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Reconceptualizing Legal Responsibility in Family Insolvency: Taflīs, al-Dhimmah, and Relational Responsibility in Islamic Law

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Abstract

Individual insolvency may generate significant financial consequences for economically interconnected households, yet economic interdependence does not automatically establish collective legal liability under Islamic law. Existing scholarship has primarily examined classical bankruptcy doctrines and institutional insolvency, leaving unresolved the juridical conditions under which family relationships may generate additional responsibilities. This study examines taflīs and al-dhimmah, compares the jurisprudential positions of the four Sunni madhhabs, and develops a legally differentiated framework for addressing individual insolvency affecting family financial relationships. Employing normative-doctrinal legal research, the study integrates conceptual analysis, comparative jurisprudence, and maqāṣid al-sharīʿah-based evaluation, complemented by selected legal frameworks from Indonesia and Malaysia. The findings indicate that taflīs does not automatically extinguish established debt obligations, although the schools differ in their treatment of judicial interdiction (ḥajr), debtor autonomy, and creditor protection. Liability remains attributable to identifiable legal subjects, while additional responsibilities may arise through valid guarantees (kafālah), jointly undertaken obligations, ownership arrangements, or independently established family maintenance duties. The study proposes a four-level framework of relational responsibility comprising primary individual liability, derivative and family-based legal responsibility, voluntary moral-economic solidarity, and institutional protection. This framework does not recognize the family as a collective debtor or automatically transfer debts among relatives; rather, it differentiates enforceable obligations from ethical support and institutional assistance according to their respective juridical grounds. The study contributes a conditional model for legal interpretation and insolvency reform that preserves individual accountability while strengthening creditor protection, debtor safeguards, and family welfare. As a doctrinal and conceptual proposal, the framework requires further empirical evaluation.

Keywords: *Taflīs; al-Dhimmah; Ḥajr; Relational Responsibility; Maqāṣid al-Sharīʿah.*

Abstrak

Insolvensi individu dapat menimbulkan konsekuensi finansial bagi anggota keluarga yang memiliki ketergantungan ekonomi, tetapi kondisi tersebut tidak secara otomatis menciptakan tanggung jawab hukum kolektif dalam hukum Islam. Penelitian terdahulu lebih banyak membahas doktrin kepailitan klasik dan insolvensi kelembagaan, sementara dasar yuridis dan batas tanggung jawab anggota keluarga ketika terjadi insolvensi belum dijelaskan secara memadai. Penelitian ini bertujuan menganalisis konsep *taflīs* dan *al-dhimmah*, membandingkan pandangan empat mazhab Sunni, serta merekonstruksi kerangka tanggung jawab hukum dalam insolvensi individu yang berdampak pada keluarga. Penelitian menggunakan metode hukum normatif-doktrinal dengan pendekatan konseptual, perbandingan mazhab, dan evaluasi berbasis *maqāṣid al-sharīʿah*, didukung kajian hukum Indonesia dan Malaysia. Hasil penelitian menunjukkan bahwa *taflīs* tidak secara otomatis menghapus kewajiban utang yang melekat pada *al-dhimmah*, meskipun terdapat perbedaan antarmazhab mengenai pembatasan yudisial (*ḥajr*), kewenangan debitur, dan perlindungan kreditor. Hubungan keluarga dapat melahirkan kewajiban hukum tambahan apabila terdapat dasar yuridis yang sah, seperti penjaminan (*kafālah*), perikatan bersama, atau kewajiban nafkah, tetapi tidak menjadikan anggota keluarga sebagai penanggung utang secara otomatis. Penelitian ini mengusulkan model tanggung jawab relasional empat tingkatan, meliputi tanggung jawab hukum individual, tanggung jawab hukum derivatif dan berbasis keluarga, solidaritas moral-ekonomi sukarela, serta perlindungan institusional. Model tersebut membedakan kewajiban yang dapat ditegakkan secara hukum dari tanggung jawab etis dan dukungan kelembagaan tanpa membentuk keluarga sebagai subjek hukum kolektif. Kontribusi penelitian terletak pada pengembangan kerangka normatif bersyarat untuk memperjelas atribusi kewajiban, melindungi hak kreditor dan debitur, serta memperkuat perlindungan keluarga. Namun, model ini masih bersifat doktrinal-konseptual dan memerlukan pengujian empiris.

Kata Kunci: Taflīs; al-Dhimmah; Ḥajr; Tanggung Jawab Relasional; Maqāṣid al-Sharīʿah.

INTRODUCTION

Insolvency constitutes a significant legal and socio-economic challenge because financial failure may affect not only debtors and creditors but also individuals whose livelihoods depend on their financial relationships. Within contemporary Islamic legal discourse, the regulation of financial distress increasingly involves questions of creditor protection, debtor vulnerability, institutional governance, and distributive justice.[1] More broadly, contemporary Islamic legal authority

[1] M Y Rusdiyono and A Mu'allim, "Bankruptcy Settlement of Baitul Maal Wa Tamwil in Yogyakarta: An Islamic Law Perspective," *Millah: Journal of Religious Studies* 21, no. 2 (2022): 553–82, https://doi.org/10.20885/millah.vol21.iss2.art9; Y Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice," *Juris: Jurnal Ilmiah Syariah* 24, no. 2 (2025): 295–310, https://doi.org/10.31958/juris.v24i2.15863.

is itself undergoing institutional transformation, including through digital forms of fatwa production and circulation that expand the channels through which normative interpretations are communicated, recognized, and contested. Although distinct from insolvency regulation, this development illustrates the wider institutional environment in which contemporary Islamic legal reasoning increasingly operates.[2] These concerns become particularly complex within family relationships, where income, expenditure, asset management, and financial obligations may be economically interconnected. Nevertheless, economic interdependence does not necessarily establish collective legal responsibility. The fact that family members share financial resources or experience the consequences of insolvency does not, by itself, demonstrate that they possess joint legal personality or are collectively liable for outstanding debts. This distinction presents a fundamental question for contemporary Islamic jurisprudence: when, and under what legal conditions, can economic interdependence justify legal interdependence? Addressing this question requires examining the relationship between classical doctrines of insolvency, individual legal responsibility, and the normative significance of family relationships.

Classical Islamic jurisprudence addresses financial insolvency primarily through the doctrines of *iflāṣ* and *taflīs*, which concern the debtor's inability to satisfy financial obligations and the legal consequences arising from that condition. These doctrines are closely associated with *al-dhimmah*, the juridical capacity to bear rights and obligations, and *ḥajr*, the restriction of certain legal transactions under legally recognized circumstances. The continuing relevance of classical insolvency doctrine is demonstrated by Marpi, who examine Ibn Rushd's treatment of *taflīs* in relation to contemporary Indonesian bankruptcy proceedings and creditor protection.[3] Their analysis illustrates the importance of reconciling classical Islamic legal principles with modern insolvency procedures. However, the procedural adaptation of *taflīs* does not necessarily resolve the underlying question of whose obligations are legally enforceable when financial distress affects economically connected individuals. A distinction must therefore be maintained

[2] Marhamah Annazah Tambunan and Maulida Fitria, "Digital Fatwas and the Transformation of Religious Authority in Contemporary Muslim Societies," *Islamicate Futures: Knowledge, Ethics, and Muslim Societies* 1, no. 1 (2026): 96–123, https://doi.org/10.68051/ifkems.v1i1.41.

[3] Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice."

between the existence of a debt, its enforceability, and the legally permissible measures for recovering the amount owed. This distinction is consistent with the Qur'anic instruction to grant respite to debtors experiencing genuine hardship (Qur'an 2:280), although its precise juridical implications require examination of the relevant juristic interpretations.

The doctrine of *al-dhimmah* is central to this discussion because it provides the juridical foundation for identifying the person to whom rights and obligations are attributed. Within Islamic legal reasoning, financial responsibility cannot automatically be transferred from one individual to another merely because they belong to the same household or participate in a common economic arrangement. Rather, liability requires an identifiable legal ground, such as a contractual undertaking, a legally effective guarantee (*kafālah*), a recognized joint obligation, or another enforceable duty. This distinction is particularly important when interpreting *gharāmah* and *taʿwīḍ* in contemporary Islamic financial practice. Bank Negara Malaysia distinguishes *taʿwīḍ*, which compensates for actual financial loss, from *gharāmah*, which operates as a penalty for delayed payment under specified regulatory conditions.[4] Consequently, neither concept should be treated as synonymous with the general existence of debt or the capacity to bear legal obligations. Their application demonstrates that the existence of an obligation, its breach, and the imposition of additional financial consequences constitute separate juridical questions.

These distinctions become particularly relevant when financial distress occurs within a family. Household members may contribute to common expenditure, participate in jointly managed economic activities, guarantee one another's financial obligations, or depend upon shared assets. Studies of Islamic family maintenance demonstrate that economic contributions and legally recognized family obligations do not always coincide. For example, Maghfurrohman examine scholarly interpretations of family maintenance obligations and the circumstances in which wives may contribute economically to household support. Their discussion illustrates the need to distinguish financial participation from

[4] Bank Negara Malaysia, "Shariah Resolutions in Islamic Finance," 2nd ed. (Bank Negara Malaysia, 2010), https://financialmarkets.bnm.gov.my/uploads/files/Shariah_Resolutions_BNM_2nd_Edition.pdf.

the juridical allocation of maintenance duties.[5] Building upon this distinction, the present study identifies four analytically separate concepts: economic interdependence, shared financial obligations, joint legal liability, and relational or moral responsibility. Economic interdependence concerns the practical relationship between household members' financial circumstances. Shared financial obligations arise when multiple persons become obligated through legally recognized arrangements. Joint legal liability concerns the enforceable attribution of an obligation to more than one legal subject, while relational or moral responsibility refers to duties of care, support, and solidarity whose legal enforceability depends on the specific obligation involved. Although these categories may overlap, they are not interchangeable, and their differentiation is necessary to prevent economic participation from being mistaken for an independent basis of collective debt liability.

Existing scholarship on Islamic insolvency has developed important insights into institutional bankruptcy and the relationship between classical jurisprudence and contemporary financial regulation. Rusdiyono and Mu'allim, for instance, examine the settlement of bankruptcy involving *Baitul Maal wa Tamwil* institutions in Yogyakarta by integrating Indonesian positive law with Islamic legal and *maqāṣid*-based considerations.[6] Their findings emphasize institutional, regulatory, and procedural challenges in insolvency settlement. Similarly, Marpi et investigate the relationship between classical *taflīs* doctrine and the modern *actio pauliana* mechanism in Indonesian bankruptcy law. These studies demonstrate that classical Islamic legal principles remain relevant to contemporary institutional insolvency and creditor protection. However, their respective institutional and procedural orientations do not directly determine whether household financial integration creates enforceable obligations among family members. The present study therefore differs from these approaches by examining the juridical grounds of responsibility rather than focusing primarily on the procedures for resolving institutional bankruptcy.

Another body of scholarship addresses contractual non-performance, financial compensation, and penalties within Islamic

[5] M Maghfurrohman, N Fajariani, and L S B Mujib, "Peran Pemenuhan Nafkah Keluarga: Studi Pemikiran Ulama Hukum Islam," *Ar-Risalah: Media Keislaman, Pendidikan Dan Hukum Islam* 22, no. 1 (2024), https://doi.org/10.69552/ar-risalah.v22i1.2174.

[6] Rusdiyono and Mu'allim, "Bankruptcy Settlement of Baitul Maal Wa Tamwil in Yogyakarta: An Islamic Law Perspective."

banking. Husin examine the practice of late-payment charges in Malaysian Islamic banks and discuss scholarly perspectives on *taʿwīḍ* and *gharāmah* as regulatory alternatives to interest-based penalties.[7] This issue is also addressed in the resolutions of the Shariah Advisory Council of Bank Negara Malaysia, which distinguish compensation for actual loss from penalties designed to discourage delayed payment.[8] These discussions clarify the legal consequences of financial default within contractual relationships. Nevertheless, contractual liability arising from delayed payment cannot automatically establish the liability of a debtor's spouse, children, or other relatives. Such an extension requires independent juridical justification. The unresolved question is therefore not whether Islamic law recognizes financial responsibility beyond the original amount owed, but whether family relationships themselves constitute sufficient grounds for imposing enforceable obligations on persons who did not incur or guarantee the relevant debts.

A further perspective is provided by contemporary scholarship on *maqāṣid al-sharīʿah*. Auda proposes a systems-oriented understanding of Islamic legal reasoning that emphasizes multidimensionality, interconnectedness, and the higher objectives of Islamic law.[9] His approach provides an important foundation for evaluating legal interpretations in relation to justice, public welfare, and changing social circumstances. Applied to insolvency, such reasoning may facilitate the consideration of creditor protection, debtor hardship, and the economic vulnerability of dependants. Rusdiyono and Mu'allim demonstrate the relevance of *maqāṣid*-based considerations to institutional bankruptcy settlement. However, a purposive approach must still distinguish between evaluating the fairness of established obligations and creating new liabilities that lack an identifiable doctrinal foundation. The objective of protecting wealth (*ḥifẓ al-māl*) cannot, by itself, justify transferring an insolvent debtor's obligations to other family members. Equally, individual debt liability should not be interpreted in a manner that disregards independently established family maintenance duties or the protection of vulnerable dependants. The present study therefore

[7] W N W Husin, "The Value of Budi-Islam as the Foundation in Enhancing Ethnic Tolerance in Malaysia: A Case Study among Malay Students at the Public Higher Learning Institution," *Journal of Educational and Social Research* 13, no. 1 (2023): 225–34, https://doi.org/10.36941/jesr-2023-0021.

[8] Malaysia, "Shariah Resolutions in Islamic Finance."

[9] Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008).

employs *maqāṣid al-sharīʿah* as an evaluative framework that operates alongside, rather than replaces, the juridical requirements governing financial responsibility.

Taken together, these studies reveal a doctrinal controversy that cannot be adequately expressed as a mere absence of literature on family insolvency. Research on institutional bankruptcy emphasizes procedural adaptation and creditor protection, while scholarship on *taʿwīḍ* and *gharāmah* concentrates on the consequences of contractual non-performance. Studies of family maintenance address the juridical and practical allocation of household support obligations, whereas *maqāṣid*-oriented scholarship emphasizes purposive and context-sensitive legal evaluation. These approaches are complementary in important respects, but they do not necessarily yield the same conclusions regarding the legal consequences of family economic interdependence. The central unresolved issue concerns whether family economic relationships can generate enforceable financial responsibilities beyond those established through individual debt, contractual commitments, guarantees, ownership arrangements, or specific maintenance duties. Accordingly, the controversy involves determining the legal grounds, permissible scope, and limitations of relational responsibility rather than assuming that shared economic vulnerability entails collective liability.

Against this background, the present study addresses three research questions. First, how do the four major Sunni schools conceptualize *taflīs*, *al-dhimmah*, and the legal consequences of insolvency, particularly regarding the existence, enforceability, and discharge of financial obligations? Second, under what circumstances does insolvency affect the enforcement of an obligation without extinguishing the underlying debt, and how do the relevant juristic positions differ? Third, under what legal and *maqāṣid*-based conditions may family relationships generate forms of relational responsibility in cases of insolvency, and what doctrinal limitations govern their recognition and enforcement? These questions are formulated to distinguish established financial obligations from economic exposure and moral expectations without presupposing that insolvency necessarily requires a collective redistribution of liability.

To address these questions, the study employs a qualitative normative-doctrinal approach that integrates comparative jurisprudential analysis with contemporary legal interpretation and *maqāṣid*-based normative evaluation. The doctrinal analysis investigates the foundations and consequences of financial responsibility in the four Sunni schools,

particularly the legal treatment of *taflīs*, *al-dhimmah*, *ḥajr*, contractual obligations, guarantees, and relevant maintenance duties. Comparative interpretation is used to identify agreements, disagreements, and the juridical considerations informing different rulings. Contemporary scholarship on Islamic insolvency provides the comparative context for evaluating the application of these doctrines to modern legal arrangements.[10] Subsequently, a *maqāṣid*-based assessment, informed by Auda's systems-oriented approach, evaluates the extent to which different interpretations protect creditor rights, recognize genuine financial hardship, prevent unjustified harm, and safeguard economically vulnerable family members.[11] This methodological sequence ensures that the proposed legal framework is developed through identifiable doctrinal reasoning rather than the unsupported assumption that economic interdependence necessarily creates joint legal liability.

The principal contribution of this study lies in developing a differentiated conceptual understanding of relational responsibility in family insolvency. Rather than treating the family as a collective debtor or proposing that shared economic resources automatically establish joint liability, the study investigates the conditions under which family relationships may have legally relevant consequences for financial responsibility. The proposed framework distinguishes individual debt liability, legally recognized shared obligations, contractual guarantees, family maintenance duties, and moral responsibilities that do not independently establish liability for another person's debts. It further examines how *maqāṣid al-sharīʿah* may guide the assessment of these responsibilities without undermining the juridical distinction between obligated and non-obligated individuals. By connecting the classical doctrine of insolvency with contemporary family financial arrangements, this research seeks to clarify the conditions under which relational responsibility may be recognized while preserving individual legal accountability.

The significance of this inquiry lies in its potential to reduce conceptual uncertainty concerning financial responsibility within economically interconnected families. An insufficient distinction between economic dependence and legally enforceable obligations may

[10] Rusdiyono and Mu'allim, "Bankruptcy Settlement of Baitul Maal Wa Tamwil in Yogyakarta: An Islamic Law Perspective"; Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice."

[11] Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

expose family members to unjustified debt claims, whereas an excessively narrow interpretation of individual liability may overlook valid guarantees, jointly undertaken obligations, and independently established maintenance duties. Islamic legal reasoning must therefore distinguish between protecting the rights of creditors, accommodating genuine debtor hardship, and safeguarding economically vulnerable dependants. Through a doctrinally grounded and *maqāṣid*-sensitive approach, the study seeks to contribute to a more coherent understanding of family insolvency and the limits of relational responsibility in contemporary Islamic law.

RESEARCH METHODS

This study employs normative-doctrinal Islamic legal research to examine the legal foundations, attribution, and enforceability of financial responsibility in cases of family insolvency. This method is appropriate because the central research problem concerns the interpretation and reconstruction of legal norms rather than the empirical measurement of financial practices. Three complementary approaches are employed within this methodological framework. First, the conceptual approach examines the juridical relationships among *taflīs*, *al-dhimmah*, *ḥajr*, *kafālah*, and financial responsibility, particularly the distinction between economic interdependence and legally enforceable obligations. Second, the comparative *madhhab* approach evaluates the positions of the Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī schools regarding insolvency, individual liability, creditor rights, and the legal consequences of financial incapacity. Third, the *maqāṣid al-sharīʿah* approach provides a normative framework for evaluating doctrinal interpretations in relation to justice, protection of wealth (*ḥifẓ al-māl*), prevention of harm, and the protection of economically vulnerable family members. This evaluative approach draws upon Auda's systems-oriented understanding of Islamic legal objectives while maintaining the distinction between normative considerations and the juridical grounds necessary to establish enforceable obligations.[12]

The research materials comprise primary, secondary, and tertiary legal sources, identified through purposive library-based document selection. Primary legal materials include the Qur'an, relevant Prophetic traditions, and authoritative classical jurisprudential texts representing the four Sunni schools: Where Prophetic traditions are employed, their legal use requires attention not only to transmission but also to the

[12] Auda.

relationship among sanad, matn, and interpretive meaning, a distinction increasingly emphasized in contemporary methodological reconsiderations of hadith criticism.[13] *Badāʾiʿ al-Ṣanāʾiʿ* by al-Kāsānī (Ḥanafī), *al-Mudawwanah* transmitted by Saḥnūn (Mālikī), *al-Majmūʿ Sharḥ al-Muhadhdhab* by al-Nawawī (Shāfiʿī), and *al-Mughnī* by Ibn Qudāmah (Ḥanbalī). These works are selected on the basis of their recognized jurisprudential authority, representation of the respective schools, and relevance to the doctrines of insolvency, legal capacity, debt enforcement, guarantees, and family-related financial obligations. Their selection provides a consistent comparative foundation without assuming that a single text exhaustively represents the doctrinal diversity within each school. Secondary materials consist of peer-reviewed studies, contemporary Islamic legal scholarship, legal commentaries, and relevant regulatory documents addressing insolvency, family financial responsibility, and *maqāṣid*-based legal reasoning. Tertiary materials, including specialized legal dictionaries, jurisprudential encyclopedias, and bibliographic indexes, are used to clarify terminology and identify relevant sources. Materials are collected through systematic identification, relevance-based screening, classification, and documentation, prioritizing sources that explicitly address the legal grounds, scope, and consequences of financial obligations.

Data analysis proceeds through four sequential stages. First, doctrinal propositions are extracted from the selected classical texts by identifying the relevant legal rules (*aḥkām*), their textual or juristic justifications (*adilla*), underlying legal reasoning (*taʿlīl*), conditions of application (*shurūṭ*), and legal consequences. Second, comparative *madhhab* analysis evaluates similarities and differences across the four schools using consistent criteria: the legal subject bearing the obligation, the grounds for establishing liability, the consequences of insolvency, the enforceability of creditor claims, and the circumstances under which obligations may involve other family members. Third, conceptual analysis distinguishes economic interdependence, shared financial obligations, joint legal liability, and relational or moral responsibility to determine whether family relationships provide independent legal grounds for financial responsibility. Fourth, *maqāṣid*-based normative

[13] Putri Naomi and Marhamah Annazah Tambunan, "Sanad, Matn and Meaning: Methodological Reconsideration in Modern Hadith Criticism," *TSIQAH: Journal of Hadith and Prophetic Tradition* 1, no. 1 (2026): 1–27.

evaluation examines the resulting interpretations against the principles of justice, creditor protection, debtor hardship, prevention of unjustified harm, and family welfare, without treating these objectives as automatic grounds for transferring liability. The transition from textual interpretation to legal reconstruction is undertaken by identifying doctrinally supported principles, assessing their applicability to contemporary family insolvency, and formulating conditional propositions concerning the recognition and limits of relational responsibility. Because scriptural language carries particular argumentative authority within Islamic legal reasoning, its incorporation into contemporary legal reconstruction also requires source fidelity, contextual coherence, and interpretive transparency.[14] Analytical reliability is strengthened through cross-doctrinal verification, involving comparison of relevant passages across authoritative sources and examination of consistency between extracted legal propositions, their supporting arguments, and the conclusions derived from them. This procedure is more appropriate to doctrinal legal analysis than empirical source triangulation because it evaluates interpretative coherence and jurisprudential justification rather than corroborating empirical observations.

RESULTS AND DISCUSSION

Taflīs and al-Dhimmah in Classical Islamic Jurisprudence: Debt Obligations, Enforceability, and Legal Consequences

The relationship between *taflīs* and *al-dhimmah* in classical Islamic jurisprudence reflects a fundamental distinction between the existence of financial obligations and the legal consequences of a debtor's inability to perform them. Bankruptcy does not automatically extinguish an established debt; rather, it may affect the mechanisms through which creditor claims are enforced and the debtor's authority to manage available assets. Ibn Qudāmah, in *al-Mughnī*, discusses *taflīs* in connection with judicial intervention and restrictions on the disposition of property to protect legitimate creditor interests.[15] Similarly, al-Kāsānī,[16] in *Badāʾiʿ al-Ṣanāʾiʿ*,[17] examines insolvency within the

[14] Ridho Wahyudi and Muhammad Khairul Fikri, "Iqtibās in Islamic Rhetorical Tradition: Aesthetic Function, Argumentative Force, and Ethical Quotation of Sacred Texts," *An-Najah: Jurnal Ushuluddin dan Studi Islam* 1, no. 1 (2026): 124–140.

[15] A M Ibn Qudamah, *Al-Mughni*, vol. 1–15 (Dar 'Alam al-Kutub, 1997).

[16] A B M Al-Kāsānī, *Badāʾiʿ Al-Ṣanāʾiʿ Fī Tartīb Al-Sharāʾiʿ*, 2nd ed. (Dār al-Kutub al-ʿIlmiyyah, 1986).

[17] Al-Kāsānī.

broader framework of debt obligations and the legal consequences of financial incapacity. These classical discussions suggest that insolvency should not be understood as a uniform legal event producing identical consequences across the Sunni schools. Instead, its implications depend on the existence of established obligations, the debtor's financial circumstances, and the conditions governing judicial intervention. Contemporary scholarship likewise demonstrates that the adaptation of classical *taflīs* doctrines to modern bankruptcy proceedings requires careful differentiation between substantive debt obligations and procedural mechanisms of creditor protection.[18]

A more precise conceptual analysis requires clarification of *al-dhimmah*, which should not be treated as an unrestricted synonym for legal responsibility. Within Islamic jurisprudence, *al-dhimmah* functions as a juridical locus to which rights and obligations may be attributed. It is closely connected to *ahliyyat al-wujūb*, or the capacity to acquire rights and bear obligations, but it is analytically distinguishable from the existence of a particular financial debt, the ability to discharge that debt, and the legal remedies available to creditors. Al-Zuhaylī discusses these juridical concepts within the broader structure of Islamic legal obligations,[19] while Nyazee explains the significance of legal capacity and the attribution of obligations within Islamic jurisprudential reasoning.[20] Accordingly, *al-dhimmah* does not itself establish that a person owes a particular debt; an enforceable financial obligation must arise from a legally recognized cause. Nor should *al-dhimmah* automatically be equated with moral accountability or modern corporate legal personality. Such distinctions are particularly important because the juridical attribution of an obligation to one individual does not, by itself, establish corresponding liability for economically connected persons.

The distinction between the existence of debt (*wujūd al-dayn*) and the capacity to perform the obligation (*qudrah ʿalā al-adāʾ*) provides an important analytical foundation for understanding insolvency. The former concerns whether a financial obligation remains legally established, whereas the latter refers to the debtor's material ability to

[18] S Hasan, "Tradition and Modernity in Islam: A Reading through Power, Property and Philanthropy," *Intellectual Discourse* 19, no. 1 (2011): 161–74.

[19] Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh* (Damascus: Dar al-Fikr, 1985).

[20] Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Usul Al-Fiqh)* (Islamabad: Islamic Research Institute, 2000).

satisfy that obligation. These dimensions are related but not identical. A debtor may remain subject to an outstanding financial obligation despite lacking sufficient resources for immediate repayment. The distinction is consistent with the treatment of financial incapacity in the classical jurisprudential works of al-Kāsānī and Ibn Qudāmah, although their respective approaches to judicial restrictions and enforcement require separate consideration. It also finds a normative foundation in Qur'an 2:280, which directs creditors to grant respite to debtors experiencing genuine hardship while presenting voluntary remission as a commendable alternative. The verse thus distinguishes the continued existence of a claim from the timing of payment and the creditor's decision to relinquish the obligation. Insolvency therefore requires legal consideration of both the debtor's financial circumstances and the creditor's established rights, rather than a categorical assumption that inability to pay either eliminates or renders the obligation immediately enforceable.

The enforceability of financial obligations constitutes a separate juridical question from their existence. Enforceability concerns the circumstances under which creditors may invoke legal mechanisms to recover outstanding debts, including judicial proceedings, restrictions on property disposal, and the distribution of available assets. In this context, *ḥajr* refers to legally recognized restrictions on certain transactions or property dispositions rather than the wholesale disappearance of the debtor's juridical capacity. Ibn Qudāmah addresses judicial restrictions in relation to the administration of an insolvent debtor's property,[21] while al-Kāsānī provides a distinct juristic treatment of the conditions and implications of restricting financial transactions.[22] These discussions should not be presented as identical doctrinal positions because classical schools differ in the authority attributed to judicial intervention and the permissible scope of restrictions. Such distinctions remain relevant to contemporary insolvency law, where procedural mechanisms seek to protect creditors without necessarily extinguishing the debtor's underlying obligations. Marpi for example, examine the relationship between classical *taflīs* and *actio pauliana* in Indonesian bankruptcy practice, highlighting the challenges of reconciling traditional principles

[21] Ibn Qudamah, *Al-Mughni*.
[22] Al-Kāsānī, *Badāʾiʿ Al-Ṣanāʾiʿ Fī Tartīb Al-Sharāʾiʿ*.

with modern mechanisms for protecting creditors against detrimental asset transactions.[23]

Postponement, discharge, and forgiveness must also be distinguished because they produce different legal consequences. Postponement concerns the deferral of payment or enforcement while an outstanding obligation continues to exist. Discharge refers to the legal termination of an obligation through a recognized mechanism, whereas forgiveness or remission (*ibrāʾ*) concerns the creditor's voluntary release of the debtor from a claim. Although valid remission may result in discharge, neither concept is equivalent to temporary postponement. Qur'an 2:280 provides a significant normative distinction between granting additional time to a debtor experiencing hardship and relinquishing the outstanding debt as an act of charity. Within contemporary comparative legal scholarship, Pirhaji examine the discharge of contractual obligations in Iranian and Malaysian legal contexts, illustrating that the termination of financial obligations requires attention to the applicable legal grounds and institutional framework.[24] Consequently, the proposition that insolvency does not automatically extinguish debt must be qualified: financial obligations may be terminated through valid legal mechanisms, but the debtor's inability to pay should not independently be equated with discharge or forgiveness.

The relationship between financial liability and moral accountability introduces an additional analytical distinction. Islamic legal reasoning recognizes ethical expectations concerning contractual fidelity, honesty, avoidance of harm, and fair treatment of debtors and creditors. Nevertheless, ethical responsibility should not be conflated with every form of legally enforceable financial obligation. A debtor who experiences genuine financial hardship presents a different legal and ethical situation from a financially capable debtor who deliberately refuses payment. Contemporary discussions of *taʿwīḍ* and *gharāmah* further demonstrate the importance of distinguishing underlying debt obligations from financial consequences imposed because of contractual non-performance. Hassan examine the application of these mechanisms beyond financial institutions, revealing questions concerning their

[23] Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice."

[24] M Pirhaji et al., "Comparative Analysis of Discharge of Contractual Obligations in Iran and Malaysia," *Social Sciences (Pakistan)* 8, no. 6 (2013): 618–27, https://doi.org/10.3923/sscience.2013.618.627.

regulatory implementation.[25] However, *taʿwīḍ*, which concerns compensation, and *gharāmah*, commonly associated with financial penalties in contemporary Islamic finance, should not be used interchangeably or treated as general equivalents of *al-dhimmah*. Their juridical operation depends on the relevant contractual and regulatory conditions. The distinction between financial obligations and other compensable harms is also reflected in Dodeen's comparative analysis of moral damages in Islamic contract law.[26]

The continued attribution of financial obligations to an individual debtor also raises questions concerning the treatment of legal responsibility within more complex economic arrangements. Zada examine the development of an Islamic framework for corporate insolvency, particularly the difficulties of applying classical jurisprudential principles to modern institutional structures.[27] Their analysis demonstrates that contemporary insolvency arrangements may require additional doctrinal and institutional considerations beyond those associated with individual debtors. Similarly, Marpi identify the continuing relevance of classical jurisprudence to contemporary bankruptcy administration in Indonesia. However, the existence of corporate or institutional insolvency mechanisms does not establish that economically interconnected family members constitute a collective legal subject. Corporate legal personality, contractual guarantees, shared ownership, and family relationships arise from different juridical foundations. Consequently, the transfer or extension of financial obligations within a family cannot be justified merely by reference to shared economic resources or exposure to financial risk. Any additional liability must instead be established through a separately identifiable legal basis.

These distinctions provide an important foundation for examining family insolvency. Although family members may share income,

[25] R Hassan, F M Noor, and J Ali, "The Application of Ta'widh and Gharamah in the Context of Non-Financial Institution," in *Lecture Notes in Networks and Systems*, vol. 621 LNNS, 2023, 255–64, https://doi.org/10.1007/978-3-031-26956-1_25.

[26] M M Dodeen, "Compensability of Moral Damage in Islamic Contract Law: A Comparative Analysis of the Palestinian, Jordanian and Qatari Civil Codes," *Arab Law Quarterly* 34, no. 2 (2020): 167–90, https://doi.org/10.1163/15730255-12341041.

[27] N Zada, A Lahsasna, and M Y Saleem, "TOWARDS A CORPORATE MODEL OF ISLAMIC LAW OF INSOLVENCY: A NOTE ON 'VOLUNTARY INSOLVENCY,'" *ISRA International Journal of Islamic Finance* 7, no. 2 (2015): 137–44, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85141985390&partnerID=40&md5=8b183fe2f065f44cc2ad1ddd4a5cd544.

participate in household expenditure, or depend on common economic resources, such circumstances do not necessarily create joint legal liability. The juridical attribution of a debt remains distinguishable from the economic effects experienced by other household members. This distinction does not exclude the possibility of legally relevant familial obligations, but it requires their identification through recognized sources of responsibility, such as contractual undertakings, guarantees, shared obligations, or independently established maintenance duties. Contemporary scholarship on Islamic legal adaptation suggests that classical doctrines may be interpreted in response to changing institutional circumstances, provided that the resulting legal conclusions remain grounded in identifiable juridical principles.[28] Accordingly, relational responsibility should be understood as a differentiated category requiring doctrinal justification rather than as an automatic consequence of economic interdependence.

Taken together, the analysis demonstrates that the legal consequences of *taflīs* cannot be reduced to a single transformation of responsibility. The existence of debt, capacity for performance, enforceability, judicial restriction, postponement, discharge, forgiveness, and moral accountability represent distinct but interconnected dimensions of Islamic financial jurisprudence. The principal doctrinal implication is that financial incapacity does not necessarily eliminate an established obligation, while the continued existence of that obligation does not justify unrestricted enforcement against the debtor or third parties. This differentiation provides a more precise conceptual foundation for understanding *al-dhimmah* and evaluating the circumstances under which family relationships may generate legally relevant responsibilities. Rather than proposing a metaphysical reconstruction of liability, the study identifies the juridical conditions under which insolvency affects the enforcement of obligations and clarifies the limits of attributing financial responsibility beyond the original debtor. Such an approach preserves the distinction between individual legal accountability and relational or moral

[28] Wael B Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009); Zada, Lahsasna, and Saleem, "TOWARDS A CORPORATE MODEL OF ISLAMIC LAW OF INSOLVENCY: A NOTE ON 'VOLUNTARY INSOLVENCY.'"

obligations while establishing a more defensible basis for subsequent *maqāṣid*-based evaluation.[29]

Comparative Doctrinal Analysis of the Four Sunni Madhhabs: Convergence, Divergence, and Implications for Relational Responsibility

The comparative examination of the four Sunni schools of Islamic jurisprudence reveals both shared juridical principles and significant differences in the regulation of insolvency. The Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī traditions recognize the legal significance of established financial obligations, while differing in their treatment of judicial intervention, restrictions on property disposal, and the administration of creditor claims. These differences require closer examination because the continued existence of debt does not necessarily determine the conditions under which creditors may seek judicial remedies or the extent to which debtors retain control over their property. The central comparative question is therefore whether variations in the regulation of taflīs represent merely procedural differences or reflect substantive disagreements concerning debtor autonomy, creditor protection, and judicial authority. Classical discussions in Badāʾiʿ al-Ṣanāʾiʿ, Bidāyat al-Mujtahid, al-Majmūʿ, and al-Mughnī provide the principal doctrinal foundations for examining these questions.[30]

Within the Ḥanafī tradition, the regulation of insolvency reflects a significant concern with distinguishing the debtor's financial obligations from restrictions on the exercise of property rights. Al-Kāsānī, in Badāʾiʿ al-Ṣanāʾiʿ, discusses debt and financial incapacity within the broader framework of obligations and judicial intervention. An important internal distinction arises between the position attributed to Abū Ḥanīfah and those associated with Abū Yūsuf and Muḥammad al-Shaybānī regarding the permissibility and extent of judicial interdiction. Consequently, Ḥanafī jurisprudence cannot be represented as uniformly rejecting or endorsing ḥajr. This disagreement reveals a more

[29] Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh*; Zubair Hasan, "Islamic Perspective on Debt and Bankruptcy," *International Journal of Economics, Management and Accounting* 19, no. 2 (2011): 203–23; Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice."

[30] Al-Kāsānī, *Badāʾiʿ Al-Ṣanāʾiʿ Fī Tartīb Al-Sharāʾiʿ*; Averroes Ibn Rushd, *Bidayat Al-Mujtahid Wa Nihayat Al-Muqtasid* (Cairo: Dar al-Hadith, 2004); Yahya Al-Nawawi, *Al-Majmu' Sharh Al-Muhadhdhab* (Beirut: Dar al-Fikr, 1996); Ibn Qudamah, *Al-Mughni*.

fundamental juridical tension between preserving the debtor's legal autonomy and protecting creditors against the consequences of unpaid obligations. The doctrinal issue is not whether debt remains attributable to the debtor, but under what conditions judicial authority may restrict transactions or property management to protect legitimate claims. Accordingly, the Ḥanafī approach illustrates that the persistence of debt and the availability of enforcement mechanisms constitute analytically distinct questions.

The Mālikī tradition provides a different perspective by emphasizing the legal consequences of insolvency both before and after formal judicial interdiction. Ibn Rushd, in Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid, discusses the restrictions applicable to a debtor whose liabilities have exhausted available assets, including circumstances in which transactions may adversely affect creditor interests. Under the position attributed to Mālik, certain gratuitous or prejudicial dispositions may be restricted even before formal ḥajr, whereas transactions involving appropriate consideration and expenditures arising from recognized obligations may receive different treatment. The significance of this distinction is that creditor protection does not necessarily depend exclusively on a formal declaration of bankruptcy. Rather, its application may depend on the debtor's financial condition, the nature of the transaction, and its potential consequences for established claims. This approach also provides a useful basis for distinguishing legally obligatory family maintenance from voluntary transfers that could prejudice creditors. Thus, the Mālikī discussion illustrates how financial interdependence may acquire legal relevance without necessarily transforming all economically connected persons into jointly liable debtors.

In the Shāfiʿī school, insolvency is examined through the relationship between established debt obligations and the legal effects of judicial restrictions. Al-Nawawī, in al-Majmūʿ Sharḥ al-Muhadhdhab, discusses ḥajr in connection with creditor claims and the administration of assets belonging to financially distressed debtors. The relevant doctrinal question concerns the circumstances under which judicial intervention becomes permissible and the legal consequences of such intervention for the debtor's property transactions. Restrictions imposed through ḥajr affect the exercise of certain proprietary powers but should not be equated with the disappearance of the debtor's juridical capacity or the automatic termination of outstanding obligations. Consequently, the Shāfiʿī framework provides an important distinction between the

continued attribution of debt and the legal mechanisms available to protect creditors. Its relevance to contemporary insolvency lies in the requirement that restrictions on property management be justified through identifiable legal conditions rather than inferred solely from economic hardship.

The Ḥanbalī tradition similarly recognizes the importance of judicial intervention in administering insolvency while distinguishing the existence of debt from the debtor's immediate ability to satisfy it. Ibn Qudāmah, in al-Mughnī, examines the legal consequences of bankruptcy, including restrictions on the disposition of property and the distribution of available assets among creditors. Such measures are directed toward protecting legitimate claims and regulating the use of property under conditions of financial distress. Nevertheless, the administration or liquidation of available assets does not necessarily extinguish obligations that remain unsatisfied. This distinction is particularly important because it demonstrates that collective creditor recovery and the continued individual attribution of debt may operate simultaneously. The Ḥanbalī discussion therefore contributes to understanding bankruptcy as a legally regulated condition affecting specific financial powers and enforcement mechanisms rather than as an automatic transformation of the debtor's legal identity.

The comparison of these schools indicates that their differences involve several substantive juridical dimensions. First, they differ in the conditions and extent of judicial authority over insolvent debtors. Second, they distinguish in different ways between restrictions arising from financial distress and those following formal judicial interdiction. Third, they address the legal consequences of transactions that potentially prejudice creditor rights. Fourth, their approaches require consideration of the relationship between available assets, established claims, and obligations remaining after the administration of bankruptcy. These dimensions demonstrate why the comparison cannot be reduced to methodological generalizations such as associating Ḥanafī doctrine exclusively with istiḥsān or Mālikī jurisprudence exclusively with maṣlaḥah. Although both concepts are relevant to Islamic legal reasoning, particular rulings must be examined through their supporting evidence, juridical reasoning, and conditions of application. As Hallaq and Nyazee explain in their respective treatments of Islamic jurisprudence, juristic disagreement emerges from complex interactions

among textual interpretation, legal reasoning, and established doctrinal principles.[31]

To systematically identify the points of convergence and divergence, Table 1 compares the four schools across consistent analytical dimensions. The comparison distinguishes relatively established doctrinal positions from their implications for contemporary family insolvency, thereby avoiding the assumption that all family-related applications were expressly formulated in classical bankruptcy discussions.

Table 1. Comparative Doctrinal Analysis of Insolvency Across the Four Sunni Madhhabs

Analytical dimension	Ḥanafī	Mālikī	Shāfiʿī	Ḥanbalī
Primary authority	Al-Kāsānī, Badāʾiʿ al-Ṣanāʾiʿ	Ibn Rushd, Bidāyat al-Mujtahid	Al-Nawawī, al-Majmūʿ	Ibn Qudāmah, al-Mughnī
Status of debt	Debt distinguished from financial incapacity	Creditor claims remain relevant despite insolvency	Debt remains distinct from judicial control of assets	Outstanding obligations distinguished from property distribution
Judicial restriction (ḥajr)	Internal disagreement over its permissibility and extent	Distinguishes legal restrictions before and after formal interdiction	Judicial interdiction subject to specified conditions	Judicial restriction and administration of available assets
Debtor autonomy	Significant concern for preserving financial autonomy	Certain prejudicial dispositions may be restricted before formal interdiction	Property transactions affected by judicially imposed restrictions	Property dispositions restricted under applicable bankruptcy rules
Creditor protection	Scope of judicial	Protection may apply	Protection through	Protection through asset

[31] Hallaq, *An Introduction to Islamic Law*; Nyazee, *Islamic Jurisprudence (Usul Al-Fiqh)*.

	enforcement is contested	before formal ḥajr	judicial intervention and asset administration	restriction and distribution
Persistence of obligations	Financial incapacity does not itself establish debt extinction	Outstanding claims remain subject to applicable legal rules	Debt attribution distinguished from enforceability	Unpaid claims distinguished from distributed assets
Principal doctrinal divergence	Limits of judicial authority	Timing and scope of restrictions protecting creditors	Conditions and effects of judicial interdiction	Administration of assets and creditor claims
Family-related implication	Kinship alone does not establish shared debt	Obligatory maintenance distinguished from voluntary dispositions	Additional family liability requires a separate juridical basis	Third-party liability requires independent legal justification
Methodological implication	Internal juristic disagreement must be recognized	Transaction type and timing are legally relevant	Conditions attached to remedies require examination	Asset administration must be distinguished from debt attribution

Source: Comparative synthesis based on al-Kāsānī, Ibn Rushd, al-Nawawī, and Ibn Qudāmah. The family-related implications represent analytical applications of the doctrines rather than uniformly explicit rulings on modern family insolvency. Passage-level verification of the classical texts remains necessary.

As summarized in Table 1, the convergence among the four schools lies primarily in recognizing established financial claims and distinguishing debt obligations from the debtor's financial condition. Their divergences concern the circumstances authorizing judicial intervention, the scope of restrictions imposed upon the debtor, and the legal treatment of transactions affecting creditor interests. These differences should not be dismissed as merely procedural because

procedural authority determines the practical extent to which creditors may exercise their rights and debtors may retain economic autonomy. For instance, differences concerning the timing of ḥajr may affect whether particular transfers remain legally effective, while differences regarding the administration of assets may influence the treatment of competing creditor claims. The comparative findings therefore suggest that insolvency law operates through the interaction of substantive obligations and legally regulated enforcement mechanisms rather than through an undifferentiated concept of continuing liability.

These doctrinal distinctions have important implications for contemporary legal reconstruction. Modern financial arrangements frequently involve obligations arising from contracts, guarantees, shared ownership, and institutional relationships that may not correspond directly to the circumstances addressed in classical bankruptcy discussions. Zada identify challenges associated with developing an Islamic framework for corporate insolvency,[32] while Marpi examine the relationship between classical taflīs and the protection of creditors under contemporary Indonesian bankruptcy procedures.[33] Their analyses demonstrate that applying classical jurisprudence to modern institutions requires attention to the specific juridical characteristics of the parties and obligations involved. However, legal principles applicable to corporations or contractual partnerships cannot automatically be extended to family relationships. Economic interdependence within a household does not necessarily create a separate legal personality or establish collective liability for obligations incurred by an individual member.

This limitation becomes particularly important when considering financial responsibility within contemporary families. Household members may share economic resources, contribute to common expenditure, guarantee one another's debts, or participate in jointly managed economic activities. Nevertheless, these arrangements must be differentiated according to their legal foundations. Shared income or financial dependence does not independently establish joint liability, whereas valid contractual guarantees, jointly undertaken obligations, or specific maintenance duties may create enforceable responsibilities

[32] Zada, Lahsasna, and Saleem, "TOWARDS A CORPORATE MODEL OF ISLAMIC LAW OF INSOLVENCY: A NOTE ON 'VOLUNTARY INSOLVENCY.'"

[33] Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice."

under applicable legal conditions. The comparative madhhab analysis therefore does not support an unrestricted extension of liability from insolvent debtors to their relatives. Instead, it supports examining whether particular family relationships involve legally recognized obligations that remain distinguishable from the original debtor's financial liabilities. In this sense, the relevance of classical jurisprudence lies in identifying the juridical grounds and limitations of responsibility rather than presuming that collective economic vulnerability requires collective debt attribution.

A further distinction is required between existing jurisprudential doctrine (fiqh de lege lata) and proposed normative reconstruction (fiqh de lege ferenda). At the level of fiqh de lege lata, the classical rules examined here establish the legal consequences of debt, financial incapacity, judicial intervention, and particular obligations arising from recognized juridical relationships. These rules do not independently establish a general doctrine under which every member of an economically interconnected family becomes collectively liable for another member's debts. At the level of fiqh de lege ferenda, the present study proposes relational responsibility as an analytical and normative framework for evaluating how legally relevant family relationships should be treated in contemporary insolvency. This proposal does not seek to replace individual legal accountability with collective liability. Rather, it distinguishes obligations already recognized under existing doctrines from potential regulatory developments intended to protect creditors, financially vulnerable dependants, and family welfare. The distinction is necessary to prevent the study's conceptual proposal from being mistakenly presented as an established rule of classical Islamic jurisprudence.

The normative evaluation of relational responsibility may be informed by maqāṣid al-sharīʿah, particularly the protection of wealth (ḥifẓ al-māl), justice, prevention of harm, and the preservation of legitimate family interests. Al-Shāṭibī and Ibn ʿĀshūr provide important foundations for evaluating legal norms in relation to their objectives and wider social consequences,[34] while Auda develops a systems-oriented approach that emphasizes interconnectedness and contextual legal

[34] Ibrahim Al-Shatibi, *Al-Muwafaqat Fi Usul Al-Shariah* (Beirut: Dar al-Kutub al-Ilmiyyah, 2004); Muhammad al-Tahir A4 - El-Mesawi Ibn Ashur Mohamed El-Tahir, *Treatise on Maqasid Al-Shariah* (London: International Institute of Islamic Thought, 2006).

reasoning.[35] Nevertheless, maqāṣid-based considerations cannot independently establish that a spouse, child, or other family member must assume an insolvent debtor's obligations. Their appropriate function is to evaluate competing interpretations and legally supportable arrangements after the relevant grounds of liability have been identified. Thus, maqāṣid may inform the proportionality of enforcement, protection of dependants, and development of appropriate legal mechanisms, but it must not be used to circumvent the juridical distinction between persons who are obligated and those who are not.

The comparative findings consequently support a qualified understanding of convergence and divergence within the four Sunni schools. Their shared recognition of legally established obligations provides an important foundation for maintaining the distinction between financial incapacity and debt extinction. However, their differences regarding judicial authority, debtor autonomy, and creditor protection demonstrate that the legal consequences of insolvency cannot be reduced to a single uniform procedure. These differences matter for contemporary legal reconstruction because they reveal the conditions under which existing obligations may be administered, restricted, or enforced without automatically expanding liability to economically connected third parties. Accordingly, relational responsibility should be understood as a proposed normative framework rather than an autonomous classical doctrine or an automatic form of collective family liability. Its legally enforceable dimensions must remain grounded in identifiable obligations, while its broader ethical dimensions may be evaluated through maqāṣid al-sharīʿah. This distinction preserves doctrinal integrity while providing a more precise foundation for analyzing family insolvency in contemporary Islamic law.

Reconstructing Legal Responsibility in Family Insolvency: A Four-Level Framework of Relational Responsibility

The reconstruction of legal responsibility in family insolvency requires a clear distinction between the juridical attribution of debt and the broader financial consequences experienced by economically interconnected family members. Classical Islamic jurisprudence recognizes financial obligations as attributable to identifiable legal subjects through established juridical grounds, rather than through family membership alone. Accordingly, the insolvency of a husband, wife, or another household member does not automatically render other

[35] Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

relatives liable for the outstanding debt. Nevertheless, family relationships may generate distinct legal and ethical obligations, particularly through maintenance duties, contractual commitments, and institutional mechanisms designed to protect financially vulnerable persons. Contemporary studies of Islamic family law demonstrate the importance of distinguishing legally recognized familial duties from broader expectations of mutual assistance.[36] The central challenge is therefore not to replace individual liability with collective household responsibility, but to determine the conditions under which family relationships create enforceable obligations and the circumstances in which they generate only moral or social expectations.

For the purposes of this study, relational responsibility is defined as a differentiated framework of legally enforceable, ethically grounded, and institutionally mediated obligations or forms of support arising in response to financial vulnerability within family relationships, without presuming the automatic transfer of an individual's debt to other family members. The concept does not establish the family as an independent collective debtor, nor does it treat economic interdependence as a sufficient source of legal liability. Instead, it distinguishes the juridical grounds, responsible actors, enforcement mechanisms, and limits associated with different forms of responsibility. This conceptualization draws upon the distinction between individual legal obligations and broader relational ethics discussed in contemporary Islamic scholarship, while employing *maqāṣid al-sharīʿah* to evaluate the protection of legitimate financial interests and the prevention of unjustified harm.[37] Its contribution lies in providing an analytical structure for identifying when relational responsibilities possess legal force and when they remain voluntary or institutionally supported.

The first level, primary legal liability, concerns obligations directly attributable to the original debtor. Under this category, financial

[36] N A Aziz et al., "DUTY OF PATERNAL FAMILY MEMBERS IN THE MAINTENANCE OF CHILDREN ACCORDING TO SECTION 73(2) OF ISLAMIC FAMILY LAW (SELANGOR) ENACTMENT 2003," *IIUM Law Journal* 29, no. S1 (2021): 111–34, https://doi.org/10.31436/iiumlj.v29iS1.638; M C Nizar, "The Religious Court's Decisions on Divorce: A Maqāṣid Sharīʿa Perspective," *Ulumuna* 24, no. 2 (2020): 398–416, https://doi.org/10.20414/ujis.v24i2.408.

[37] Al-Shatibi, *Al-Muwafaqat Fi Usul Al-Shariah*; Ibn Ashur Mohamed El-Tahir, *Treatise on Maqasid Al-Shariah*; M R Kayikci, "Relational Ethics: Volunteering and the Responsibilities of the Good Muslim," *Religions* 10, no. 3 (2019), https://doi.org/10.3390/rel10030150; Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

responsibility arises from a valid juridical cause and remains attached to the debtor's *dhimmah*, subject to the rules governing payment, postponement, enforcement, settlement, and legally recognized discharge. The debtor's inability to satisfy an obligation does not, by itself, transfer the debt to another family member. Classical discussions of *taflīs* and financial incapacity provide the doctrinal foundations for distinguishing the continued existence of an obligation from the restrictions that may affect its enforcement. For example, when one spouse independently incurs a valid debt without a guarantee or co-obligation undertaken by the other spouse, the existence of marriage alone does not establish the latter's liability for repayment. This distinction preserves the juridical attribution of debt while allowing the legally relevant circumstances of insolvency to determine the appropriate treatment of enforcement. Primary liability therefore establishes the basic limitation within which all other forms of relational responsibility must operate.

The second level, derivative and family-based legal responsibility, arises when a person other than the original debtor becomes subject to an enforceable obligation through a separately identifiable legal ground. Within this level, contractual derivative liability must be distinguished from responsibilities established by family law or other applicable legal provisions. Contractual derivative liability may arise through a valid guarantee (*kafālah*), an express co-obligation, or another legally recognized undertaking. Such liability does not follow automatically from the family relationship but from the juridical act through which the relevant obligation is established. A spouse who provides a legally effective guarantee, for example, may become responsible within the scope and conditions of that undertaking, whereas a spouse who merely shares household expenditure does not thereby become a guarantor. Similarly, jointly owned assets must be distinguished from jointly incurred debts: ownership arrangements may determine which property interests are available for enforcement, but co-ownership alone does not necessarily establish personal liability for another owner's debt. These distinctions are consistent with the broader contractual analysis of financial rights and obligations in Islamic jurisprudence.[38]

[38] Frank E Vogel and Samuel L Hayes, *Islamic Law and Finance: Religion, Risk, and Return* (The Hague: Kluwer Law International, 1998).

Table 2. Proposed Four-Level Framework of Relational Responsibility in Family Insolvency

Level	Form of responsibility	Juridical basis	Enforceability	Legal consequence
Primary Legal Liability	Individual debt obligation	Valid debt or contractual obligation attributable to the original debtor	Enforceable subject to applicable insolvency rules	Debt remains attributable to the debtor unless legally discharged
Derivative and Family-Based Legal Responsibility	Guarantee, co-obligation, or independently established family maintenance duty	Valid contract, kafālah, applicable family law, or statutory provision	Enforceable only when the relevant legal conditions are satisfied	Additional obligations arise within defined legal limits
Moral-Economic Solidarity	Voluntary financial assistance, caregiving, and family support	Ethical commitments, kinship solidarity, and voluntary undertaking	Not enforceable merely because of kinship or moral expectation	Assistance may alleviate hardship without transferring debt liability
Institutional Protection	Zakat, social assistance, restructuring, mediation, and insolvency administration	Applicable legal regulation, institutional mandate, or authorized financial arrangements	Dependent on institutional authority, eligibility, and applicable rules	Financial distress is mitigated without automatically imposing liability upon relatives

Source: Authors' proposed analytical reconstruction based on al-Kāsānī, Ibn Qudāmah, al-Shāṭibī, Ibn ʿĀshūr, Auda, Aziz, and relevant contemporary Islamic legal scholarship. The four-level typology is a conceptual proposal of this study, not a classification expressly formulated by the cited classical jurists.

Family-based legal responsibility constitutes a distinct component of the second level. Unlike contractual derivative liability, it may arise through an independently established maintenance obligation or through legislation expressly identifying the responsible family member,

beneficiary, conditions, and scope of financial support. Aziz for example, examine the duty of paternal family members to maintain children under Section 73(2) of the Islamic Family Law (Selangor) Enactment 2003.[39] This example illustrates that family relationships may acquire enforceable financial consequences where the applicable legal framework recognizes a specific obligation. However, such responsibility must not be interpreted as a general rule transferring the father's outstanding contractual debts to paternal relatives. The legal duty concerns the maintenance of eligible children under specified conditions, not the unrestricted assumption of another person's liabilities. The distinction is fundamental because family maintenance obligations and bankruptcy debts differ in their juridical sources, beneficiaries, scope, and enforcement mechanisms. Thus, relational responsibility may possess legal force without requiring recognition of the family as a collective debtor.

The third level, moral-economic solidarity, concerns assistance provided by family members without an independent legal obligation to satisfy the insolvent debtor's debts. Such assistance may include voluntary financial contributions, temporary accommodation, shared living expenses, caregiving, debt-relief assistance, or other forms of support intended to reduce the social consequences of insolvency. These practices may be supported by Islamic ethical commitments to compassion, cooperation, and family solidarity, but their moral significance does not automatically render them judicially enforceable. Kayikci demonstrates the relevance of relational ethical responsibilities within Islamic social life, while Robinson examines the relationship between Islamic ethical commitments and responsibility in social and economic conduct.[40] Applied to family insolvency, these perspectives support the recognition of voluntary assistance as an ethically significant response to financial distress. Nevertheless, moral-economic solidarity must remain distinguishable from contractual guarantees and legally established maintenance duties. A family member who voluntarily assists an insolvent relative does not thereby become responsible for all

[39] Aziz et al., "DUTY OF PATERNAL FAMILY MEMBERS IN THE MAINTENANCE OF CHILDREN ACCORDING TO SECTION 73(2) OF ISLAMIC FAMILY LAW (SELANGOR) ENACTMENT 2003."

[40] S Robinson, "Islam, Responsibility and Business in the Thought of Fethullah Gülen," *Journal of Business Ethics* 128, no. 2 (2015): 369–81, https://doi.org/10.1007/s10551-014-2101-3.

remaining debts unless an independent legal undertaking or another recognized ground establishes such liability.

The fourth level, institutional protection and social responsibility, concerns mechanisms through which public authorities, charitable institutions, financial organizations, or other legally authorized bodies may address the consequences of insolvency without transferring private debts automatically to relatives. These mechanisms may include zakat assistance for eligible recipients, regulated debt restructuring, mediation, social welfare programs, and judicially supervised insolvency procedures. Recent scholarship in Islamic economic ethics likewise emphasizes that debt relief and charitable transfers remain important mechanisms of welfare protection, but should operate within differentiated obligations, transparent governance, institutional responsibility, and broader considerations of distributive justice.[41] Their juridical character differs from personal debt liability because the relevant duty may arise from public regulation, institutional mandates, contractual restructuring arrangements, or the established rules governing charitable distribution. Contemporary discussions of Islamic financial regulation emphasize the importance of developing insolvency mechanisms that balance legitimate creditor claims with debtor protection and broader financial stability.[42] In this framework, zakat or social assistance should not be treated as an automatic mechanism for extinguishing private debts; eligibility, institutional authority, and the relevant legal requirements must first be established. Institutional protection therefore complements individual and family responsibilities while avoiding the assumption that financial vulnerability justifies unrestricted debt transfer.

The four levels establish a distinction between the legal status of responsibility and the social relationships through which financial hardship is experienced. Primary liability identifies the debtor who directly bears the original obligation. Derivative and family-based legal responsibility identifies additional obligations arising from contracts,

[41] Muhammad Ikhlas Supardin, Danial Fayyadl, Abbas Hamonangan Harahap, and Fajrul Falah, "Beyond Growth and Charity: Reconstructing Islamic Economic Ethics through Welfare, Distributive Justice, and Social Responsibility," *Islamicate Futures: Knowledge, Ethics, and Muslim Societies* 1, no. 2 (2026): 154–183, https://doi.org/10.68051/ifkems.v1i2.42.

[42] A Prihasmoro, Y Sopyan, and R Abdullah, "Sharia Economic Bankruptcy Law (Al-Taflis) and the Dualism of Court Competency in Indonesia," *Juris: Jurnal Ilmiah Syariah* 23, no. 2 (2024): 227–39, https://doi.org/10.31958/juris.v23i2.11045.

guarantees, specific maintenance duties, or applicable legislation. Moral-economic solidarity encompasses voluntary assistance that does not independently establish enforceable debt liability. Institutional protection addresses the broader social consequences of insolvency through authorized financial, welfare, and dispute-resolution mechanisms. These categories differ not only in their responsible actors but also in their juridical sources, beneficiaries, conditions of enforceability, and permissible legal consequences. Accordingly, economic interdependence functions as a contextual consideration requiring legal examination, rather than as an independent mechanism for creating collective financial liability.

The proposed framework also requires a distinction between existing Islamic legal doctrine (*fiqh de lege lata*) and normative legal reconstruction (*fiqh de lege ferenda*). At the level of *fiqh de lege lata,* the recognition of individual debt obligations, contractual guarantees, and specific family maintenance duties rests upon established juridical grounds. Their enforceability depends on the applicable doctrinal requirements, contractual conditions, and legal provisions. Moral assistance and institutional support, by contrast, possess different legal characteristics and cannot be treated as equivalent forms of personal debt liability. At the level of *fiqh de lege ferenda,* the proposed four-level framework represents an analytical and normative reconstruction intended to clarify the interaction among these legally distinct responsibilities in contemporary family insolvency. It does not claim that classical jurists formulated relational responsibility as an autonomous four-level category. Rather, the model organizes existing doctrines and contemporary institutional possibilities into a coherent structure that may guide legal interpretation, regulatory development, and the evaluation of family-related financial disputes. This distinction prevents the conceptual reconstruction from being misrepresented as an established classical legal rule.

The transition from existing doctrine to normative reconstruction requires a methodologically controlled application of *maqāṣid al-sharīʿah*. Al-Shāṭibī emphasizes the protection of essential human interests, while Ibn ʿĀshūr provides a framework for examining the broader purposes and social consequences of legal rules. Auda (2008) further develops a systems-oriented approach that emphasizes the interconnectedness of legal objectives and their relevance to changing social circumstances. Applied to family insolvency, these perspectives support the evaluation of competing legal arrangements through the

protection of wealth (*ḥifẓ al-māl*), justice, prevention of harm, preservation of legitimate creditor rights, and protection of vulnerable dependants. Nevertheless, *maqāṣid*-based reasoning must operate within the juridical boundaries governing the creation and attribution of obligations. The objective of protecting family welfare cannot independently justify imposing another person's debt upon an uninvolved spouse or relative. Equally, creditor protection must not be interpreted as authorizing enforcement against persons who lack a valid legal obligation. The appropriate function of *maqāṣid* is therefore to evaluate the proportionality, fairness, and consequences of legally supportable arrangements rather than to create collective liability without an identifiable juridical foundation.

A further concern arises from the potential distributive consequences of extending familial responsibility. An expansive and insufficiently defined notion of relational responsibility could reproduce existing inequalities by placing disproportionate financial expectations upon spouses, women, elderly relatives, or other economically vulnerable household members. Critical socio-legal analysis of *qiwāmah* similarly demonstrates that gendered configurations of family authority may shape the distribution of responsibility, the recognition of women's agency, and the legitimacy of obligations imposed within household relationships. This reinforces the need to ensure that relational responsibility does not transform socially embedded expectations of gender or kinship into legally enforceable financial burdens without an independent juridical basis.[43] Haneef emphasizes the importance of gender-responsive jurisprudential reform in Malaysian Islamic family law,[44] while Rokhmad and Susilo examine the legal recognition of women's rights within Indonesian Islamic family law.[45] These studies demonstrate why the reconstruction of responsibility must consider both formal legal obligations and the social conditions under which financial

[43] Al Fiqri Ardiansyah, Marhamah Annazah Tambunan, Randy Putra Alamsyah, Idrus Afandi Akbar, and Nuruddin, "Qiwāmah and Epistemic Violence: A Critical Socio-Legal Analysis of Gendered Authority in Islamic Family Law," *Mawaddah: Jurnal Hukum Keluarga Islam* 3, no. 2 (2025): 605–626, https://doi.org/10.52496/mjhki.v3i2.100.

[44] S S S Haneef, "Women and Malaysian Islamic Family Law: Towards a Women-Affirming Jurisprudential Reform," *Journal of Social Welfare and Family Law* 33, no. 1 (2011): 47–60, https://doi.org/10.1080/09649069.2011.571470.

[45] A Rokhmad and S Susilo, "Conceptualizing Authority of the Legalization of Indonesian Women's Rights in Islamic Family Law," *Journal of Indonesian Islam* 11, no. 2 (2017): 489–508, https://doi.org/10.15642/JIIS.2017.11.2.489-508.

duties are allocated. Accordingly, any proposal for expanded family-based financial responsibility must identify the obligated person, the relevant legal ground, the beneficiary, the scope of the obligation, and the available protections against disproportionate burdens. The preservation of family welfare cannot justify assigning financial liabilities solely on the basis of kinship, gender, or perceived household roles.

The practical operation of the proposed framework can be illustrated through several legally distinct situations. Where an insolvent husband has independently incurred a debt, primary liability remains attributable to him, subject to applicable enforcement and insolvency rules. Where his wife has provided a valid guarantee, her potential responsibility arises from the guarantee rather than from marriage itself. Where the husband's financial incapacity affects the maintenance of eligible children, an independently established maintenance duty may become relevant under applicable family law, as illustrated by the Selangor framework examined by Aziz. Where other family members provide voluntary financial support without assuming an enforceable obligation, their contributions remain within the domain of moral-economic solidarity.[46] Finally, where the debtor qualifies for zakat, restructuring, mediation, or social protection, assistance may be provided through the relevant institutional mechanisms. These situations illustrate that a single episode of family insolvency may activate different forms of responsibility without transforming the family into one collective debtor.

The conceptual contribution of this reconstruction is therefore the replacement of an undifferentiated dual-layered model with a legally structured, four-level framework. The previous distinction between individual legal liability and collective moral-economic responsibility identifies an important ethical tension but does not adequately specify when relational obligations become enforceable. The revised model addresses that limitation by differentiating primary liability, derivative and family-based legal obligations, voluntary solidarity, and institutional protection according to their juridical foundations and mechanisms of application. Its novelty does not lie in claiming the discovery of a new source of liability within classical fiqh, but in integrating established

[46] Aziz et al., "Duty of Paternal Family Members In The Maintenance of Children According To Section 73(2) of Islamic Family Law (Selangor) Enactment 2003."

legal categories and contemporary normative considerations into a coherent analytical framework for family insolvency. The resulting model preserves individual accountability while recognizing that family relationships may generate additional, legally distinct obligations under specified conditions.

Ultimately, relational responsibility in Islamic family insolvency should be understood as a conditional framework of differentiated responsibility rather than a presumption of collective legal liability. Its legally enforceable dimensions must arise from independently established juridical grounds, whereas its ethical and institutional dimensions may provide additional forms of protection without automatically transferring outstanding debts. By distinguishing *fiqh de lege lata* from *fiqh de lege ferenda* and employing *maqāṣid al-sharīʿah* as a framework for evaluating legally supportable arrangements, this study offers a more precise reconstruction of responsibility that balances debtor accountability, creditor protection, family welfare, and institutional justice. The four-level model consequently provides a foundation for developing contemporary Islamic insolvency frameworks that recognize family economic interdependence without conflating it with collective juridical personality or unrestricted debt liability.

Maqāṣid-Based Legal Evaluation and Contemporary Reform: Methodological Limits and Comparative Perspectives from Indonesia and Malaysia

The application of maqāṣid al-sharīʿah to contemporary family insolvency requires a distinction between the objectives of Islamic law and the juridical methods through which enforceable obligations are established, interpreted, or modified. Although the protection of wealth, prevention of harm, justice, and family welfare provide important normative considerations, these objectives do not independently authorize the transfer of financial liability from an insolvent debtor to economically connected relatives. Classical and contemporary scholarship recognizes maṣlaḥah as a significant component of Islamic legal reasoning, but its operation remains subject to methodological conditions concerning textual authority, established legal doctrine, and the identification of legitimate public. Auda's systems-oriented approach further supports examining the interaction between legal rules and their social consequences without requiring the abandonment of established juridical principles.[47] Accordingly, the present study employs maqāṣid

[47] Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

al-sharīʿah as a controlled framework for normative evaluation rather than an unrestricted mechanism for producing preferred contemporary outcomes. A comparable methodological caution is found in recent scholarship on the contextualization of classical Islamic thought, which emphasizes both the possibilities and the limits of translating premodern concepts into contemporary normative and policy frameworks. Such reconstruction requires attention to historical context, conceptual continuity, and demonstrable juridical relationships so that modern categories are not retrospectively projected onto classical sources.[48]

A defensible maqāṣid-based reconstruction must clarify the relationship between naṣṣ, established fiqh doctrine, qiyās, maṣlaḥah, and broader legal objectives. The Qur'an and authoritative Sunnah provide foundational normative sources, while classical jurisprudence represents historically developed interpretations of those sources through recognized methods of legal reasoning. Established doctrinal rulings must consequently be examined in relation to their textual evidence, legal reasoning, scope of application, and the degree of certainty attached to the relevant proof. Where an authoritative and definitive textual ruling directly governs a question, an asserted contemporary benefit cannot independently justify contradicting that ruling. Where the applicable texts admit interpretation, the legal rationale requires clarification, or a genuinely new institutional arrangement arises, further juristic reasoning may become relevant. Qiyās may be employed where an appropriate effective legal cause (*ʿillah*) can be established, while maṣlaḥah may inform legal evaluation where the proposed measure is compatible with authoritative principles and does not contradict a controlling rule. *Maqāṣid*, in turn, provides an evaluative framework for examining whether the resulting interpretation advances legitimate legal objectives without undermining established rights.[49] Such methodological restraint also corresponds with recent critiques of normative Qur'anic citation, which emphasize transparent textual selection, contextual mediation,

[48] Al Fiqri Ardiansyah, Yusuf Rahman, Zubair, Marhamah Annazah Tambunan, and Nur Cholis, "Reconstructing Ecological Ethics from Fakhr al-Dīn al-Rāzī: The Possibilities and Limits of Its Contextualization in Indonesian Ecotheological Policy," *AL QUDS: Jurnal Studi Alquran dan Hadis* 10, no. 2 (2026): 385–414, https://doi.org/10.29240/alquds.v10i2.15999.

[49] Mohammad Hashim Kamali, *Maqasid Al-Shariah Made Simple* (London: International Institute of Islamic Thought, 2008).

theoretical consistency, and traceable argumentation when scriptural sources are employed to address contemporary legal problems.[50]

The methodological threshold for invoking maṣlaḥah must therefore be articulated explicitly. First, the proposed reform must address a clearly identified legal problem rather than an assumed social benefit. Second, the relevant textual evidence and established juristic positions must be examined to determine whether the issue is already governed by a binding rule or remains open to interpretation. Third, where analogy is proposed, the relevant *ʿillah* must be identifiable and appropriately applicable to the new circumstances. Fourth, the asserted benefit must be sufficiently demonstrable, consistent with recognized *maqāṣid*, and proportionate to the harm it seeks to prevent. Fifth, the reform must preserve established rights and must not impose new financial obligations upon third parties without a valid juridical basis. These criteria reflect the need to distinguish legally recognized interests from speculative or merely desirable outcomes. Al-Shāṭibī's treatment of maṣlaḥah emphasizes its relationship to the objectives and general principles of Islamic law, while Ibn ʿĀshūr underscores the importance of purposive reasoning within a coherent legal framework. Accordingly, the relevant question is not simply whether a reform promotes family welfare, but whether its legal basis, necessity, proportionality, and consequences satisfy the requirements of disciplined juridical reasoning.

This methodological hierarchy is particularly important when applying maqāṣid to the four-level framework of relational responsibility developed in the preceding section. At the level of primary liability, the objective of protecting wealth (*ḥifẓ al-māl*) supports the recognition of legitimate creditor claims and the preservation of the debtor's established obligations. However, creditor protection must be balanced against the prohibition of unjustified harm, particularly where the debtor's genuine inability to pay has been established. Qur'an 2:280 provides a direct normative basis for postponing repayment in cases of hardship while encouraging voluntary remission. Recent Qur'anic legal-ethical scholarship similarly situates Q. al-Baqarah 2:275–280 within a broader critique of debt dependency, exploitation, and asymmetrical risk transfer,

[50] Al Fiqri Ardiansyah and Marhamah Annazah Tambunan, "From Normative Citation to Critical Analysis: Evaluating Methodological Problems in Contemporary Indonesian Qur'anic Scholarship," *Dialogues in Qur'anic and Hadith Studies* 1, no. 1 (2026): 1–26, https://doi.org/10.68051/dqhs.v1i1.12.

while emphasizing debt compassion and substantive financial justice.[51] Therefore, the protection of creditor rights does not justify unrestricted enforcement, and the protection of debtors does not necessarily require extinguishing established obligations. The legal implication is a differentiated approach that preserves the underlying claim while subjecting its enforcement to recognized conditions of financial capacity, judicial procedure, and legally permitted relief.

At the second level, derivative and family-based legal responsibility, the principles of justice and protection of property require the identification of an independent legal basis before additional persons may be held liable. Valid contractual guarantees, jointly undertaken obligations, and independently established maintenance duties may produce enforceable financial consequences, but their legal effects must remain limited to the conditions and scope of the relevant undertaking or legal provision. Maqāṣid-based reasoning may support clearer regulation of such obligations, particularly where ambiguity exposes economically vulnerable family members to disproportionate financial burdens. Nevertheless, neither family solidarity nor the objective of protecting dependants independently establishes that a spouse or relative must repay another person's debts. The prevention of harm must operate in both directions: protecting creditors against unjustified avoidance of obligations while protecting non-obligated family members against unauthorized transfers of liability. This interpretation is consistent with broader discussions of financial rights and family-related obligations in Islamic legal scholarship.[52]

At the third level, moral-economic solidarity, maqāṣid-based evaluation recognizes the significance of voluntary assistance without transforming ethical expectations into compulsory debt obligations. Family members may contribute financial resources, provide care, share accommodation, or assist in negotiating settlements. Such practices can mitigate the social consequences of insolvency and contribute to family stability. Nevertheless, voluntary contributions should remain distinguishable from enforceable guarantees and statutory maintenance obligations. Kayikci discusses relational ethical responsibility within

[51] Putri Naomi, Miftahul Jannah, Rismayani, and Azwirsyah, "Reassessing Ribā through Qur'anic Legal Ethics: The Moral Limits of Islamic Finance under Global Capitalism," *Journal of Qur'anic Legal Studies and Exegesis* 1, no. 1 (2026): 68–90.

[52] Vogel and Hayes, *Islamic Law and Finance: Religion, Risk, and Return*; Haneef, "Women and Malaysian Islamic Family Law: Towards a Women-Affirming Jurisprudential Reform."

Islamic social life,[53] while Auda's framework provides a basis for examining the interaction between individual actions and broader social welfare.[54] The appropriate implication is therefore to facilitate voluntary cooperation and protect its participants, rather than treating moral solidarity as sufficient justification for compulsory financial liability.

At the fourth level, institutional protection, the objectives of preventing harm and preserving legitimate financial interests may support regulated restructuring, mediation, eligible zakat assistance, and social welfare mechanisms. Such interventions can address the consequences of insolvency without imposing the full burden of financial distress upon relatives who are not legally responsible for the original debt. However, institutional measures must satisfy their own legal requirements, including eligibility, administrative authority, procedural fairness, and applicable rules concerning the treatment of creditor claims. Contemporary scholarship on Islamic insolvency discusses the importance of institutional mechanisms for balancing financial rights and debtor protection. The resulting legal implication is not the automatic redistribution of private debt, but the development and application of authorized mechanisms that may reduce financial hardship while respecting established obligations.

To make these normative implications legally operational, the proposed application of maqāṣid must be evaluated against identifiable criteria rather than broad assertions of welfare. Protection of wealth requires examination of legitimate ownership, established creditor rights, and the legally available assets of the debtor. Prevention of harm requires consideration of genuine insolvency, proportional enforcement, and the consequences of coercive recovery. Protection of family welfare requires identification of legally entitled dependants, relevant maintenance obligations, and available institutional support. Justice requires the distinction between obligated and non-obligated persons, procedural fairness, and safeguards against disproportionate burdens. Table 3 operationalizes these principles by connecting each normative objective to a specific legal implication and a corresponding methodological limitation.

[53] Kayikci, "Relational Ethics: Volunteering and the Responsibilities of the Good Muslim."

[54] Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

Table 3. Operationalization of Maqāṣid Al-Sharīʿah In Family Insolvency

Maqāṣid principle	Normative concern	Specific legal implication	Methodological limitation
Ḥifẓ al-māl (protection of wealth)	Protection of legitimate financial interests	Recognition of valid creditor claims, preservation of property rights, and lawful asset administration	Cannot justify claims against persons who do not bear an established obligation
Dafʿ al-ḍarar (prevention of harm)	Protection against unjustified economic hardship	Respite for genuinely insolvent debtors and restrictions on disproportionate enforcement	Does not automatically cancel valid debts
Family welfare	Protection of dependants' essential needs	Enforcement of valid maintenance duties and access to appropriate social protection	Does not independently establish collective family debt liability
Al-ʿadl (justice)	Fair attribution of rights and obligations	Identification of the legally responsible person, procedural fairness, and proportional remedies	Cannot justify transferring liabilities solely on the basis of kinship
Maṣlaḥah (legitimate welfare)	Evaluation of contemporary legal arrangements	Legally authorized restructuring, mediation, and institutional coordination	Must satisfy textual, doctrinal, evidentiary, and proportionality requirements

Source: Authors' analytical synthesis based on al-Shāṭibī, Ibn ʿĀshūr, Kamali, and Auda. The relationships presented constitute the study's proposed evaluative framework rather than classifications expressly formulated by the cited scholars.

As presented in Table 3, maqāṣid-based evaluation does not function as an independent mechanism for establishing new financial obligations. Rather, each principle produces a specific normative implication whose enforceability remains dependent upon recognized juridical grounds. The protection of wealth justifies preserving legitimate

creditor claims but does not permit their extension to legally uninvolved relatives. The prevention of harm supports appropriate relief for genuinely insolvent debtors without necessarily extinguishing established debts. Family welfare requires attention to independently established maintenance obligations and the protection of dependants, whereas justice demands that liability be attributed only to persons who bear a legally recognized responsibility. The significance of this framework is that maqāṣid becomes a methodologically constrained instrument for evaluating legal consequences, rather than a general ethical vocabulary used to justify predetermined reform proposals.

The contemporary relevance of this approach can be examined through a focused comparison between Indonesia and Malaysia. Both jurisdictions regulate insolvency and family-related financial obligations through modern legal institutions, although they differ in the organization and application of Islamic family law. The comparison is limited to three dimensions: the legal regulation of insolvency, the juridical recognition of family maintenance obligations, and the implications of these arrangements for the proposed relational responsibility framework. This restricted comparison avoids treating geographically diverse legal systems as interchangeable and permits closer examination of the relationship between state law, Islamic legal principles, and family financial protection.

In Indonesia, Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations provides the principal statutory framework for bankruptcy proceedings and debt-payment suspension mechanisms. Its provisions govern the judicial administration of debtor assets, creditor claims, and procedures associated with insolvency-related disputes. Separately, Islamic family-related obligations are addressed through the legal framework associated with marriage and family law, including the Compilation of Islamic Law disseminated through Presidential Instruction No. 1 of 1991. These legal instruments operate within different juridical domains and should not be assumed to establish a unified regime of family insolvency. Marpi examine the relationship between classical taflīs and contemporary Indonesian bankruptcy mechanisms,[55] while Prihasmoro discuss institutional issues concerning the adjudication of Sharia economic bankruptcy disputes.[56] For the

[55] Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice."

[56] Prihasmoro, Sopyan, and Abdullah, "Sharia Economic Bankruptcy Law (Al-Taflis) and the Dualism of Court Competency in Indonesia."

purposes of this study, the central legal question is whether a particular financial claim arises from individual debt, a valid guarantee, an ownership arrangement, or an independently established family obligation. Household economic interdependence alone cannot resolve the attribution of such obligations.

Malaysia offers a complementary comparative perspective. Individual bankruptcy is principally regulated through the Insolvency Act 1967 and its applicable amendments, while Islamic family law operates through relevant state-level legislative frameworks. The Islamic Family Law (Selangor) Enactment 2003 provides a particularly relevant example of legally recognized family-based maintenance responsibilities. Section 73(2) addresses circumstances in which a person liable under Hukum Syarak may be required to contribute to a child's maintenance where the father has died, cannot be located, or is unable to provide the required support. Aziz examine the responsibilities of paternal family members under this provision. Importantly, such responsibility concerns an independently established maintenance obligation rather than the general assumption of a father's outstanding contractual debts.[57] The Malaysian example therefore illustrates how family relationships may generate enforceable financial consequences through a specific legal provision without establishing unrestricted collective household liability.

The comparison between Indonesia and Malaysia highlights the importance of distinguishing insolvency regulation from family maintenance law. Although both legal systems recognize individual financial obligations and provide institutional mechanisms for resolving financial disputes, the legal consequences of family relationships depend on particular statutory provisions and contractual arrangements. The Selangor framework provides a specific illustration of conditional family-based maintenance responsibility, while the Indonesian framework examined here requires consideration of family-law duties alongside separately regulated bankruptcy proceedings. These distinctions are summarized in Table 4.

[57] Aziz et al., "Duty Of Paternal Family Members In The Maintenance Of Children According To Section 73(2) Of Islamic Family Law (Selangor) Enactment 2003."

Table 4. Comparative Legal Framework for Family Insolvency in Indonesia and Malaysia

Comparative dimension	Indonesia	Malaysia
Principal insolvency legislation	Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations	Insolvency Act 1967 (Act 360), as amended
Family-law framework examined	Compilation of Islamic Law and relevant Indonesian family legislation	Islamic Family Law (Selangor) Enactment 2003
Insolvency administration	Statutory bankruptcy and debt-payment suspension proceedings	Statutory bankruptcy administration through the relevant courts and insolvency authorities
Family-based financial duties	Specific obligations governed by applicable family law	Specific maintenance obligations, including Section 73(2) in Selangor
Third-party liability	Requires an applicable legal basis	Requires an applicable legal basis
Main doctrinal issue	Coordination of insolvency, individual liability, property rights, and family obligations	Distinguishing statutory maintenance duties from personal bankruptcy debts
Implication for relational responsibility	Clarification of legal attribution and coordination of available remedies	Illustration of conditional family responsibility established through legislation

Source: Authors' comparative synthesis of Indonesian Law No. 37 of 2004, Presidential Instruction No. 1 of 1991, the Malaysian Insolvency Act 1967, the Islamic Family Law (Selangor) Enactment, and Aziz. The table compares the selected legal frameworks rather than their empirical effectiveness.

As demonstrated in Table 4, both jurisdictions require a distinction between the obligations arising from insolvency proceedings and those independently established under family law. The comparison does not establish that either jurisdiction recognizes the family as a collective debtor or possesses a comprehensive family insolvency regime. Rather, it illustrates how different legal instruments regulate specific financial responsibilities according to their respective juridical sources. In Indonesia, the principal analytical challenge concerns the relationship

between bankruptcy procedures, property interests, and independently established family obligations. In Malaysia, the Selangor maintenance provision demonstrates that particular family members may incur financial duties under defined statutory conditions without assuming the original debtor's unrelated obligations. The comparative findings therefore reinforce the proposition that relational responsibility becomes legally enforceable through identifiable contractual, statutory, or other recognized grounds, rather than through economic interdependence alone.

From the perspective of fiqh de lege lata, the comparative analysis identifies existing legal mechanisms governing individual debt obligations, creditor claims, insolvency administration, and specific family-related responsibilities. These mechanisms differ in their sources, scope, procedures, and institutional settings. Consequently, they cannot automatically be supplemented by generalized appeals to maṣlaḥah. From the perspective of fiqh de lege ferenda, the proposed reconstruction supports clearer coordination between insolvency procedures, family maintenance enforcement, and appropriate social protection arrangements. Potential measures include more explicit identification of legally obligated persons, clearer distinctions between jointly owned property and jointly incurred debts, safeguards for the essential interests of dependants, and accessible mechanisms for permissible debt restructuring or institutional assistance. However, these proposals require further assessment against applicable legislation, authoritative legal sources, established doctrinal requirements, and the rights of affected parties.

The findings demonstrate that maqāṣid al-sharīʿah can contribute to contemporary legal reform only when normative objectives are translated into specific juridical criteria and applied through defensible legal reasoning. The preservation of wealth supports the protection of legitimate financial claims; the prevention of harm limits disproportionate enforcement; family welfare requires attention to legally recognized maintenance obligations and vulnerable dependants; and justice prohibits imposing another person's financial liabilities without an established legal basis. The Indonesia–Malaysia comparison further demonstrates that enforceable relational responsibility depends upon identifiable juridical grounds, whereas voluntary solidarity and institutional protection operate through distinct mechanisms. Accordingly, the principal function of maqāṣid is not to authorize unrestricted departures from classical doctrine but to guide legally

justified interpretation, proportionate enforcement, and carefully bounded institutional reform. This approach preserves the methodological integrity of Islamic jurisprudence while enabling its established principles to address contemporary financial responsibilities within economically interconnected families.

CONCLUSION

This study demonstrates that classical Islamic jurisprudence distinguishes the existence of debt from the debtor's capacity to perform and the legal mechanisms governing its enforcement. Addressing the first research question, the comparative analysis of the four Sunni *madhhabs* reveals a shared recognition that insolvency (*taflīs*) does not automatically extinguish established financial obligations, although significant differences exist concerning judicial interdiction (*ḥajr*), debtor autonomy, creditor protection, and the administration of available assets. Regarding the second question, insolvency may justify postponement or restrictions on enforcement without necessarily discharging the underlying debt, which remains attributable to the debtor's *dhimmah* unless terminated through a recognized legal mechanism. The third question concerns the conditions under which family relationships may generate additional responsibilities. The findings establish that economic interdependence alone does not constitute a sufficient juridical basis for collective liability; rather, enforceable responsibilities require identifiable legal grounds, including valid contractual undertakings, guarantees, jointly established obligations, or independently recognized family maintenance duties. The principal limitation of classical insolvency doctrine in contemporary family contexts is therefore not its commitment to individual liability, but the absence of an integrated framework for analyzing the interaction between individual debt obligations, legally recognized family duties, and institutional mechanisms of financial protection.

The study's principal theoretical contribution is a four-level framework of relational responsibility comprising primary individual liability, derivative and family-based legal responsibility, moral-economic solidarity, and institutional protection. This framework advances the analysis beyond a simple distinction between individual legal responsibility and collective moral obligations by identifying the juridical sources, conditions of enforceability, and limitations associated with each form of responsibility. Importantly, the proposed reconstruction does not establish the family as a new collective legal subject or automatically convert family members into co-debtors.

Instead, it preserves individual liability while recognizing legally differentiated mechanisms of contractual risk-sharing, family support, voluntary solidarity, and welfare protection. The framework also distinguishes established jurisprudential rules (*fiqh de lege lata*) from proposals for normative development (*fiqh de lege ferenda*). Through a methodologically constrained application of *maqāṣid al-sharīʿah*, particularly the protection of wealth, justice, prevention of harm, and family welfare, the study demonstrates that contemporary adaptation must remain grounded in recognizable legal obligations rather than unrestricted appeals to social benefit. Its theoretical implication is a more precise understanding of relational responsibility as a conditional framework that connects classical insolvency doctrine with contemporary family financial relationships without undermining the juridical attribution of debt.

Practically, the findings provide a conceptual basis for legislators, judges, Islamic financial institutions, and family-law practitioners to distinguish personal debt obligations from contractual guarantees, statutory maintenance duties, voluntary family assistance, and institutional protection when addressing family-related financial distress. In Indonesia and Malaysia, the proposed framework may inform clearer coordination between insolvency procedures, family maintenance enforcement, debt restructuring, and appropriate social protection mechanisms while safeguarding creditor rights and preventing unjustified liability transfers to economically vulnerable relatives. Nevertheless, the study is limited by its normative-doctrinal and conceptual design; the proposed framework has not been empirically tested against actual household insolvency cases, judicial decisions, or the experiences of affected families and legal practitioners. Furthermore, its application remains dependent on jurisdiction-specific legislation and the legal conditions governing each form of responsibility. Future research should therefore examine judicial decisions, documented family insolvency disputes, relevant statutory provisions, and interviews with judges, legal practitioners, financial administrators, and affected households to assess the framework's legal applicability, institutional feasibility, and distributive consequences. Such investigations are necessary before the proposed model can serve as a validated basis for comprehensive legal reform.

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