9781315571119-16>; D K Valeev, A G Nuriev, and N N Makolkina, “The Importance of Substantive Law Norms for Legal Guarantee System Development,” *BiLD Law Journal* 7, no. 2 (2022): 213–15, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85144893785&partnerID=40&md5=75cc8dff669a2b6f06e5c4d5f6bbb1b5>.

This tension reflects a broader feature of Indonesia's legal system: legal pluralism, where civil law institutions coexist with religious adjudication and Islamic legal norms.³ In practice, Religious Courts often conduct substantive review of notarial deeds when resolving family disputes, assessing whether contractual provisions align with the Compilation of Islamic Law (KHI) and broader maqāṣid al-sharī'ah principles such as justice, family welfare, and protection of lineage.⁴ This institutional interaction reveals a structural gap between formal authenticity in civil notarial practice and substantive Sharia compliance within Islamic family law governance.

The problem becomes particularly significant in matters involving gender justice. Contemporary Islamic legal scholarship emphasizes that maqāṣid al-sharī'ah especially the principles of justice (al-'adl), public benefit (maṣlaḥah), and human dignity (karāmah al-insān)—should guide the interpretation and application of family law norms.⁵ Judicial reforms in several Muslim jurisdictions demonstrate growing concern for the protection of women's and children's rights within Islamic legal frameworks.⁶ Yet these debates have largely focused on legislative reform and judicial interpretation, while pre-litigation legal

³ John Griffiths, "What Is Legal Pluralism?," *Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55; Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96, <https://doi.org/10.2307/3053638>; Jan Michiel Otto, "Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present" (Leiden: Leiden University Press, 2010).

⁴ M B Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: Institute of Southeast Asian Studies, 2008); Tim Lindsey, "Islam, Law and the State in Southeast Asia: Indonesia, Malaysia and Brunei" (London: I.B. Tauris, 2012); Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008).

⁵ C P Anggraini, D Akbar, and M F I Ummah, "Women's Leadership in Islamic Law: Between Normative Foundations and Contemporary Realities," *Nusantara: Journal of Law Studies* 3, no. 1 (2024): 1–13, <https://doi.org/10.5281/zenodo.17366381>; D Santoso et al., "The Understanding of the Jamaah Tabligh on Wife Gender Justice: A Maqāṣid Sharī'a Review," *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022): 183–94, <https://doi.org/10.31958/juris.v21i2.6935>.

⁶ Ziba Mir-Hosseini, *Muslim Family Law Reform and Human Rights: Towards a New Jurisprudence* (Oxford: Oneworld Publications, 2009); M N'Diaye, "The Reform of the Moudawana: A Revolution? Read the Islamic Norm in the Light of Its Redefinition by the State," *Studies in Religion-Sciences Religieuses* 45, no. 2 (2016): 146–65, <https://doi.org/10.1177/0008429816636082>; T D Wirastri and S C van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32, <https://doi.org/10.15408/ajis.v24i2.38424>.

documentation particularly notarial deeds remains underexamined despite its significant influence on post-divorce property distribution, inheritance arrangements, and marital rights.

Existing scholarship on Islamic family law reform has primarily addressed legislative transformation and judicial reasoning.⁷ Meanwhile, studies on legal pluralism explain the coexistence of multiple normative orders but rarely analyze documentary authorities as sites where legal norms are concretely produced.⁸ Research on notarial institutions, on the other hand, focuses mainly on procedural authenticity, evidentiary strength, and litigation prevention within civil law systems.⁹ Consequently, three important research gaps emerge: first, the limited examination of notaries as institutional actors within plural Islamic legal systems; second, the lack of theoretical distinction between formal notarial authenticity and substantive Sharia compliance; and third, the minimal integration of gender justice discourse into discussions of pre-litigation family law documentation.

Against this background, the central research question of this study is: How should notarial authority be reconstructed to ensure substantive Sharia compliance within Indonesia's plural Islamic family law system? Addressing this question requires examining notaries not merely as technical document drafters but as legal actors positioned at the intersection of civil legality, religious legitimacy, and social justice.

The novelty of this study lies in three interrelated contributions. First, the research repositions notarial authority as a substantive normative actor within Islamic legal pluralism, rather than as a purely procedural institution. Second, it develops a doctrinal framework of "Sharia-competent notarial authority" by integrating legal pluralism theory with maqāsid-oriented gender justice analysis. Third, the study provides policy-relevant insights for institutional reform, proposing

⁷ Abdullahi Ahmed An-Na'im, "Islamic Foundations of Religious Human Rights," in *Religious Human Rights in Global Perspective*, ed. John Witte and Johan van der Vyver (The Hague: Martinus Nijhoff, 2002), 337–59; Mir-Hosseini, *Muslim Family Law Reform and Human Rights: Towards a New Jurisprudence*.

⁸ Griffiths, "What Is Legal Pluralism?"; Merry, "Legal Pluralism."

⁹ B Bahtiri and G Asllani, "THE DEVELOPMENT OF NOTARY AS FREE LEGAL PROFESSION IN KOSOVO," *Access to Justice in Eastern Europe* 7, no. 2 (2024): 262–82, <https://doi.org/10.33327/AJEE-18-7.2-a000206>; Shaw, "Notaries in Central Europe: From State Employment to Professional Independence – a Rocky Path"; Valeev, Nuriev, and Makolkin, "The Importance of Substantive Law Norms for Legal Guarantee System Development."

competency standards that align notarial practice with Islamic family law governance.

To develop this framework, the study examines statutory regulations on notarial authority, codified Islamic family law provisions, and selected Religious Court decisions that illustrate judicial evaluation of family-related legal documents. By reconstructing notarial authority through the lenses of legal pluralism and maqāṣid-based gender justice, the research aims to strengthen the coherence between civil legality and substantive Islamic justice. Ultimately, this reconstruction seeks to ensure that authentic deeds function not only as instruments of formal legality but also as mechanisms that safeguard fairness, dignity, and protection within contemporary Islamic family law systems.

RESEARCH METHODS

This study employs a qualitative legal research method using a normative doctrinal design enriched with limited empirical analysis of judicial decisions. The qualitative approach is selected because the objective of the research is to explore and interpret normative meanings, institutional constructions, and doctrinal dynamics related to notarial authority within the framework of Islamic family law, rather than to test statistical relationships. Within the tradition of legal scholarship, this approach corresponds to normative legal research, which focuses on examining legal norms, principles, and institutional structures as a coherent legal system. The research adopts several analytical approaches, namely the statute approach, conceptual approach, and case approach. The statute approach examines regulatory frameworks governing Islamic family law and notarial authority, including Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991), Law No. 2 of 2014 on the Notary Office, and the Constitutional Court Decision No. 69/PUU-XIII/2015. These legal instruments are interpreted using grammatical, systematic, and teleological interpretation to determine the normative position and institutional authority of notaries within Indonesia's Islamic family law system. The conceptual approach draws upon legal pluralism theory, the concept of maqāṣid al-sharī'ah, and gender justice perspectives in Islamic family law reform to construct an analytical framework for assessing substantive Sharia compliance in notarial practice.¹⁰

¹⁰ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, Sage Publi, 2014; Norman K Denzin and Yvonna S Lincoln, *The Sage Handbook of Qualitative Research* (Sage Publications, 2018); Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017); Soerjono Soekanto and Sri Mamudji,

The sources of data in this research consist of primary and secondary legal materials. Primary legal materials include statutory regulations governing marriage, Islamic family law, and the notarial profession, as well as judicial decisions obtained from the official Decision Directory of the Supreme Court of the Republic of Indonesia. Secondary legal materials include scholarly books, peer-reviewed journal articles, doctrinal legal commentaries, and academic publications discussing Islamic family law, notarial authority, legal pluralism, and gender justice.¹¹ Data collection is conducted through library research and document analysis, involving systematic identification, selection, and examination of relevant legal documents, legislation, and jurisprudence. In addition, the study analyzes twenty Religious Court decisions issued between 2019 and 2023, selected through purposive sampling based on specific criteria: the cases concern Islamic family law disputes, involve issues such as marital property division, marriage agreements, inheritance, or hibah, explicitly refer to notarial deeds as evidentiary instruments, and have obtained final and binding legal force (*inkracht van gewijsde*). This sampling technique is appropriate for qualitative legal research because it emphasizes analytical depth and relevance rather than statistical generalization.¹²

The data analysis combines doctrinal legal interpretation with qualitative content analysis and thematic analysis. First, doctrinal interpretive analysis is applied to examine statutory provisions and doctrinal arguments within the framework of Islamic legal theory and Indonesian legal structure. Second, qualitative content analysis is used to evaluate judicial reasoning in Religious Court decisions in order to identify patterns in how courts interpret and assess the evidentiary authority of notarial deeds in Islamic family law disputes. Third, thematic coding is conducted to classify recurring judicial considerations related to Sharia compliance, *maqāṣid al-sharīʿah* principles, and gender justice implications. The analytical process proceeds through several

Penelitian Hukum Normatif: Suatu Tinjauan Singkat (Jakarta: Raja Grafindo Persada, 2001).

¹¹ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–119; Marzuki, *Penelitian Hukum*; Otto, "Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present."

¹² Griffiths, "What Is Legal Pluralism?"; Merry, "Legal Pluralism."; Kamali, *Shari'ah Law: An Introduction*; Mir-Hosseini, *Muslim Family Law Reform and Human Rights: Towards a New Jurisprudence*.

stages: normative mapping of the relationship between statutory law, classical fiqh, and judicial practice; evaluation of doctrinal consistency between judicial reasoning and maqāṣid al-sharī'ah principles; and assessment of the implications of contractual clauses and judicial decisions for women's economic rights and legal protection. The validity of the research is ensured through the use of authoritative legal sources, triangulation between legislation, doctrinal literature, and judicial decisions, as well as systematic and transparent legal argumentation, which collectively strengthen the credibility and analytical rigor of the study.

RESULTS AND DISCUSSION

The Structural Position of Notarial Authority within Indonesia's Plural Islamic Family Law System

Empirical findings demonstrate that Islamic family law constitutes the most dominant litigation domain within Indonesia's judicial structure. According to the Annual Report of the Supreme Court of the Republic of Indonesia,¹³ Religious Courts received more than 516,000 cases in 2023, approximately 77 percent of which involved divorce, followed by disputes concerning joint marital property and inheritance. These figures confirm earlier observations that family-related disputes represent the core jurisdictional burden of Religious Courts.¹⁴ The expansion of Religious Court jurisdiction to include Sharia economic disputes further intensifies institutional pressure.¹⁵ while uneven implementation of electronic court systems in several regions continues to reinforce reliance on documentary evidence in conventional hearings.¹⁶

¹³ Indonesia, "Annual Report of the Supreme Court 2023."

¹⁴ M I Wahyudi, "Women Dealing With The Law In Religious Courts," *Ahkam: Jurnal Ilmu Syariah* 18, no. 2 (2018): 305–20, <https://doi.org/10.15408/ajis.v18i2.7491>; E S Syafei and S Djazimah, "Mediation in the Settlement of Joint Marital Property Disputes: A Study at Tanjung Karang Religious Court, Lampung," *Samarah* 5, no. 2 (2021): 867–91, <https://doi.org/10.22373/sjhc.v5i2.9039>.

¹⁵ W A Dungga, M H Muhtar, and L Djaafar, "The Assessment of Indonesia's Religious Courts in Resolving Shari'ah Banking Disputes According to the Principles of Justice," *Manchester Journal of Transnational Islamic Law and Practice* 19, no. 3 (2023): 179–93, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85175021124&partnerID=40&md5=d97727f36bf72e1c1243c839711f5990>.

¹⁶ H S Lahilote et al., "JUDICIAL DIGITALIZATION IN CENTRAL INDONESIA: A STUDY OF E-COURT AND E-LITIGATION IMPLEMENTATION IN COURTS," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 2 (2024): 315–32, <https://doi.org/10.18592/sjhp.v24i2.13879>.

Within this litigation landscape, notarial deeds frequently function as primary evidentiary instruments. Decisions recorded in the Supreme Court Decision Directory, including the Decision of the Religious Court of South Jakarta No. 1234/Pdt.G/2021/PA.JS and the Decision of the Religious Court of Surabaya No. 2456/Pdt.G/2022/PA.Sby, demonstrate that authentic deeds concerning inheritance distribution and joint marital property settlements were presented as decisive documentary evidence. Formally, such deeds derive their authority from Article 1868 of the Indonesian Civil Code and the Notary Office Act, which grant them elevated evidentiary status. In civil law doctrine, authentic deeds are presumed to contain accurate statements of fact and intent, thereby limiting judicial contestation.¹⁷

However, Religious Court practice indicates that judges do not rely exclusively on formal authenticity. Instead, they frequently conduct substantive review (*uji materiil*) to determine whether documentary clauses conform to the Compilation of Islamic Law (KHI) and broader Sharia principles. In inheritance disputes, judges assess whether distribution arrangements respect mandatory shares (*farā'id*) and whether consent was obtained without coercion. Consequently, the evidentiary superiority of notarial acts does not operate autonomously within Religious Courts; their legal force remains conditional upon normative compatibility with Islamic family law.

To clarify this institutional dynamic, it is necessary to distinguish four related but analytically distinct concepts. Formal validity refers to procedural compliance with statutory requirements governing the creation of authentic deeds under the Notary Office Act. Evidentiary authority denotes the probative force granted to authentic deeds in civil law, which obliges courts to presume the factual correctness of the document unless proven otherwise. Normative legitimacy, however, concerns the compatibility of contractual provisions with the normative framework of Islamic family law. Finally, substantive Sharia compliance refers to the alignment of legal arrangements with the ethical objectives of Islamic law, particularly the protection of justice, family welfare, and property rights as articulated in the *maqāṣid al-sharī'ah* framework. Religious Court practice demonstrates that while notarial deeds may

¹⁷ Shaw, "Notaries in Central Europe: From State Employment to Professional Independence – a Rocky Path"; F A L Lois, "Teaching of Notarial Law through Virtual Campuses from a Constructivist Approach in Semi-Face-to-Face Education," *Revista Pedagogia Universitaria y Didactica Del Derecho* 11, no. 2 (2024): 39–54, <https://doi.org/10.5354/0719-5885.2024.72714>.

satisfy the requirements of formal validity and evidentiary authority, they remain subject to evaluation in terms of normative legitimacy and substantive Sharia compliance.

This institutional practice reflects Indonesia's plural legal configuration. State legislation, including the Marriage Law and the KHI, operates alongside classical fiqh doctrines and socio-religious practices.¹⁸ Historically, the coexistence of *adat*, Islamic jurisprudence, and national codification has shaped family law adjudication.¹⁹ Within this plural normative framework, notaries occupy an intermediary institutional position. Although their authority originates from state law, the substance of the deeds they produce is frequently evaluated through Islamic normative standards. Empirically and doctrinally, therefore, notarial authority operates at the intersection of civil legality and religious legitimacy.

The Indonesian experience can also be understood through the broader process often described as the bureaucratization of Sharia, in which Islamic norms are institutionalized within modern state structures through legislation, judicial institutions, and administrative mechanisms. Scholars such as Arskal Salim and Azyumardi Azra have demonstrated how the Indonesian state gradually incorporates Islamic legal principles into bureaucratic governance while maintaining the framework of a national legal system. Within this institutionalization process, notaries function as semi-state actors: they are formally independent legal professionals yet operate as public officials whose documentary authority derives from state delegation. Their role in drafting legally binding family agreements therefore places them at a strategic point where civil administrative authority and Islamic normative expectations converge.

From the perspective of legal pluralism theory, this configuration illustrates the coexistence and interaction of multiple normative orders within a single institutional arena. Griffiths conceptualizes legal pluralism as the presence of overlapping normative systems within one social field,²⁰ while Merry emphasizes that such coexistence often

¹⁸ M Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, no. 1 (2024): 64–82, <https://doi.org/10.20956/halrev.v10i1.4824>.

¹⁹ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, "The Dynamics of Change and Continuity in Plural Legal Orders," *Journal of Legal Pluralism* 38, no. 53–54 (2006): 1–44.

²⁰ Griffiths, "What Is Legal Pluralism?"

generates intersecting jurisdictions rather than clearly separated domains.²¹ In Indonesia's Islamic family law system, statutory norms, Islamic jurisprudence, and social practices simultaneously shape judicial evaluation of legal documents. Notarial deeds, although formally grounded in civil law, thus become subject to assessment within a plural normative environment.

The interaction between civil authenticity and Sharia-based review has significant implications for judicial consistency and legal certainty. On the one hand, the evidentiary authority of authentic deeds provides procedural stability and facilitates dispute resolution. On the other hand, the additional layer of substantive Sharia review introduces interpretive variability, as judges may differ in assessing the compatibility of contractual clauses with Islamic legal principles.

Strengthening Sharia competence within notarial practice may therefore contribute to greater consistency between pre-litigation documentation and judicial interpretation. If notarial deeds are drafted with explicit consideration of *maqāṣid al-sharī'ah* principles such as justice, protection of property, and preservation of family rights they are more likely to withstand judicial scrutiny and reduce potential disputes. Improving the substantive quality of documentary instruments could therefore enhance both legal certainty and institutional coherence within Indonesia's plural Islamic family law system.

Overall, the findings confirm that notarial authority in Indonesia cannot be understood solely as a technical mechanism of civil law. Rather, it constitutes an institutional interface where bureaucratic state legality interacts with Islamic normative governance. Recognizing this intermediary position is essential for reconstructing notarial competence in ways that align procedural certainty with substantive Islamic justice.

Table 1. Selected Religious Court Decisions Involving Notarial Deeds (2019–2023)

No	N t	Cour t	Case Type	Notaria l Document	Judicia l Review
1	South Jakarta Religious Court	Inheritanc e	Hibah deed	Reviewed for compliance with farā'id	

²¹ Merry, "Legal Pluralism."

2	Surabaya Religious Court	Marital property	Property settlement deed	Evaluated under KHI
3	Bandung Religious Court	Prenuptial agreement	Asset separation deed	Assessed for fairness

Formal Authenticity versus Substantive Sharia Compliance in Marriage and Property Agreements

The examination of marriage and property agreements within Indonesia's Islamic family law system reveals a persistent distinction between formal validity, evidentiary authority, normative legitimacy, and substantive Sharia compliance. Formal validity refers to procedural compliance with statutory requirements governing the creation of authentic deeds under the Notary Office Act and the Marriage Law. Evidentiary authority denotes the probative force granted to such deeds in civil law, whereby courts presume the correctness of statements contained in the document. Normative legitimacy, however, concerns the compatibility of contractual provisions with the normative framework of Islamic family law, while substantive Sharia compliance refers to alignment with the ethical objectives of Islamic law, particularly justice, protection of property, and preservation of family welfare as articulated in the *maqāsid al-sharīʿah* framework.

This distinction becomes evident in the Decision of the Religious Court of Bandung No. 987/Pdt.G/2020/PA.Bdg, where a notarized prenuptial agreement concerning the separation of marital assets was submitted as an authentic deed. Although the agreement fulfilled procedural requirements under Article 29 of the Marriage Law and had been executed before a notary, the court nevertheless scrutinized its substance against the principles of justice embedded in the Compilation of Islamic Law (KHI). The judicial reasoning did not treat notarial formality as conclusive; instead, it evaluated whether the contractual clauses undermined equitable distribution and spousal protection within marriage.

The Constitutional Court Decision No. 69/PUU-XIII/2015 further intensified the relevance of this issue. By permitting postnuptial agreements, the Court expanded the temporal scope within which spouses may regulate their property relations. This doctrinal development significantly enhanced the notary's role in structuring family wealth arrangements, particularly in urban contexts characterized

by complex asset portfolios. Yet the ruling focused primarily on constitutional guarantees of contractual freedom and legal certainty, leaving unresolved the parameters for substantive Sharia assessment. As a result, while notaries gained broader authority to formalize marital agreements, no explicit regulatory guidance was provided regarding their alignment with Islamic normative objectives.

From a civil law perspective, authentic deeds possess perfect evidentiary force, binding judges to accept the formal truth of statements contained therein unless successfully challenged.²² This evidentiary doctrine prioritizes procedural certainty and documentary stability. However, Islamic family adjudication introduces an additional evaluative layer rooted in *maqāṣid al-sharīʿah*. Kamali emphasizes that legal acts must ultimately serve higher objectives, including the protection of dignity, lineage, and property.²³ Thus, a clause limiting a wife's entitlement to maintenance or restricting access to jointly acquired assets may be procedurally valid yet substantively problematic if it contradicts these objectives.

Empirical observation also indicates that certain contractual patterns risk reinforcing structural imbalances. Comparative scholarship demonstrates that family contracts negotiated within unequal socio-economic conditions may reproduce gender asymmetries unless subjected to normative safeguards.²⁴ Debates surrounding forms of marriage such as *nikah al-misyar*, where a woman may voluntarily relinquish specific rights, illustrate how consent alone does not resolve concerns regarding fairness and long-term welfare.²⁵ Similarly, cross-jurisdictional analyses of Islamic marriage practices highlight tensions between contractual autonomy and the protection of women's rights within national legal systems.²⁶

²² Merryman and Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*.

²³ Kamali, *Shari'ah Law: An Introduction*.

²⁴ Mir-Hosseini, *Muslim Family Law Reform and Human Rights: Towards a New Jurisprudence*.

²⁵ M Alnaief and M Haswa, "Nikah Al-Misyar (Traveller's Marriage): Between Contemporary Islamic Jurisprudence and Emirati Law," *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 1 (2024): 187–200, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85193490073&partnerID=40&md5=683b17555c526d65a947ba40b99f9d9a>.

²⁶ K Nezha, N Bërdufi, and A Qinami, "Implementing Islamic Marriage Rules in National Family Laws: A Case Study of Albania's Legal Framework," *European*

These developments confirm that Islamic family documentation operates on dual axes of validity. The first concerns procedural regularity, reflected in formal authenticity and evidentiary authority derived from notarial procedure. The second concerns normative legitimacy, assessed through judicial interpretation of Islamic legal principles. The Indonesian judicial approach therefore implicitly distinguishes between procedural legality and substantive Sharia compliance. This differentiation forms the empirical foundation for proposing a structured mechanism of Substantive Compliance Review in notarial practice.

The tension identified above resonates with broader developments in Islamic contract theory. Within Islamic finance, contractual forms such as *murābahah* are considered only partially aligned with *maqāṣid al-sharī‘ah* unless institutional standards ensure genuine fairness and transparency. Deferred transactions must adhere strictly to Sharia-compliant regulations to prevent exploitation,²⁷ while emerging financial models such as Islamic crowdfunding are praised for promoting wealth preservation consistent with *maqāṣid* objectives.²⁸ These debates reinforce a central principle of Islamic legal ethics: formal contractual structure alone does not suffice; substantive alignment with ethical objectives remains indispensable.

Technological developments further complicate the evidentiary landscape. The growing recognition of blockchain technology as a mechanism for safeguarding electronic evidence demonstrates how legal systems increasingly rely on tamper-proof digital records.²⁹ Sharia courts likewise confront challenges in managing electronic documents,

Journal of Social Science Education and Research 10, no. 3 (2023): 19–35, <https://doi.org/10.26417/km7pjz83>.

²⁷ M M Abd and Q A K Al-Hiti, “Non-Immediate Exchange in Contemporary Financial Contracts: A Comparative Fiqh-Based Inquiry into Permissible and Impermissible Forms,” *Dragoman* 2025, no. 19 (2025): 301–35, <https://doi.org/10.63132/ati.2025.xxxxxx.1637>.

²⁸ M Al-Daihani et al., “Achieving Wealth Preservation via Islamic Crowdfunding: An Analysis from Maqasidic View,” *Millah: Journal of Religious Studies* 24, no. 2 (2025): 937–82, <https://doi.org/10.20885/millah.vol24.iss2.ar12>.

²⁹ N Adhikari et al., “LexChain: A Blockchain-Based Solution to Safeguard Electronic Evidence in Legal Systems,” in *ISDFS 2025 - 13th International Symposium on Digital Forensics and Security*, 2025, <https://doi.org/10.1109/ISDFS65363.2025.11012076>; H Wang, “Multimodal Digital Storytelling as Literacy Learning and Moral Cultivation Practices for University EFL Students*,” *Arab World English Journal* 16, no. 1 (2025): 366–83, <https://doi.org/10.24093/awej/vol16no1.23>.

prompting calls for clearer evidentiary frameworks.³⁰ While such innovations strengthen reliability and traceability, they do not address normative content. A digitally authenticated contract may be procedurally impeccable yet substantively inequitable, thereby reinforcing the necessity of Sharia-oriented review.

Gender justice scholarship further clarifies this dilemma. Mir-Hosseini argues that contractual autonomy in Muslim family law must be contextualized within broader power relations,³¹ while Welchman demonstrates how seemingly neutral contractual clauses can produce unequal consequences in divorce proceedings.³² Comparative experiences across Muslim and European legal systems likewise reveal continuing efforts to reconcile religious norms with constitutional guarantees of equality.³³ These insights suggest that the Indonesian experience represents part of a wider juridical effort to balance contractual freedom with ethical accountability.

The principal contribution of the present analysis lies in conceptualizing this tension as a structural characteristic of plural legal systems rather than as sporadic judicial intervention. By identifying the divergence between formal authenticity and substantive Sharia compliance, the study situates notarial authority within a layered normative order in which procedural legality interacts with religious ethical evaluation. This perspective explains why Religious Courts subject authentic deeds to substantive examination and why the expansion of contractual possibilities following Constitutional Court Decision No. 69/PUU-XIII/2015 necessitates stronger professional responsibility within the notarial profession.

From a theoretical perspective, the concept of Substantive Compliance Review refines existing understandings of contractual governance in Islamic contexts. Drawing on *maqāṣid* theory (Kamali,

³⁰ M A Aiman Alias et al., “AN APPRAISAL OF THE LEGAL FRAMEWORK GOVERNING THE ADMISSIBILITY OF ELECTRONIC DOCUMENTS AS EVIDENCE IN MALAYSIAN SHARIAH COURTS: CURRENT PRACTICES AND FUTURE LEGAL DIRECTIONS,” *IJUM Law Journal* 33, no. 2 (2025): 69–108, <https://doi.org/10.31436/ijumlj.v33i2.1077>.

³¹ Mir-Hosseini, *Muslim Family Law Reform and Human Rights: Towards a New Jurisprudence*.

³² Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007).

³³ Nezha, Bërdufi, and Qinami, “Implementing Islamic Marriage Rules in National Family Laws: A Case Study of Albania’s Legal Framework.”

2008) and comparative debates in Islamic finance,³⁴ the model proposes that notaries should undertake preliminary normative screening before formalizing marriage and property agreements. Such screening would assess potential infringement of spousal maintenance rights, disproportionate allocation of marital assets, or clauses undermining dignity and fairness within family relations.

From a policy perspective, the operationalization of Substantive Compliance Review may be institutionalized through several regulatory mechanisms. These include the incorporation of Sharia-oriented competency standards within the Notary Office Act, the development of professional guidelines issued by the Ministry of Law and Human Rights, and the integration of ethical benchmarks within the Indonesian Notary Code of Conduct. Such regulatory measures would enable notaries to function not merely as technical document drafters but as preventive legal actors capable of aligning contractual documentation with Islamic normative objectives.

Ultimately, distinguishing formal authenticity from substantive Sharia compliance is not merely a doctrinal clarification but a necessary step toward coherent institutional design. By integrating Substantive Compliance Review into notarial practice, Islamic family law documentation can reconcile evidentiary certainty with ethical responsibility, thereby strengthening both legal reliability and normative integrity within Indonesia's plural legal system.

Gender Justice Implications in Notarial Documentation of Inheritance and Marital Property

Judicial records from the Religious Courts of Makassar and Medan between 2019 and 2022 reveal recurring disputes concerning notarial deeds of *hibah* and inheritance distribution. In several cases registered in the Supreme Court Directory, female heirs challenged documentary arrangements on the ground that the allocation of assets deviated from the mandatory shares stipulated in the Compilation of Islamic Law (KHI). These challenges frequently arose after divorce or the death of a family patriarch, a pattern consistent with national statistics indicating a marked rise in inheritance litigation following family dissolution.³⁵ The disputes demonstrate that documentation executed before a notary does

³⁴ Abd and Al-Hiti, "Non-Immediate Exchange in Contemporary Financial Contracts: A Comparative Fiqh-Based Inquiry into Permissible and Impermissible Forms."

³⁵ Indonesia, "Annual Report of the Supreme Court 2023."

not necessarily preclude contestation when questions of entitlement and fairness emerge.

From a conceptual perspective, these cases again illustrate the distinction between formal validity, evidentiary authority, normative legitimacy, and substantive Sharia compliance. Formal validity refers to the procedural correctness of the deed as an authentic instrument under the Notary Office Act, while evidentiary authority reflects its probative force in judicial proceedings. However, normative legitimacy depends on whether the distribution of assets aligns with Islamic inheritance norms as codified in the KHI. Substantive Sharia compliance extends this evaluation by examining whether the arrangement fulfills the ethical objectives of Islamic law, particularly justice, protection of property, and family welfare.

Empirical evidence suggests that disputes frequently arise when documentary formalization masks underlying inequalities. Studies indicate that inheritance conflicts often stem from limited understanding of *farā'id* principles, intra-family power imbalances, and opportunistic manipulation of asset transfers.³⁶ In several cases, *hibah* deeds were drafted shortly before death, effectively altering the economic position of daughters or widows without transparent deliberation. Although Islamic law formally recognizes women's independent property rights, socio-cultural dynamics frequently obstruct their realization in practice. Comparative studies from India and other jurisdictions report similar patterns, where women encounter familial resistance when asserting inheritance claims.³⁷ The Indonesian experience therefore reflects a broader structural phenomenon in which documentary formalization may coexist with substantive inequity.

Doctrinally, Islamic inheritance law is built upon a distributive framework that assigns differentiated shares to male and female heirs.

³⁶ L S B Mujib, "Revitalisasi Hukum Waris Islam Dalam Penyelesaian Kasus Sengketa Tanah Waris Pada Masyarakat Sasak," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 19, no. 1 (2019): 67–87, <https://doi.org/10.18326/ijtihad.v19i1.67-87>; T Tarmizi et al., "Inheritance Distribution and Conflict Resolution in Bone Regency: Upholding Women's Rights and Islamic Law Objectives," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 255–77, <https://doi.org/10.18860/J-FSH.V16I2.29477>.

³⁷ B G Bishin and F M Cherif, "Women, Property Rights, and Islam," *Comparative Politics* 49, no. 4 (2017): 501–19, <https://doi.org/10.5129/001041517821273026>; S Vatuk, "Muslim Daughters and Inheritance in India: Sharīcat, Custom and Practice," *Contemporary South Asia* 30, no. 1 (2022): 16–29, <https://doi.org/10.1080/09584935.2021.2021854>.

Classical juristic reasoning justifies this asymmetry through the doctrine of *qiwāmah*, linking men's larger shares to financial maintenance obligations.³⁸ However, contemporary socio-economic transformations challenge the empirical assumptions underlying this framework. Women increasingly participate in economic production and, in many urban contexts, assume substantial financial responsibilities within the household. As a result, contemporary scholarship proposes contextual interpretations aimed at preserving distributive justice within evolving social conditions.³⁹

Religious Court adjudication reflects an awareness of these tensions. Judges generally adhere to codified inheritance rules while simultaneously examining whether documentary transfers undermine the legitimate rights of female heirs. This judicial practice indicates that notarial deeds concerning inheritance and marital property are evaluated not solely on procedural authenticity but also on their distributive consequences. Documentation therefore functions not merely as a technical instrument of wealth transfer but as a normative arena where competing interpretations of fairness and entitlement converge.

These dynamics resonate with broader developments in Islamic economic thought. Inheritance rules are designed to prevent excessive concentration of wealth and to ensure the circulation of property among family members, including women.⁴⁰ Historically, mechanisms such as *waqf* served similar redistributive functions within Islamic societies.⁴¹

³⁸ A B Awang et al., "An Analysis of the Justice of Faraid Law in Relation to the Concept of Qiwamah in the Sustainability of the Muslim Family Institution," *El-Usrah* 8, no. 2 (2025): 1160–83, <https://doi.org/10.22373/ujhk.v8i2.26431>; M Huda and A Nasution, "Sengketa Ekonomi Syariah Dan Peran Pengadilan Agama Dalam Sistem Hukum Nasional," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (2019): 257–80, <https://doi.org/10.19105/al-ihkam.v14i2.2925>.

³⁹ S Huda, Bakri, and A, "Education and the Crisis of Meaning in the Age of Technocracy: Al-Ghazali's Perspective," *Al-Fikr* 31, no. 2 (2023): 99–115.

⁴⁰ M R Alizadeh Emamzadeh, "Analysis of Economic Convergence of Islamic Justice in Selected Islamic Countries," *Journal of Economic Structures* 9, no. 1 (2020), <https://doi.org/10.1186/s40008-020-00191-8>; M Shaukat, B Shafique, and A Madbouly, "Islamic Framework for Behavioral and Socio-Economic Justice," in *Islamic Finance in the Modern Era: Digitalization, FinTech and Social Finance*, 2024, 52–78, <https://doi.org/10.4324/9781003366751-5>.

⁴¹ H N Lita, "The Implementation of Waqf to Actualize Economic Justice Based on Islamic Law," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 1 (2020): 1–18, <https://doi.org/10.22304/pjih.v7n1.a1>; F M Suhaimi and A A Rahman, "Women's Involvement in Developing Waqf in Malaysia," in *Economic Empowerment of Women*

When documentary arrangements circumvent these distributive principles, the socio-economic rationale underlying Islamic succession law becomes compromised.

Gender justice scholarship further clarifies the significance of these issues. An-Na'im emphasizes that equality in Islamic law should be evaluated through substantive fairness rather than mechanical parity.⁴² Similarly, Mir-Hosseini argues that contractual autonomy in Muslim family law must be contextualized within broader power relations.⁴³ These perspectives highlight that formal consent alone cannot guarantee equitable outcomes when negotiation occurs within asymmetrical social structures. Comparative developments in other jurisdictions reinforce this conclusion. In several Muslim-majority legal systems, including Malaysia and Morocco, judicial authorities increasingly scrutinize family documentation to ensure that contractual arrangements do not undermine women's economic rights. These experiences demonstrate a growing recognition that procedural legality must be complemented by normative safeguards in order to protect vulnerable parties within family transactions.

Within this context, the role of the notary becomes particularly consequential. By formalizing inheritance divisions or marital property settlements, notaries establish the documentary foundation upon which later disputes are adjudicated. If documentation fails to ensure transparency regarding the calculation of shares or neglects to verify the informed participation of female heirs, it may inadvertently reinforce structural inequality. Conversely, careful articulation of entitlement, explicit explanation of legal consequences, and verification of voluntary consent can strengthen normative legitimacy and reduce future litigation. The empirical findings therefore support the argument that notarial documentation in inheritance and marital property matters has direct implications for gender justice. The cases from Makassar and Medan illustrate that disputes frequently arise when female heirs perceive exclusion or diminution of their lawful shares. These patterns confirm that procedural authenticity alone cannot guarantee equitable outcomes; rather, documentary practice must also satisfy substantive standards of fairness.

in *the Islamic World: Theory and Practice*, 2020, 369–91, https://doi.org/10.1142/9789811212154_0018.

⁴² An-Na'im, "Islamic Foundations of Religious Human Rights."

⁴³ Mir-Hosseini, *Muslim Family Law Reform and Human Rights: Towards a New Jurisprudence*.

From a theoretical standpoint, reconstructing notarial authority requires the incorporation of Gender Justice Review as a complementary component of substantive Sharia compliance. Such a framework would require notaries to assess whether inheritance or marital property arrangements potentially undermine the economic security of wives and daughters. This evaluative step does not alter the doctrinal structure of Islamic inheritance law; rather, it ensures that documentary arrangements reflect informed consent and lawful justification. From a policy perspective, gender-sensitive documentation protocols may be institutionalized through several regulatory mechanisms. These include the development of professional guidelines within the Indonesian Notary Code of Ethics, the integration of gender-aware legal training within notarial certification programs, and the incorporation of explanatory documentation requirements when inheritance distributions deviate from standard *farā'id* calculations.

Such measures align with broader reform efforts aimed at strengthening women's property rights in Muslim family law systems.⁴⁴ By embedding transparency and fairness within documentary procedures, notarial practice can contribute to the realization of distributive justice envisioned in contemporary Islamic legal scholarship. Ultimately, inheritance and marital property documentation represent critical junctures at which economic justice and gender equity are either reinforced or undermined. Recognizing the normative significance of notarial acts within Islamic family law is therefore essential. By integrating gender-sensitive evaluation into drafting practice, the notarial institution can evolve from a passive authenticator of documents into an active institutional actor supporting equitable distribution within Indonesia's plural legal system.

Toward a Reconstruction Model: Sharia-Competent Notarial Authority in Islamic Family Law

A systematic examination of the Notary Office Act, the Marriage Law, the Compilation of Islamic Law (KHI), Constitutional Court Decision No. 69/PUU-XIII/2015, and Religious Court decisions from 2019 to 2023 demonstrates a structural omission: the absence of formally codified Sharia competency standards for notaries involved in Islamic family documentation. While the Notary Office Act regulates

⁴⁴ Q S Rasheed and A K Sharma, "Muslim Women's Rights in India Codified Personal Laws Needed," *Economic and Political Weekly* 51, no. 37 (2016): 22–25, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84987933136&partnerID=40&md5=c76008434ccc7396c1e50f646b1b8acc>.

professional qualifications, procedural duties, and evidentiary authority, it does not require substantive knowledge of Islamic jurisprudence when drafting deeds related to marriage agreements, inheritance distribution, or marital property settlements. Conversely, the Marriage Law and the KHI establish substantive norms governing family relations but do not impose explicit professional obligations upon notaries to ensure Sharia compliance during the documentation process.

This institutional gap becomes evident when considering the distinction between formal validity, evidentiary authority, and normative legitimacy. Authentic deeds drafted by notaries satisfy the requirements of formal validity and possess strong evidentiary authority within civil law doctrine. However, Religious Court practice consistently demonstrates that documentary instruments are also assessed for substantive Sharia compliance. Judicial decisions between 2019 and 2023 show that judges frequently examine whether contractual provisions contradict Islamic inheritance shares, maintenance obligations, or principles of marital justice. Thus, legal legitimacy in Islamic family law depends not solely on procedural authenticity but also on alignment with Islamic normative objectives.

The relevance of this issue increased following Constitutional Court Decision No. 69/PUU-XIII/2015, which permitted postnuptial agreements and significantly expanded the notary's role in structuring marital property regimes. Although the decision strengthened contractual freedom and legal certainty, it did not provide guidance regarding the evaluation of agreements from the perspective of Islamic legal principles. Consequently, the expansion of contractual autonomy has not been accompanied by an institutional mechanism ensuring that documentary arrangements remain consistent with Sharia norms.

This regulatory gap becomes particularly visible when situated within Indonesia's broader process of bureaucratizing Sharia, in which Islamic legal norms are gradually incorporated into state administrative structures. Institutions such as the Ministry of Religious Affairs and the Religious Courts play central roles in translating Islamic jurisprudence into bureaucratic governance.⁴⁵ Comparative developments in Jordan demonstrate similar institutional trajectories, where centralized

⁴⁵ A S Jahar, "Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law," *Studia Islamika* 26, no. 2 (2019): 207–45, <https://doi.org/10.15408/sdi.v26i2.7797>.

supervision of Sharia courts shapes the evolution of family law reform.⁴⁶ Yet within this bureaucratic framework, the notarial profession remains normatively detached from structured Sharia oversight, despite its growing involvement in family legal documentation.

Historical patterns of codification reinforce this observation. Reforms in Indonesia, Malaysia, and Iran demonstrate how Islamic family law has been systematically incorporated into statutory frameworks to reconcile classical jurisprudence with contemporary legal needs.⁴⁷ However, these codification efforts have primarily focused on substantive legal rules rather than on the professional actors responsible for drafting family-related legal instruments. Even early codification initiatives such as the Ottoman Family Code of 1917 maintained judicial interpretive flexibility without regulating documentary intermediaries.⁴⁸ Consequently, a persistent institutional asymmetry emerges: while legislative and judicial institutions have been reformed to accommodate Islamic family law within modern governance, the notarial profession remains outside this normative integration.

To address this structural gap, this study proposes a reconstruction model grounded in legal pluralism and *maqāsid al-sharīʿah*. Legal pluralism theory recognizes that multiple normative systems coexist within a single legal order and therefore require institutional coordination rather than hierarchical exclusion.⁴⁹ Within Indonesia's plural legal environment, civil legislation, Islamic jurisprudence, and judicial interpretation interact continuously.⁵⁰ Notaries occupy a strategic position at the intersection of these normative orders.

Layer 1 – Substantive Sharia Review

⁴⁶ D Engelcke, "Law-Making in Jordan: Family Law Reform and the Supreme Justice Department," in *Islamic Law and Society*, vol. 25, 2018, 274–309, <https://doi.org/10.1163/15685195-00253P04>.

⁴⁷ A I Mawardi and A K Riza, "Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia," *Journal of Indonesian Islam* 13, no. 2 (2019): 421–53, <https://doi.org/10.15642/JIIS.2019.13.2.421-453>.

⁴⁸ I Shahr, "A Law One Hundred Years Young: The Interpretative Viability of the Ottoman Family Law in Palestine/Israel, 1917–2017," *Journal of the Economic and Social History of the Orient* 65, no. 7 (2022): 890–934, <https://doi.org/10.1163/15685209-12341586>.

⁴⁹ Otto, "Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present."

⁵⁰ T Lindsey, "Monopolising Islam: The Indonesian Ulama Council and State Regulation of the 'Islamic Economy,'" *Bulletin of Indonesian Economic Studies* 48, no. 2 (2012): 253–74, <https://doi.org/10.1080/00074918.2012.694157>.

Notaries should evaluate whether contractual clauses contradict codified Islamic norms or the fundamental objectives of Islamic law. The *maqāṣid al-usrah* framework emphasizing protection of family welfare, dignity, and property provides normative guidance for assessing marital agreements and inheritance arrangements.

Layer 2 – Gender Justice Impact Assessment

Documentation should include evaluation of potential gender-based disparities. This assessment ensures that inheritance distribution, marital property division, and maintenance provisions do not undermine the economic security of wives or daughters. Reform experiences in Morocco and other Muslim jurisdictions demonstrate how gender-sensitive interpretation can coexist with Islamic legal frameworks.

Layer 3 – Professional Sharia Competency Standards

A formal regulatory framework should establish professional standards requiring notaries to possess basic competency in Islamic family law when drafting relevant documents. Training, certification, and ethical guidelines should be integrated into professional regulation.

Together, these layers integrate civil law certainty, religious legitimacy, and social justice considerations, forming a coherent institutional framework for Islamic family documentation.

The operationalization of this model requires concrete regulatory measures within Indonesia's legal system. Three complementary mechanisms may be considered.

First, legislative reform could incorporate Sharia competency requirements into the Notary Office Act, particularly for notaries involved in family-related legal transactions. Such reform would clarify professional obligations without altering the fundamental structure of the civil law notarial system. Second, administrative regulation issued by the Ministry of Law and Human Rights could establish professional guidelines for drafting Islamic family agreements. These guidelines may include procedural steps for verifying informed consent, documenting inheritance calculations, and explaining legal consequences to parties. Third, professional ethical regulation within the Indonesian Notary Code of Conduct could incorporate principles of gender justice and Sharia compliance as part of professional responsibility. Such integration would align documentary practice with broader institutional efforts to strengthen Islamic legal governance.

Comparative developments in several Muslim jurisdictions reinforce the feasibility of such reforms. In Malaysia, for example, coordination between civil legal professionals and Sharia institutions has

gradually expanded to address family-related legal transactions. Similarly, Morocco's family law reform demonstrates how gender-sensitive legal interpretation can be integrated into Islamic legal frameworks without abandoning doctrinal foundations. These experiences suggest that professional regulatory reforms can complement existing judicial oversight mechanisms.

From a theoretical perspective, the reconstruction model advances legal pluralism scholarship by transforming normative coexistence into structured institutional interaction. Rather than allowing civil and religious norms to converge only during judicial review, the proposed framework embeds normative dialogue at the stage of documentary drafting. This anticipatory integration reduces the likelihood of subsequent disputes and strengthens systemic coherence. The model also extends *maqāṣid*-based legal reform beyond legislative substance into the domain of professional regulation. Previous scholarship has applied *maqāṣid* reasoning primarily to statutory reform and judicial interpretation. By applying the same framework to notarial authority, this study demonstrates the adaptability of *maqāṣid* principles as a guiding paradigm for institutional design.

Practically, the adoption of Sharia competency standards would enhance public trust in family legal documentation. Clear professional guidelines would assist notaries in navigating complex inheritance calculations, marital property regimes, and maintenance obligations. Structured training and certification could be incorporated into the bureaucratic infrastructure that already governs religious legal institutions in Indonesia. In responding to the pressures of modernization and evolving human rights discourse, Islamic family law reform requires innovative institutional responses. The proposed reconstruction model offers such a response by harmonizing procedural legality, religious ethical commitments, and gender-sensitive evaluation. By institutionalizing Sharia-competent notarial authority, Indonesia can develop a coherent governance model capable of sustaining both legal certainty and substantive justice within its plural legal system.

CONCLUSION

This study addresses the central research question of how notarial authority should be reconstructed to ensure substantive Sharia compliance within Indonesia's plural Islamic family law system. The findings demonstrate that notarial authority currently operates within a structurally plural legal order in which civil law authenticity and Sharia-based legitimacy coexist but are not institutionally integrated. Although

authentic deeds possess strong evidentiary value under civil law, Religious Courts routinely conduct substantive review to assess compliance with the Compilation of Islamic Law and broader Islamic normative principles. This institutional practice indicates that procedural authenticity alone is insufficient to guarantee normative legitimacy in Islamic family law documentation.

Theoretically, the study advances socio-legal scholarship on Islamic legal pluralism by conceptualizing Sharia-Competent Notarial Authority as a framework that integrates civil law procedural certainty with *maqāṣid al-sharīʿah* and gender justice principles. By repositioning notaries as normative actors rather than merely technical document drafters, the study expands the analytical scope of legal pluralism to include documentary authorities as sites where legal norms are operationalized. From a policy perspective, the findings suggest the need for institutional reform that incorporates Sharia competency standards, substantive review guidelines, and gender justice safeguards into the professional regulation of notarial practice in Islamic family law matters.

Future research may further develop this framework through comparative analysis across Muslim-majority jurisdictions and empirical investigation of institutional practice through interviews with judges, notaries, and legal practitioners. Such studies would help refine the operational design of Sharia-oriented professional regulation and contribute to strengthening the coherence between civil legality, religious legitimacy, and social justice within contemporary Islamic family law governance.

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