

DYNAMICS OF COMPARATIVE JURISPRUDENCE IN DETERMINING ISLAMIC FAMILY LAW IN INDONESIA: A COMPARATIVE STUDY OF THE SHAFI'I AND HANAFI SCHOOLS

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ABSTRACT This study aims to analyze the comparative dynamics of Islamic jurisprudence in shaping Islamic family law in Indonesia, with a focus on the Shafi'i and Hanafi schools of thought. The urgency of this research stems from the fact that family law practices in Indonesia, historically and normatively rooted in the Shafi'i school, face various contemporary challenges that necessitate flexibility and alternative approaches. However, comparative studies examining the potential contributions of the Hanafi school as a reference for *ijtihad* in addressing modern issues remain limited, resulting in a research gap that needs to be addressed. This study employs a literature-based methodology, conducting a comparative analysis of primary and secondary Islamic jurisprudence texts, laws and regulations, and relevant academic studies. The findings indicate that differences in legal *istinbāt* methodologies between the two schools offer diverse approaches to family law issues such as guardianship, divorce, maintenance, and marriage contracts. These results suggest that selectively integrating approaches from the Hanafi school has the potential to enrich the practice of Islamic family law in Indonesia, particularly in addressing contemporary challenges that require adaptive and contextually informed legal solutions.

KEYWORDS *Islamic Family Law, Shafi'i School of Thought, Hanafi school of thought, Comparative Jurisprudence*

INTRODUCTION

The human understanding and practice of Sharia, the divine law revealed in the Qur'an and the Sunnah (the traditions of the Prophet Muhammad), is known as Islamic jurisprudence, or *Fiqh*. Islamic legal theory, also called *Ushul al-Fiqh*, is the methodology used by jurists to derive legal rulings from the primary sources of Islamic law. This theory encompasses the principles, sources, and interpretive methods that underpin the formation and application of Islamic law. Islamic jurisprudence has a rich history, evolving over fourteen centuries, and has been shaped by the socio-political contexts of Muslim communities. *Fiqh* governs various aspects of life, including worship, commercial transactions, family law, criminal law, and international relations. Its relevance endures across time and place due to

its dynamic and adaptive nature. (Shair Faizi & Ali, 2024)

As the needs of Muslim society become increasingly complex, the establishment of Islamic family law in Indonesia faces ongoing methodological and practical challenges. Issues such as marriage, divorce, child custody, maintenance, and inheritance continue to generate debates reflecting differing schools of thought, despite efforts by the Compilation of Islamic Law (KHI) to unify family law. This is largely due to the development of the Islamic legal system in Indonesia, which relies both on positive provisions (such as the KHI and other regulations) and on *fiqh* (Islamic jurisprudence), consistently utilized by judges, ulama, and laypeople as authoritative sources. This situation illustrates the inevitable differences between schools of thought in

shaping Islamic family law, particularly between the Shafi'i school, the primary reference in Indonesia, and the Hanafi school, which is often employed for comparative purposes in international fiqh literature.(Yullianti, 2018)

One of the primary challenges of this research is the discrepancy between fiqh theory, which provides multiple legal perspectives, and the practical implementation of Islamic family law, which often adheres to a single perspective without sufficient comparative analysis. For instance, regarding guardianship in marriage, the Shafi'i school considers a guardian indispensable. Generally, it prohibits a woman from marrying without one, except in certain circumstances where a legal guardian is appointed. In contrast, the Hanafi school permits mature, sound-minded women to marry without a guardian, a position frequently applied in emergencies or when interpretive disagreements arise. Moreover, differences exist concerning the maintenance period during *'iddah*, the evidentiary procedures in divorce, and regulations governing child custody. In certain cases, religious court judges prefer the Hanafi approach because it is more adaptable to contemporary contexts, particularly in matters of modern evidence not explicitly addressed in classical Shafi'i jurisprudence.(Asman, 2024)

The existence of these differences between norms and practices highlights the need for a comprehensive investigation into how comparisons of schools of thought may influence the development of Islamic family law in Indonesia. Previous studies have primarily focused on comparing legal rulings (*fiqh al-ahkam*) but have not thoroughly examined the methodological foundations (*usul al-fiqh*) that underlie the differences between the Shafi'i and Hanafi schools of law. Renowned for its rigorous approach to textual interpretation, the Shafi'i school relies heavily on evidence from primary texts and closely considers how *ra'yu* (the principle of reasoning) expands textual meaning. In contrast, the Hanafi school emphasizes utility, rationality, *istihsan* (the principle of juridical preference), and societal custom (*'urf*). These epistemological differences result in distinct approaches to addressing family law issues, which cannot be overlooked in contemporary Indonesian society.(Idris & Anita, 2024)

As social realities become increasingly complex, the importance of this research

becomes more apparent. For instance, in divorce cases, judges often face issues such as early marriage, religious differences, domestic violence, or disputes over the division of joint property within a changing family economic context. In matters of child custody, psychological factors and the best interests of the child are crucial. Classical Islamic jurisprudence does not always explicitly address these issues.(Afifah et al., 2022) Furthermore, advances in technology and modernization have transformed the ways in which evidence is presented in cases. This includes the use of digital recordings, electronic evidence, and official documents that are not recognized within traditional fiqh frameworks. Consequently, the methodological flexibility of the Hanafi school is often considered an additional factor in making decisions that better align with the requirements of contemporary justice.(Wibisono, 2022)

Furthermore, this research is significant due to its unique context in Indonesia. The country is strategically positioned to develop a dynamic model for the harmonization of Islamic family law. Although the majority of the population adheres to the Shafi'i school of thought, its legal system accommodates various interpretations of Islamic jurisprudence. The process of establishing family law offers a rich space for dialogue between modern demands and traditional values, owing to the socio-cultural complexity of Indonesian society and the diverse perspectives of Islamic scholars. However, research that comprehensively examines the epistemological and juridical dynamics of the Shafi'i and Hanafi schools of thought within the Indonesian context remains scarce. Most studies focus solely on differences in legal substance, neglecting the underlying social context and judicial practices.

This research is also valuable for academics, legal practitioners, and policymakers. Understanding the dynamics of these two schools of thought can help policymakers formulate family laws that are more contextual, adaptive, and inclusive. Religious court judges may benefit from comprehending the methodological differences between the two schools when handling cases not fully addressed in the Compilation of Islamic Law (KHI) or when alternative perspectives are necessary to achieve substantive justice. Moreover, this research can support academics in conducting comparative studies of the

schools of thought that are more relevant to the current Indonesian context.

Offering a comparative analysis model constitutes the primary contribution of this study. This model not only compares the legal outputs of the two schools of thought but also examines the methodological foundations underlying these differences. Consequently, the study aims to provide a deeper understanding of how the approaches of the Shafi'i and Hanafi schools can complement each other in addressing issues of Islamic family law in Indonesia. Moreover, this study is expected to offer a conceptual contribution toward developing a more progressive, responsive, and contextually relevant family law that meets the needs of contemporary society.

This study comprehensively examines the dynamics of comparative schools of thought in shaping Islamic family law in Indonesia. It aims to address gaps in existing research, enrich academic discourse, and provide practical contributions toward the development of family law that better meet individual needs. Ultimately, this research is expected to serve as a foundation for reforming Islamic family law based on classical fiqh traditions while taking into account evolving societal contexts, social needs, and contemporary demands for justice.

METHODS

This study employs a qualitative approach using library research methods combined with comparative analysis to examine the methodological and substantive differences between the Shafi'i and Hanafi schools of thought in shaping Islamic family law in Indonesia. Data were collected through a review of primary literature, including classical fiqh works such as *al-Umm*, *al-Majmū'*, *al-Mabsūṭ*, and *al-Hidāyah*, as well as texts on the principles of Islamic jurisprudence for both schools, which serve as a methodological foundation for legal determination. Additionally, to understand the relevance and application of each school's perspective in Indonesia, secondary sources; including scientific journals, contemporary books, fatwas, religious court decisions, and legal documents such as the Compilation of Islamic Law and related legislation—were consulted. Data analysis was conducted in three stages. First, relevant literature was selected to reduce data volume and identify the family law issues that constitute the study's focus. Second, content analysis was performed to examine the concepts,

legal *istinbāth* methods, and fiqh arguments of each school. Third, comparative analysis was undertaken to highlight the conclusions, differences, and methodological implications of the two schools for the formulation and practice of Islamic law. To arrive at comprehensive and contextual conclusions, the results were critically interpreted, taking into account social dynamics, legal requirements, and the realities of religious courts. This method was chosen to ensure that the study was not merely descriptive but also offered an analytical understanding of how the epistemological relationship between the Shafi'i and Hanafi schools contributes to the establishment of Islamic family law in Indonesia.

DISCUSSION

1. Conceptual Analysis of Marriage Guardianship in the Shafi'i and Hanafi Schools

In Islamic law, the concept of guardianship is fundamental, encompassing various aspects related to justice, protection, and social stability. For instance, guardianship laws are designed to ensure that marriages occur with the free and informed consent of both parties. Guardians act as family representatives or authorized agents who grant permission and safeguard the prospective bride from coercion or undue pressure. This framework protects women while upholding fairness and integrity throughout the marriage process.(Putra et al., 2025)

The concept of a marriage guardian is a critical issue in the jurisprudence of *munakahat*, directly affecting the validity of a marriage. The epistemological and methodological diversity in interpreting Sharia texts is reflected in the differing opinions among schools of thought regarding the role of a marriage guardian. Due to their markedly different legal approaches to determining the position of a marriage guardian, the Shafi'i and Hanafi schools are often compared. These differences are not merely conceptual but also reflect each school's legal framework and the application of family law in various countries, including Indonesia.

A guardian is a mandatory requirement for marriage according to the Shafi'i school. Even if a woman has reached puberty and is of sound mind, she cannot contract marriage without a guardian, according to Imam al-Shafi'i in *al-Umm*. This opinion is based on the textual evidence of the hadith, which clearly states that 'Marriage is invalid without a guardian.'(Al-Syafi'i, n.d.)

Therefore, the guardian has the authority to safeguard the woman's welfare and ensure orderly social conditions in the context of marriage.(Jalil & Wirnanda, 2020) This hadith is regarded as a fundamental principle in the Shafi'i school of thought and cannot be interpreted independently within its textual framework. The Shafi'i school rejects the possibility of a woman contracting a marriage on her own, regardless of her maturity, sanity, or widowhood, due to the high degree of prudence (ihtiyāt) observed.

Most scholars of the Shafi'i school of thought require that a guardian be just, asserting that a wicked person cannot act as a guardian in the marriage of their daughter. However, a small group within the Shafi'i school (al-qauluts tsani) holds that a wicked person may legitimately serve as a guardian in marriage. Sahal Mahfudh explains this view, as cited in *Al-Qalyubi 'Alal Mahalli*, volume III. According to al-Mahalli, a wicked person may act as a guardian because, in the early days of Islam, wicked individuals were not prohibited from marrying off their daughters.('Umairah, n.d.)

The Shafi'i school of thought establishes a strict hierarchy of guardianship based on kinship, beginning with the biological father, followed by the grandfather, the biological brother, the half-brother, and so forth. This framework reflects the Shafi'i school's strong emphasis on family legitimacy in marriage contracts as a means of protecting women, safeguarding their honor, and ensuring that marriages are conducted with careful deliberation. A judge may intervene only if the kinsman is absent, their whereabouts are unknown, or they refuse to act without a reason compliant with shari'a.(Habib & Talli, 2022)

In contrast, the Hanafi school grants women greater autonomy. According to Abu Hanifah, a mature, sane, and free woman has the right to marry without a guardian, provided that the prospective spouse possesses sufficient *kafā'ah* (compatibility) and offers a dowry consistent with prevailing social norms.(Al-Sarakhsi, 1993) By emphasizing rationality and social justice, the Hanafi approach considers women fully capable of entering into contracts concerning their own interests. This distinction illustrates two differing approaches to legal *istinbāṭh*: the Hanafi school emphasizes rationality and contextual considerations, whereas the Shafi'i school prioritizes textual adherence.(Umar & Purnama, 2018)

The two schools differ in their methodological frameworks. The Shafi'i school emphasizes a textual approach, treating hadiths

concerning guardianship as evidence to be applied literally, thereby limiting the scope for rational interpretation. In contrast, the Hanafi school is more receptive to the use of *ra'y*, *istihsan*, and considerations of community welfare, granting adult women greater autonomy in determining their marriage. This methodological diversity results in variations in the formulation and implementation of family law across Muslim regions.(Halim, 2017)

In the Indonesian context, the Shafi'i school of thought constitutes the primary basis of the positive legal system, as outlined in the Compilation of Islamic Law, which stipulates that a marriage guardian is a mandatory requirement for a marriage to be considered valid. However, in certain situations, such as when a guardian refuses to perform a marriage without a Shari'a-compliant reason or when a marriage case requires urgent resolution; judges often refer to the Hanafi school of thought as an alternative, within the framework of *istihsan*. Therefore, a conceptual comparison between the two schools of thought is not only theoretically significant but also practically relevant to the implementation of Islamic family law in Indonesia, where there is a continuous effort to balance social needs with evolving normative provisions.(Asmawi & Muammar, 2020)

2. Requirements for Marriage Witnesses: A Comparative School Perspective

The majority of scholars agree that witnesses are an essential component of Islamic marriage law to validate a marriage contract. Surah Al-Baqarah (2:282), which emphasizes the necessity of witnesses in important agreements, even in cases of debt, is often cited to support this position. Furthermore, the hadith of the Prophet (peace be upon him), narrated by al-Bayhaqi in *Sunan al-Kubra*, states: "There is no marriage except with a guardian and two just witnesses."(Al-Bayhaqī, 1994) Additional hadiths, such as the one narrated by al-Tirmidhi, "Announce the marriage and hold a wedding reception, even if it is only with a single goat"—further illustrate the importance of making marriages public.(Al-Tirmizī, 1998)

In the Shafi'i school of thought, the presence of witnesses is a valid requirement for marriage. In *al-Umm* (Volume 5), Imam al-Shafi'i states that a marriage contract without two just male witnesses is considered null and void.(Al-Syafi'i, n.d.) He stated that the condition of justice does not merely mean refraining from wrongdoing, but also requires being socially

recognized as a person of moral integrity who avoids major sins and minor immoral behaviors. In *al-Majmū' Syarḥ al-Muhadzdzab*, al-Nawawi emphasizes a similar point, particularly when discussing the conditions and pillars of marriage. He asserts, "The testimony of two men is an indispensable condition in the marriage contract. (Al-Nawawi, n.d.-a) This aligns with the view of the majority of Shafi'i jurists, such as al-Rafi'i and al-Shirazi, who hold that witnesses must be present, hear, and fully comprehend the pronouncement of the *ijab* and *qabul*.

The Shafi'i school's cautious and textualist (*iḥtiyāt*) methodology for maintaining the validity of contracts is fundamental to its perspective. The school holds that the primary duty of witnesses is to ensure that a marriage is not conducted secretly (*nikah sirri*) and to provide legal security in case of disputes. Consequently, the *walimah*, although recommended by the *hadith*, cannot substitute for witnesses. This position reflects the consistency of Shafi'i *ushul fiqh*, which treats marriage as a special contract (*'ibādīyah ḡhayr mahdhah*) and, therefore, prescribes specific rules for witnessing. (Alfarisi et al., 2025)

The Hanafi school is considered more flexible than the Shafi'i school. It holds that a woman's testimony remains valid in marriage, so witnesses can consist of either two men or one man and two women, as is the case in *muamalah* contracts. In *Badā'i' al-Ṣanā'i'*, a seminal work in Hanafi jurisprudence, al-Kasani elaborates on this point in depth. He explains that because marriage is regarded as a contract similar to a transaction in terms of evidentiary requirements, the structure of testimony in marriage aligns with the structure of general testimony. (Al-Kāsānī, 1986a)

Apart from that, al-Sarakhsi's *al-Mabsūṭ* explains that a woman's testimony does not invalidate a marriage contract, as marriage is a contract that a woman can substantiate in cases of dispute. Consequently, the presence of women as witnesses at the time of the contract is also permitted. (Al-Sarakhsī, 1993) Al-Sarakhsi stated that the conditions of justice are not particularly strict in the Shafi'i school; what matters most is that the witness is not publicly known as a liar. In *al-Hidāyah*, al-Marghinani noted that the purpose of a witness is to provide evidence (*bayyinah*) and prevent secret marriages, rather than serving as a condition explicitly stipulated in the contract. (Umar & Purnama, 2018)

The theory of legal *istinbath* underlies the differences between the two schools of thought

regarding marriage witnesses. The Hanafi school, being more rational and contextual, treats marriage as a contract analogous to *muamalah* in terms of evidentiary requirements. In contrast, the Shafi'i school, which is more textual, considers marriage a special contract that necessitates a specific witness structure. In Indonesia, the requirement of two just male witnesses is codified in law, following the Shafi'i school normatively through the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI). Nevertheless, the Hanafi school's flexible approach is often the preferred reference in academic discussions and fatwas, especially in certain social contexts such as remote areas, situations with limited male witnesses, or emergencies. (Ismail & Mohamad, 2019)

Through their classical arguments and references, both schools of thought provide a comprehensive conceptual foundation for understanding the role of witnesses in marital relations. This comparative analysis demonstrates that Islamic law encompasses various perspectives that remain relevant in modern society, particularly in circumstances that necessitate adaptation while preserving the core objectives of *maqāṣid al-sharī'ah*: safeguarding honor, preventing disputes, and ensuring the public nature of marriage.

3. Divorce and Its Significance in the Dynamics of Marital Relationships

In family jurisprudence, divorce is considered a last resort to preserve the marital relationship. In the Islamic jurisprudential tradition, it is defined as a declaration by the husband, under certain conditions, that terminates the marriage contract. The conditions, forms, circumstances, and legal consequences of divorce are discussed extensively in classical literature. In *al-Umm*, Imam al-Shafi'i states, "*Wa lā yanfaẓu al-ṭalāq illā min 'āqilin muqtabir*" (Divorce is valid only when pronounced by a sane, responsible adult). (Al-Syafi'i, n.d.) This view indicates that the Shafi'i school of thought holds that divorce should not be used carelessly or during periods of emotional instability. Furthermore, according to the Shafi'i school, divorce should not be pronounced while the wife is menstruating or in a state of purity following sexual intercourse. *Al-Majmū'* by al-Nawawi states that *bid'i* divorce is haram and does not comply with the requirements of sharia, as it creates confusion during the *'iddah* period. (Al-Nawawi, n.d.-a)

The Hanafi school differs from the Shafi'i school in considering a divorce (*ṭalāq*) valid even when pronounced under less-than-ideal circumstances; however, it regards such actions as discouraged (*makrūh*). In *al-Hidāyah*, al-Marghinani states, "*Wa kullu ṭalāqin jā'izun wa in kāna bid'atan, lianna al-nahya 'an al-waqt lā an al-fi'l*," meaning that all divorces are valid even if innovative (*bid'ī*), because the prohibition concerns the timing of its execution rather than the validity of the divorce itself. (Al-Marghīnānī, n.d.) The Hanafi methodology underpins this more flexible perspective, emphasizing practical benefits and social realities. In contemporary contexts, the Hanafi school is often used as an alternative reference, especially when courts face issues not addressed by the Shafi'i school, such as emergencies, divorces pronounced in emotional states, or the use of electronic evidence unknown to classical jurisprudence. (Alfiannor & Hamdie, 2018)

The concept of divorce in Indonesia is viewed not merely as a husband's prerogative within marital relations, but also as a component of a strictly regulated legal system aimed at ensuring justice for women and maintaining family stability. Religious courts oversee divorce through formal court procedures, mandatory mediation, and the pronouncement of divorce by a judge. This aligns with the classical principle that requires caution when granting a divorce. As the Prophet Muhammad (peace be upon him) said, "*Abghad al-ḥalāl ilā Allāh al-ṭalāq*." (Dāwūd, n.d.) This hadith provides an ethical framework, emphasizing that divorce should be considered only as a last resort after reconciliation efforts have been exhausted. (Wahyudi, 2022) Therefore, contemporary Sharia and legal systems seek to preserve the integrity of the household and minimize the misuse of divorce.

When examining social changes in Indonesian society, the significance of divorce in shaping marital dynamics becomes increasingly apparent. Divorce cases arising from emotional issues, economic disparities, domestic violence, and infidelity illustrate that divorce is not merely a legal matter; it also reflects the psychological dynamics and instability within couples' gender relations. In contemporary judicial practice, the Hanafi school of thought often employs more flexible evidentiary methods, such as accepting written documentation or testimonies not explicitly mandated by classical Islamic jurisprudence. This flexibility enables judges to render decisions that better reflect the actual

circumstances of households, without being strictly constrained by traditional forms of proof.

Therefore, divorce is essential for understanding the dynamics of marital relations, both from classical normative perspectives and contemporary practices. The methodological and epistemological differences in Islamic jurisprudence, particularly between the Shafi'i and Hanafi schools of thought, significantly influence legal formulations and judicial practices in Indonesia. By examining these two schools comparatively, it is possible to develop a more balanced, moderate, and contextually informed approach to family law. Such an approach allows divorce to serve as a mechanism of justice rather than a means of domination or an impulsive act that harms one party.

4. The Concept of Livelihood from the Perspective of the Shafi'i and Hanafi Schools

One of the primary obligations of a husband toward his wife during marriage, according to Islamic family law, is to provide maintenance. This obligation includes meeting the wife's basic needs, such as food, clothing, and shelter, as well as other necessities required to preserve her life and dignity. Although both major schools of Islamic jurisprudence consider maintenance a Sharia obligation for the husband, they differ regarding certain technical aspects and circumstances that affect the determination of maintenance. (Putra, 2024)

The Shafi'i school of thought holds that, during a valid marriage contract, a husband is obliged to provide for his wife. This school emphasizes that the marriage contract establishes a legal relationship that requires the husband to fulfill his responsibilities as the head of the family. However, according to the Shafi'i school, the amount of maintenance is determined based on local standards of eligibility (*'urf*) and the husband's financial capacity (*al-ghinā' wa al-faqr*), taking into account the family's socioeconomic conditions. (Al-Nawawi, n.d.-b) If the wife engages in *nusyūz*, disobedience or deviation from proper conduct without a valid Sharia reason, this obligation may be waived. Therefore, the amount of maintenance must remain within reasonable and just limits, although it is flexible and not fixed. (Abd Nasri, 2024)

However, the Hanafi school of thought provides a broader explanation of the obligation of maintenance and the conditions surrounding it. According to the Hanafi perspective, a wife

must submit herself fully (*tamkīn kāmīl*) to her husband. If the wife fails to do so or refuses to stay at home without a valid Islamic excuse, the husband's maintenance obligation is considered unfulfilled. Nevertheless, the Hanafi school emphasizes that, after the marriage contract and when the wife expresses a willingness to live together, maintenance remains the husband's primary responsibility. Furthermore, the Hanafi school stresses the importance of considering societal customs (*'urf*) and the wife's standard of living before marriage when determining the amount of maintenance. Therefore, according to the Hanafi school, the concept of maintenance is centered on preserving the wife's dignity in accordance with prevailing social standards. (Haider et al., 2025)

Although the two schools of thought differ regarding the conditions for obtaining maintenance after divorce, they also diverge in their interpretations of entitlement. According to the Shafi'i school, a divorced wife is entitled to maintenance during the *'iddah* period only in the case of a *raj'i* divorce, and if the wife is pregnant. In contrast, the Hanafi school holds that the husband must provide maintenance during the *'iddah* period for all types of divorce, both *raj'i* and *bai'n*, to protect the wife's vulnerability after divorce. Because it offers broader economic protection to women, the Hanafi perspective is often considered more adaptive in contemporary society. (Afadi, 2023)

The regulation of maintenance in the Compilation of Islamic Law and its implementation in religious courts highlights the dynamic differences between these two schools of thought within the Indonesian context. Although the Compilation of Islamic Law primarily follows the Shafi'i school, judges may occasionally refer to the Hanafi school, particularly when additional protection for women is required or when social conditions demand legal flexibility. Thus, comparing the two schools provides a broader understanding of the concept of maintenance and its application in Islamic family law in Indonesia. The methodological differences between them, especially in the use of *'urf*, *maslahah*, and legal reasoning; demonstrate that maintenance is not merely a technical matter but also reflects epistemological distinctions that shape both the formulation and practice of family law.

5. The Concept of *Hadhanah*: Psychological Implications for Children

In Islamic family law, the concept of *Hadhanah* refers to the obligation to care for, maintain, and educate children who are not yet able to function independently; physically, mentally, or emotionally. In fiqh, *Hadhanah* is understood not only as a parental right but, more importantly, as the child's right to receive protection, attention, and a safe environment in which to grow. Essentially, both the Shafi'i and Hanafi schools of thought agree that determining who has the right to exercise *Hadhanah* is based on the best interests of the child (*maṣlaḥah al-walad*). However, the two schools differ regarding the minimum age of children and the hierarchy of parties entitled to care for them. (Al-Nawawi, n.d.-b) The Hanafi school of thought considers boys and girls to have different needs, thereby establishing distinct age limits. In contrast, the Shafi'i school emphasizes the importance of a child's emotional bond with the mother, prioritizing the mother's right to *hadhanah* until the child reaches seven or nine years of age, depending on the child's readiness. Although these schools differ epistemologically, both prioritize the welfare of the child. (Al-Kāsānī, 1986b)

Psychologically, *hadhanah* decisions or policies significantly impact a child's long-term mental and emotional development. Children who lose their primary caregiver due to divorce or family conflict may experience anxiety, depression, low self-esteem, and difficulties in social adjustment. From a developmental psychology perspective, some of the most critical factors for a child's psychological health include environmental stability, consistent parenting, and a sustained emotional connection with their parents. The principle of the child's best interests is particularly relevant in these contexts, as it requires judges to consider the child's emotional well-being, attachment, and the parents' psychological readiness to act as caregivers. Religious courts in Indonesia are increasingly taking psychological factors into account when determining custody, especially in cases where one parent experiences mental health issues, exhibits violent behavior, or lacks adequate parenting capacity. To ensure that *ḥadānah* decisions are not only legally valid but also conducive to the child's healthy development, it is essential to integrate both Islamic jurisprudence and psychological perspectives. (Afriyani, 2021)

Furthermore, *hadhanah* has significant psychological implications for the development of a child's character and self-identity. For children to grow into confident, calm, and

empathetic individuals, they require warm emotional attachments. Sudden changes in their environment, such as separation from primary caregivers or placement with a family that does not understand their needs; can lead to various forms of psychological distress. Therefore, decisions regarding *hadhanah* must take into account not only kinship or parental rights but also the caregiver's social, moral, economic, and psychological conditions. This comprehensive approach aligns with the overarching objectives of Islamic law, which aim to safeguard both the soul (*hifz al-nafs*) and the progeny (*hifz al-nasl*). (Fauzan & Hamzah, 2024) Therefore, the concept of *hadhanah* in Islamic law is highly relevant to contemporary legal practice, as it integrates religious, legal, and psychological considerations to ensure the overall safety and well-being of children.

6. Implications of Comparative Approaches to Islamic Family Law in Indonesia

The development and application of Islamic family law in Indonesia have been significantly influenced by comparisons among the various Islamic schools of thought. Although the Shafi'i school has historically predominated in Indonesian society, family law practice continues to be shaped by differences among the schools as documented in classical fiqh literature. These diverse legal perspectives provide judges and policymakers with considerable flexibility in addressing contemporary issues that are not fully addressed by any single school. Comparative analysis of Islamic schools of thought offers an important framework for integrating statutory legal principles, fiqh doctrines, and social contexts in such cases. For instance, in matters requiring a rational and adaptive approach; such as guardianship in marriage, the use of contemporary evidence in divorce proceedings, or consideration of welfare in determining maintenance; the Hanafi school is frequently consulted. The methodological flexibility of the Hanafi school, particularly through the concepts of *istihsan* and *ra'yu*, facilitates more contextualized resolutions of family law issues and allows their adaptation to the needs of modern society. (Asman, 2024)

In contrast, the Shafi'i school of thought remains the primary reference in the formulation of family law norms, particularly within the Compilation of Islamic Law (KHI). The dominance of this school provides a robust and systematic legal foundation for the practice of religious courts. However, when Shafi'i norms are

insufficient to address more complex legal issues, judges in religious courts often resort to the views of other schools as an alternative *qawl* to achieve substantive justice. Numerous rulings cite the opinions of the Hanafi school, especially concerning child custody, evidentiary procedures in *shiqaq* cases, and the role of guardians in jurisprudence. Consequently, the interaction between these two schools has enriched Indonesian family law and facilitated legal reform (*tajsid al-fiqh*) in accordance with contemporary social developments. (Al-Marghīnānī, n.d.)

Furthermore, comparing different schools of thought influences the family law process. Policymakers can utilize these comparisons as a scientific foundation for developing more flexible and comprehensive family law regulations. Such comparisons offer methodological options that can be considered when formulating responsive legal policies, especially when legal issues gain new urgency, such as guardianship, interfaith marriage, or digital custody in the modern era. Moreover, comparing schools of thought helps reduce ambiguity in legal interpretation. Consequently, Islamic family law does not remain static but evolves in response to societal needs.

This also creates a broader academic space for discussions on Islamic family law in Indonesia. Comparative studies foster new ideas that focus not only on legal differences but also on the integration of methodologies across schools of thought. Consequently, the Islamic legal education curriculum is enriched, students' and researchers' knowledge is broadened, and academics gain a better understanding of various approaches to fiqh. In this context, the comparison of schools of thought influences the development of both legal theory and practice.

CONCLUSION

The conclusion of this study indicates that differences in principles and methodologies between the Shafi'i and Hanafi schools of thought significantly influence the development of Islamic family law in Indonesia. The Shafi'i school emphasizes strict adherence to traditional Islamic texts and fiqh practices, whereas the Hanafi school adopts a more flexible approach, considering social context and rationality in legal decision-making. These findings support the research hypothesis that comparative jurisprudential dynamics play a crucial role in shaping Islamic family law and highlight the need for an adaptive approach to legal harmonization

in Indonesia. Accordingly, this study underscores that integrating principles from different schools of thought can serve as a foundation for developing Islamic family law policies that are more responsive to societal needs.

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