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Reconstructing Indonesian Islamic Family Law through Progressive Law and Psychological Approaches for Addressing Psychological Violence

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Abstract

Psychological violence presents a persistent challenge for Indonesian family law because its effects are often relational, cumulative, and difficult to demonstrate through conventional forms of legal proof. This study addresses the continuing gap between legal recognition and judicial implementation by examining how non-physical harm is interpreted, assessed as evidence, and incorporated into decision-making in family disputes. Using a qualitative socio-legal approach based on library research, the study analyses Law No. 23 of 2004 on the Elimination of Domestic Violence, Supreme Court Regulation No. 1 of 2016 on Mediation Procedure in Courts, Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law, relevant Religious Court and Badilag institutional materials, and recent scholarship on progressive law, trauma psychology, Islamic family law, and *maqāṣid al-sharīʻah*. The findings indicate that Indonesian law and Islamic legal principles already provide a normative basis for recognising psychological violence, but judicial reasoning, evidentiary assessment, and mediation practices remain insufficiently responsive to its cumulative and non-physical character. The study therefore supports contextual assessment of relational evidence, psychological expertise, early violence screening, and trauma-sensitive judicial practice. The novelty of this study lies in developing an integrated adjudicative model that connects normative recognition of psychological violence with evidentiary reasoning, trauma, unequal power relations, and mediation within Religious Court practice. This model contributes to the development of Islamic family law by advancing a more contextual, psychologically informed, and substantively just approach to family adjudication.

Keywords

Islamic Family Law; Progressive Legal Philosophy; Psychological Violence; Religious Courts; Substantive Justice

Introduction

Islamic family law in Indonesia continues to develop through an ongoing encounter between religious norms, state regulation, judicial practice, and changing social realities. Recent scholarship has shown growing concern for the protection of vulnerable family members, particularly in relation to children's rights, women's post-divorce entitlements, premarital education, and broader family law reform (Kamarusdiana et al., 2022; Nasution & Nasution, 2021; Syukrawati et al., 2024). Despite these developments, legal discussions still tend to focus on matters that can be readily identified through formal legal categories, such as marital status, maintenance, child custody, and physical violence

(Nasyi'ah, 2024). Psychological suffering is more difficult to place within these categories. As a result, a legal process may appear procedurally adequate while leaving significant emotional harm insufficiently recognised.

The significance of this problem becomes more apparent when considered against the wider reality of violence against women in Indonesia. The in-depth analysis of the 2024 National Women's Life Experience Survey, published in 2026, reported that one in four women had experienced physical, sexual, or psychological violence during the previous year. It also found that 41.2 per cent had experienced at least one form of violence by a husband or intimate partner during their lifetime (UNFPA Indonesia et al., 2026). Komnas Perempuan's CATAHU 2025, released in 2026, similarly shows that 89.76% of reported gender-based violence occurred in the personal and domestic sphere, with psychological violence accounting for 32.48% of cases (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2026). These findings suggest that violence within intimate relationships cannot be understood only through visible bodily injury. Emotional suffering may persist for long periods without leaving physical evidence.

Psychological violence may appear through humiliation, threats, coercive control, social isolation, manipulation, affective neglect, gaslighting, or prolonged silent treatment (Darke et al., 2025; McLindon et al., 2026; Salcioglu & Cankardas, 2026). Such conduct can gradually erode dignity and emotional security while increasing anxiety, depression and loss of personal agency through repeated control and persistent fear (Choudhury et al., 2025; Lortkipanidze et al., 2025). Yet this form of harm often creates a particular difficulty for legal adjudication. Unlike physical violence, psychological suffering may not produce an immediately observable injury. Victims may therefore struggle to present their experiences within evidentiary structures that favour visible harm, direct witnesses, or conventional medical documentation.

Recent developments within the Religious Courts indicate a growing awareness of this problem (Fajarani et al., 2026). Badilag has discussed silent treatment as a relational pattern that may, under certain circumstances, provide grounds for divorce. More recent institutional discourse has also considered a broader interpretation of psychological violence under domestic violence law (Sabbaha & Saputra, 2026). Such developments are significant because they indicate that psychological harm is no longer entirely peripheral to family adjudication. Nevertheless, normative or institutional recognition does not automatically provide clear standards for judicial interpretation, evidentiary assessment, or mediation. The practical problem therefore concerns not merely whether psychological violence can be recognised in law, but whether existing judicial processes are capable of identifying its relational and cumulative character in a

manner consistent with procedural fairness. Addressing this gap is important because inadequate recognition may influence the assessment of evidence, the suitability of mediation, and the quality of legal protection available to vulnerable parties. The present manuscript similarly frames the central difficulty as translating recognition of psychological harm into judicial practice.

To examine this problem, the study employs progressive legal philosophy and psychological perspectives as complementary analytical frameworks. Progressive legal philosophy provides an interpretive orientation that keeps legal doctrine and procedure responsive to social realities and substantive justice rather than allowing them to operate through rigid formalism (Rahardjo, 2009; Sony et al., 2024). Legal rules do not simply reproduce everyday life but give legal meaning to events that arise within it. When an everyday occurrence acquires legal significance, it becomes a legal event that activates the law and requires judicial interpretation (Rahardjo, 2021). Courts therefore should not treat law as something confined to written rules but as a framework that must respond to the lived realities brought before them. In this context, progressive legal thought provides a basis for questioning whether conventional legal and evidentiary categories are sufficiently responsive to forms of harm that do not leave visible physical traces. Psychological and trauma-informed perspectives perform a different but complementary function by explaining how emotional control, coercive behaviour, trauma, delayed disclosure, fragmented narratives, and changes in behaviour may shape victims' experiences and their presentation in legal proceedings. These perspectives are complemented by *maqāṣid al-sharīʻah* and the principle of *ḍarar*, which provide an Islamic normative basis for protecting human dignity, psychological well-being, and freedom from harm. Thus, progressive law functions primarily as an interpretive orientation, psychology as an explanatory framework, and *maqāṣid al-sharīʻah* as a normative foundation for evaluating the legal significance of psychological harm. This normative orientation is also consistent with contemporary developments in maqāṣid theory that place human welfare within a systemic understanding of Islamic law and with Islamic psychological approaches that connect marital well being with attention to sharia (Ni'ami & Bustamin, 2021; Prabowo et al., 2024).

Existing studies have contributed important insights into psychological rehabilitation, family resilience, women's legal protection, domestic violence, and the risks associated with mediation. However, psychological violence has received comparatively limited attention as a distinct adjudicative problem that simultaneously involves legal interpretation, evidentiary assessment, trauma, unequal power relations, and mediation within the Religious Courts. This gap is particularly important because psychological harm is often relational, repetitive, and cumulative, making it vulnerable to being interpreted merely as ordinary

marital conflict. The issue is therefore not simply a lack of normative recognition, but the continuing distance between legal recognition and the institutional capacity to identify, evaluate, and respond appropriately to psychological violence.

Against this background, this study aims to examine how psychological violence is understood within Indonesian Islamic family law and Religious Court practice, identify the evidentiary and judicial limitations that hinder its effective recognition, and develop an integrative framework that brings together progressive legal thought, psychological and trauma-informed perspectives, and *maqāṣid al-sharīʿah*. Through this framework, the study seeks to bridge the gap between normative recognition and judicial implementation and to support a more context-sensitive, psychologically informed, and substantively just approach to family adjudication.

Method

A qualitative socio-legal approach grounded in library research provides the methodological basis for examining psychological violence in Indonesian Islamic family law and Religious Court practice. The primary legal materials consist of Law No. 23 of 2004 on the Elimination of Domestic Violence, Supreme Court Regulation No. 1 of 2016 on Mediation Procedure in Courts, and Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law. Institutional materials issued by the Directorate General of Religious Courts (Badilag) and the Religious Courts were also examined to identify developments in judicial discourse concerning psychological harm. Official research reports, particularly CATAHU 2025 issued by Komnas Perempuan and the In-Depth Analysis of the 2024 National Women's Life Experience Survey (SPHPN), were used to provide empirical context on violence against women in Indonesia. Secondary materials consist of peer-reviewed journal articles and scholarly books dealing with progressive legal thought, Islamic family law, psychological violence, trauma informed justice, evidentiary assessment, power relations, mediation, and *maqāṣid al-sharīʿah*.

The literature search mainly covers publications from 2021 to 2026, while earlier works were retained when they provide important theoretical or legal foundations, particularly the original works of Satjipto Rahardjo on progressive law. Relevant literature was identified primarily through Scopus and supplemented by Google Scholar. Legal and institutional materials were obtained from official repositories and institutional websites, including the legal databases of the Indonesian government and Supreme Court, Badilag, Komnas Perempuan, and UNFPA Indonesia. Searches used combinations of terms related to psychological violence, domestic violence, Islamic family law, Religious Courts, progressive law, trauma-informed justice, evidentiary assessment, coercive control, power imbalance, mediation, and *maqāṣid al-sharīʿah*. Sources were

included when they were directly relevant to the research objectives and provided verifiable legal, psychological, or institutional information. Duplicate records, materials of uncertain authority, and studies dealing exclusively with physical violence without a clear connection to psychological harm or family adjudication were excluded.

The selected materials were examined through qualitative content analysis and thematic interpretation. Legal materials were analysed to identify the normative recognition of psychological violence and the procedural framework relevant to adjudication. Scholarly and institutional materials were then organised around recurring themes of psychological harm, evidentiary challenges, trauma, unequal power relations, mediation, and judicial practice. These themes were interpreted through progressive legal thought, psychological and trauma-informed perspectives, and *maqāṣid al-sharīʻah* together with the principle of ḍarar. The analysis focused on the distance between formal legal recognition and its practical application in adjudication, from which an integrated framework for addressing psychological violence in Religious Court practice was developed.

Literature Review

Several previous studies are relevant to the present research. One notable study is Arsyad (2024), This study examines how psychological rehabilitation is positioned within Islamic family law, while also identifying the limitations of classical fiqh and existing legal regulations in responding to the recovery needs of women who experience domestic violence. Its findings show that domestic violence may produce long-term psychological consequences, including trauma, depression, anxiety, diminished self-esteem, and disruption of social and emotional functioning. At the normative level, the study argues that Islamic family law already contains a strong basis for protection through *maqāṣid al-sharīʻah*, *maṣlaḥah*, and the preservation of human dignity, yet these principles have not been fully translated into systematic mechanisms of psychological recovery. Arsyad concludes that psychological rehabilitation may be understood as *maṣlaḥah ḍarūriyyah* and should therefore be recognised as part of the normative responsibility of Islamic family law. The study ultimately advocates a shift from a predominantly legal-formal orientation toward a trauma-informed and substantively just approach in which psychological recovery becomes an integral element of legal protection for women victims of domestic violence.

Selinah et al. (2025), examine the reconstruction of Islamic family law by incorporating insights from family psychology. Their study emphasizes the importance of psychological considerations in strengthening marital resilience and preventing family breakdown associated with early marriage, infidelity, divorce, and domestic violence. The findings indicate that psychological perspectives should be integrated into marital preparation, premarital education, conflict resolution, and mediation practices within the Religious Courts. Rather than relying solely on a normative legal framework, the study

advocates a more comprehensive approach that takes into account psychosocial maturity, emotional resilience, and the overall well-being of family members. The authors conclude that the development of Islamic family law should move toward a more holistic and responsive model in which legal norms are complemented by psychological understanding to better address the complexity of contemporary family life.

Jones and Aftab (2023), examine the practice of mandatory mediation in divorce cases involving domestic and family violence before Indonesia's Religious Courts. Their study finds that mediation may not always provide a safe or effective process for victims, particularly when existing power imbalances and the risk of further abuse are overlooked. The authors conclude that Religious Courts should introduce early violence screening mechanisms and allow exemptions from compulsory mediation in cases where domestic or family violence is identified, drawing on comparative practices from Australia and Canada.

Rossi et al. (2024), in their article address the need to identify intimate partner violence and ongoing safety concerns among parents undergoing separation or divorce. The article introduces the MASIC-S as a screening instrument designed for family-law settings and explains how its results may inform parenting arrangements when a history of violence is present. The authors emphasize that appropriate screening is necessary because undetected violence may lead to parenting arrangements that fail to protect victims and children from continued risk.

Based on this concern, Gifford et al. (2025) compares self administered and screener administered formats of the MASIC-S with the Danger Assessment in a court-affiliated mediation programme. The findings indicate that participants were more likely to complete the screening on time when assisted by a screener and that this format identified higher levels of reported victimization among women. The authors therefore suggest that courts may detect more violence through professionally administered screening and use the results to determine whether specialized mediation procedures are needed.

A broader procedural perspective is offered by Sixsmith and Blakey (2025). Through a comparative analysis of family mediation policy in Australia and England and Wales, the authors examine whether mediators are adequately equipped to identify domestic abuse and assess the risks associated with mediation. Their analysis argues that insufficient training and weak screening arrangements can undermine participant safety and the voluntary character of mediation. They consequently call for stronger safeguards to ensure that victims of domestic abuse are not placed in unsuitable or unsafe mediation processes.

Extending the discussion into an Islamic family-law setting, Cholil et al. (2025), investigate a mosque based Family Corner programme in Malang Regency that provides legal education, counselling, mediation, and legal advocacy for families affected by domestic violence. Using a descriptive qualitative field approach, the study finds that the programme improves victims' awareness of their legal rights and supports more informed decision-making through non-litigation mechanisms. The authors further relate these interventions to *maqāṣid al-usrah*, particularly the protection of life, family integrity, religious values, and the pursuit of sakinah, mawaddah, and rahmah.

Emira (2025) examines the fulfilment of post-divorce rights of former wives and children where the husband is a civil servant, particularly through the application of Article 8 of Government Regulation No. 10 of 1983 in conjunction with Government Regulation No. 45 of 1990 at the Painan Religious Court. The study finds that, of 28 cases in which the salary-sharing provision could legally have been applied, only three decisions granted the former wife a portion of her former husband's civil service salary. The study concludes that the implementation of these provisions remains ineffective, meaning that legal certainty and protection for former wives and children after divorce have not yet been fully realised.

Ulya and Eva (2025), in their study shows that legal awareness helps women better understand their rights, protect themselves, and seek legal remedies when violence occurs. At the same time, limited awareness remains closely linked to social stigma, patriarchal norms, unequal access to information, and weaknesses in legal protection. The authors conclude that strengthening women's legal awareness requires sustained and coordinated involvement from government institutions, law enforcement agencies, communities, and civil society so that both prevention and victim protection can operate more effectively.

Sawitri et al. (2025), in their study examine the legal protection available to women experiencing domestic violence, with particular attention to the physical and psychological consequences of abuse and the influence of a culture of silence on reporting and case resolution. Their findings show that victims may suffer both physical harm and severe psychological trauma, often compounded by infidelity, patriarchal norms, social pressure, and reluctance to report the abuse. The authors conclude that existing legal protection remains insufficient and should be strengthened through more victim-responsive measures, including legal assistance, witness protection, and safer, more accessible reporting mechanisms.

The existing literature shows a growing interest in psychological perspectives within family law and in the legal protection of women, yet an important area remains insufficiently explored. Arsyad (2024) focuses primarily on the psychological rehabilitation of domestic violence survivors and frames such recovery as part of *maṣlaḥah ḍarūriyyah*. Selinah et al. (2025) emphasize the integration of family psychology into marital resilience, premarital education, and the prevention of family breakdown. Jones and Aftab (2023) examine the risks of compulsory mediation in cases involving domestic and family violence and propose screening mechanisms and exemptions from mediation. Emira (2025) highlights the limited effectiveness of post-divorce legal protection for women and children, while Ulya and Eva (2025) stress the importance of women's legal awareness in responding to domestic violence.

More recent scholarship broadens this discussion in several directions. Prabowo et al. (2024) and Ni'ami and Bustamin (2021) strengthen the connection between psychological well being and the protective orientation of *maqāṣid al-sharīʻah*. Busriyanti et al. (2025) and Cholil et al. (2025) extend *maqāṣid* based analysis to family-law reform and institutional responses to domestic violence. Nasyi'ah et al. (2026) address psychological violence directly through domestic violence law and *maqāṣid al-sharīʻah*, while Irfan et al. (2026) demonstrate how psychological coercion may affect autonomy and marital consent. Psychological studies further identify gaslighting, coercive control, and other forms of psychological abuse as multidimensional and relational patterns associated with trauma, diminished agency, persistent fear, and difficulties of identification (Choudhury et al., 2025; Darke et al., 2025; McLindon et al., 2026; Salcioglu & Cankardas, 2026).

Research on mediation also demonstrates that legal protection depends not only on substantive norms but on the ability of judicial procedures to identify violence before dispute resolution begins. Rossi et al. (2024) emphasize the role of structured screening in identifying intimate partner violence among separating or divorcing parents. Gifford et al. (2025) provide further evidence from a court affiliated mediation programme, while Sixsmith and Blakey (2025) highlight the importance of mediator training, effective screening, and procedural safeguards where domestic abuse is present. These studies strengthen the argument that apparently neutral procedures may fail to provide substantive protection when existing power imbalances remain unidentified.

Sawitri et al. (2025), meanwhile, focus on legal protection, the psychological consequences of abuse, and the influence of a culture of silence. Although these studies have significantly broadened the discussion on women's protection, family psychology, *maqāṣid al-sharīʻah*, domestic violence, psychological abuse, and mediation, they have not systematically examined psychological violence in

relation to legal interpretation, evidentiary assessment, power imbalances, mediation, and judicial reasoning within the Religious Courts. This gap is particularly important because psychological violence differs from physical violence in that it is often relational, repetitive, cumulative, and difficult to observe directly. As a result, victims' experiences may be reduced to ordinary marital conflict and may fail to receive adequate legal recognition. The central problem, therefore, is not simply the absence of a legal basis, but the continuing gap between the normative recognition of psychological violence and the capacity of judicial practice to identify, prove, and address it appropriately.

Building on this gap, the novelty of the present study lies in developing a reconstruction framework for Islamic family law that treats psychological violence as a distinct adjudicative issue within the Religious Courts. Rather than limiting the discussion to victim rehabilitation, conflict prevention, legal awareness, violence screening, or psychological measurement, this study integrates progressive legal philosophy, psychological and trauma perspectives, and *maqāṣid al-sharīʿah* together with the principle of ḍarar into a single analytical framework that connects normative recognition with evidentiary and judicial practice. The proposed reconstruction operates at three interrelated levels. At the normative-conceptual level, psychological violence is understood as ḍarar with legal and ethical consequences. At the evidentiary level, the assessment of proof is adapted to the characteristics of psychological harm by considering communication patterns, controlling behaviour, counselling histories, behavioural changes, and psychological assessments without compromising judicial scrutiny. At the institutional level, the study proposes early screening, greater judicial and mediator sensitivity to trauma and unequal power relations, access to psychological expertise, and a more careful assessment of whether mediation is appropriate in cases involving indications of abuse. Accordingly, the main contribution of this study does not lie in proposing additional legal rules, but in developing a model of legal reasoning capable of translating the normative recognition of psychological violence into more substantive, humane, and context-sensitive protection within Religious Court practice.

Result

Psychological Violence as a Distinct Form of Domestic Harm and an Evidentiary Challenge

The analysis indicates that psychological violence should be treated as a distinct form of domestic harm rather than merely as an ordinary consequence of marital conflict. It does not always arise from a single, readily identifiable incident; instead, it often develops through recurring patterns of humiliation, silent treatment, coercive control, emotional neglect, manipulation, and other behaviours that gradually erode a person's sense of security, self-worth, and autonomy. Unlike physical violence, which commonly produces observable

consequences, the seriousness of psychological violence often lies in its repetition and cumulative effects within intimate relationships. Psychological research linking prolonged emotional abuse to anxiety, depression, and reduced life satisfaction further demonstrates that the absence of physical injury does not diminish the significance of the harm experienced by victims (Dokkedahl et al., 2022).

This characterisation carries important implications for Islamic family law. Psychological violence may be understood as *ḍarar* because it threatens not only emotional well-being but also human dignity and the ethical purposes of marriage. This understanding is consistent with Article 7 of Law No. 23 of 2004, which legally recognises psychological violence through consequences such as fear, loss of self-confidence, diminished ability to act, helplessness, and severe psychological suffering (Republik Indonesia, 2004). Protection within family law, therefore, cannot be confined to bodily safety. A marriage may formally remain intact while continuously producing fear, humiliation, emotional pressure, or the gradual loss of personal autonomy. Such a relationship cannot fully embody the values of tranquillity, compassion, and mutual care that underpin the ethical vision of family life. Institutional discourse within the Religious Courts also reflects a growing openness to this understanding. Badilag's discussion of silent treatment and its broader interpretation of psychological violence indicate an emerging recognition that marital harm cannot always be measured through visible injury alone (Sabbaha & Saputra, 2026). Yet conceptual recognition has not automatically resulted in consistent standards of judicial assessment.

This difficulty becomes most apparent at the evidentiary level. Family litigation tends to operate more readily with forms of evidence that can be directly observed or verified, such as documents, physical injuries, medical records, or eyewitness testimony. These forms of evidence remain important, but they are not always capable of capturing abuse that occurs privately, relationally, and cumulatively (Lin, 2024; Redding et al., 2023). Victims may also fail to recognise repeated emotional pressure immediately as a form of abuse. Some remain silent for extended periods, delay disclosure, or experience difficulty recounting their experiences in a clear chronological sequence. Trauma may further affect memory, emotional expression, and the manner in which distressing experiences are narrated. Hesitation, pauses, or fragmented narratives should therefore not automatically be treated as indicators that a victim's account is unreliable.

Relational and psychological evidence can provide a fuller picture of the relationship when considered together. This is particularly important because non-physical abuse often develops through repeated coercion and control that may not be captured by conventional evidence (Choudhury et al., 2025; Lin, 2024; McLindon et al., 2026; Redding et al., 2023). Such evidence should also be

interpreted in light of trauma-related responses without treating inconsistent or fragmented accounts as automatic signs of unreliability (Bosma, 2024; Bradshaw et al., 2024; Cogan et al., 2025). A broader evidentiary approach therefore does not reduce judicial scrutiny but allows psychological harm to be assessed more accurately.

These findings point to the need for an evidentiary approach that corresponds more closely to the nature of psychological harm while maintaining judicial scrutiny. Communication records, patterns of interaction, controlling behaviour, counselling histories, changes in social and emotional behaviour, and professional psychological assessments may constitute relevant supporting evidence when examined contextually and in combination. The purpose is not to lower the standard of proof, but to ensure that the evidence considered is appropriate to the kind of harm under examination. This orientation is consistent with trauma-informed approaches, which emphasise that legal procedures should minimise victim-blaming, unwarranted disbelief, and unnecessary re-exposure to traumatic experiences (Bradshaw et al., 2024). Evidentiary justice, therefore, concerns not only the availability of evidence but also the quality of judicial interpretation applied to victims' experiences without compromising procedural fairness.

Power Imbalances, Misclassification Risks, and the Need for Trauma-Sensitive Religious Court Practice

A further finding concerns the difficulty of distinguishing psychological violence from ordinary marital conflict. Not every troubled or conflictual relationship constitutes abuse. The decisive distinction lies not simply in whether disagreement occurs, but in the relational structure within which it takes place. Ordinary conflict generally leaves both parties with a relatively comparable capacity to express their interests and preserve their autonomy. Psychological violence, by contrast, may operate through sustained patterns of domination that progressively diminish one party's freedom, confidence, emotional security, and ability to act independently. Legal assessment must therefore move beyond isolated incidents and examine the broader relational pattern in which those incidents occur.

This distinction is particularly important because victims of psychological violence do not always respond passively. They may resist, become angry, withdraw, or display strong emotional reactions after prolonged exposure to pressure and control. Such responses do not necessarily demonstrate that both parties occupy equal positions or bear equal responsibility for the conflict. When judicial assessment focuses only on visible arguments or immediate reactions without considering preceding patterns of control, psychological violence may be

misclassified as ordinary marital disharmony. Such misclassification risks removing the context of domination from legal consideration and reducing the victim's experience to a mutual dispute.

The issue also has direct implications for the mediation process. When indications of psychological violence are not recognised at an early stage, victims may be placed in negotiations with partners who have previously exercised sustained emotional control over them. Although mediation may appear procedurally neutral, pre-existing power imbalances can continue to shape the process. In such circumstances, mediation may reinforce or even deepen the victim's vulnerability rather than address the underlying problem.

This concern is particularly relevant within Indonesian court procedure because Article 4 of Supreme Court Regulation No. 1 of 2016 generally requires civil disputes brought before the courts to undergo mediation (Mahkamah Agung, 2016). Identifying domestic and family violence before or during mediation is therefore essential to ensure that dispute-resolution mechanisms do not overlook unequal power relations between the parties (Gifford et al., 2025; Jones & Aftab, 2023; Rossi et al., 2024; Sixsmith & Blakey, 2025). This concern becomes even more significant in cases of psychological violence, which can easily be mistaken for ordinary marital discord. Early screening is thus necessary not to exclude mediation as a legal mechanism, but to determine whether the parties are genuinely able to negotiate safely, freely, and without coercive pressure. Reconciliation, therefore, should not be pursued at the expense of the safety and dignity of vulnerable parties.

These considerations also reveal the need for a more trauma-sensitive Religious Court practice. Effective legal protection depends not only on favourable legal norms but also on the capacity of judges, mediators, and court personnel to recognise vulnerability throughout the adjudicative process. A trauma-sensitive approach does not transform the Religious Courts into therapeutic institutions, nor does it replace legal reasoning with psychological judgement. Rather, it improves the quality of judicial assessment by recognising that silence, delayed reporting, emotional hesitation, or fragmented narratives may be connected to traumatic experiences and should not automatically be interpreted as signs of weak credibility.

In practical terms, such sensitivity may be reflected in early screening for indications of domestic violence, more careful assessment of whether mediation is appropriate, communication practices that avoid victim blaming, and greater openness to psychological expertise where relevant. These measures are consistent with Article 4 of Supreme Court Regulation No. 3 of 2017, which requires judges to consider psychological impacts, physical and psychological

vulnerability, unequal power relations, unequal legal protection, and histories of violence when adjudicating cases involving women (Mahkamah Agung, 2017). Protection against psychological violence therefore requires not only adequate legal norms but also procedures and institutional practices capable of recognising the relational and psychological realities underlying family disputes. Particular attention is still needed in its practical application, as Putri and Ma'ruf (2021) found that the regulation had not been fully implemented in divorce cases at the Tanjung Karang Class IA Religious Court, with the decisions they examined showing limited incorporation of a gender perspective.

Reconstructing Islamic Family Law through Progressive Law, Psychology, and *Maqāṣid al-Sharīʿah*

Taken together, the findings point to the need for a reconstruction of Islamic family law across three interconnected dimensions: normative-conceptual, evidentiary, and institutional. At the normative-conceptual level, psychological violence should be more clearly recognised as *ḍarar* carrying both legal and ethical consequences. The focus of family law should therefore extend beyond determining whether a marriage continues formally to examining whether the relationship still preserves dignity, emotional security, personal autonomy, and mutual care. Recognising psychological *ḍarar* allows Islamic family law to treat non-physical suffering as legally relevant harm rather than merely as a private emotional problem within marriage.

At the evidentiary level, reconstruction is required so that the cumulative and relational nature of psychological violence can be assessed through forms of evidence suited to its characteristics. Psychological assessments, communication records, counselling histories, patterns of controlling behaviour, and testimony concerning behavioural changes may serve as supporting evidence when examined carefully and within the wider context of the relationship. Such an approach is not intended to reduce evidentiary standards. On the contrary, it strengthens evidentiary reasoning by preventing psychological violence from becoming legally invisible simply because conventional forms of proof are better suited to physical than psychological harm.

At the institutional level, effective protection cannot depend solely on the personal sensitivity of individual judges or mediators. More systematic support is required through clearer screening mechanisms, enhanced judicial and mediation capacity to understand trauma and power relations, access to psychological expertise, and cooperation with victim-support services. Mediation procedures should likewise be reassessed when indicators of domestic violence are present so that reconciliation does not become a source of renewed vulnerability. Institutional reconstruction therefore provides the mechanism through which

normative recognition and evidentiary reform can operate meaningfully in judicial practice.

This reconstruction is grounded in the convergence of three perspectives that perform distinct but complementary functions. Progressive legal philosophy provides an interpretive orientation that prevents law from becoming confined by rigid formalism when conventional legal categories fail to capture the realities of human suffering. Psychological and trauma-informed perspectives explain emotional control, trauma, relational patterns, and behavioural responses that may otherwise be misunderstood through purely legal categories. *Maqāṣid al-sharīʿah*, meanwhile, supplies the normative foundation for preventing *ḍarar* and protecting human dignity and well-being. Their integration suggests that reforming Islamic family law does not necessarily require the creation of additional legal rules; it may instead require a more responsive model of legal reasoning capable of making existing norms meaningful in the face of complex psychological harm.

Within this framework, the role of the Religious Courts also acquires a broader meaning. They are not merely institutions that determine whether a marriage continues or ends, but also institutions responsible for ensuring that dispute-resolution procedures do not reproduce, reinforce, or prolong the harm experienced by vulnerable parties. The findings ultimately reveal a coherent relationship: the distinctive character of psychological violence determines the evidentiary approach required to recognise it, evidentiary assessment cannot be separated from power relations and victims' psychological conditions, and both require an Islamic family law framework capable of translating normative recognition into substantive protection within Religious Court practice.

Discussion

The central insight of this study is that the challenge of addressing psychological violence in the Religious Courts does not primarily stem from the absence of a legal foundation. Indonesian law already recognises psychological violence, while Islamic legal principles provide a normative basis for preventing non-physical harm (Republik Indonesia, 2004). The more fundamental difficulty lies in the gap between normative recognition and the way psychological suffering is interpreted, evidenced, and addressed in judicial practice. This shifts the discussion from whether psychological violence deserves legal recognition to how the legal system can recognise it fairly without weakening procedural safeguards. From this perspective, the three research questions are closely connected: the legal meaning assigned to psychological violence shapes the way evidence is assessed, while both ultimately determine whether Islamic family law can provide substantive protection.

Psychological Violence as Legally Relevant Harm

Recognising psychological violence requires a broader legal understanding of what constitutes serious harm within marriage. Family law tends to operate more comfortably when harm produces visible or readily verifiable consequences, whereas psychological violence often acquires its seriousness through accumulated experiences. Repeated humiliation, coercive control, emotional neglect, manipulation, or prolonged silence may appear relatively minor when viewed in isolation. When they form a sustained relational pattern, however, their combined effect can gradually undermine personal autonomy, emotional stability, and human dignity. Psychological evidence linking prolonged emotional abuse with adverse mental-health outcomes further demonstrates that the absence of physical injury does not make the resulting harm less substantial (Dokkedahl et al., 2022).

From a legal perspective, this exposes the limitations of an approach that relies too heavily on formal categories. When legal significance is primarily attached to harm that can be observed directly, relational and psychologically experienced forms of suffering may receive inadequate recognition. Progressive legal philosophy offers a way beyond this limitation by placing human welfare and substantive justice at the centre of legal interpretation. Rahardjo's progressive conception of law challenges rigid legal formalism by requiring legal reasoning to remain responsive to social realities and substantive justice (Rahardjo, 2009). Applied to psychological violence, this perspective suggests that the absence of visible injury should not make non-physical harm legally invisible. Legal interpretation should therefore remain attentive to changing social conditions and human welfare rather than being confined by rigid formal categories (Sony et al., 2024).

A similar conclusion emerges from Islamic legal reasoning. Auda's systems approach reinforces this purposive understanding by directing legal reasoning toward interconnected dimensions of human welfare rather than isolated and mechanically applied rules (Auda, 2021; Ni'ami & Bustamin, 2021). Psychological violence can therefore be situated within the protective logic of Islamic law itself, rather than being treated as an external category imposed upon it. More broadly, maqāṣid-based scholarship on violence shows that abusive conduct is inconsistent with the protective purposes of Islamic law and human rights (Muhsin et al., 2021). More recent studies make this connection explicit by locating psychological violence within the protection of life, intellect, dignity, and family well being (Nasyi'ah et al., 2026).

This interpretive direction is also beginning to appear within institutional discourse. Badilag's discussions of silent treatment and the broader

interpretation of psychological violence point to a growing recognition that destructive marital behaviour does not always produce physical injury (Sabbaha & Saputra, 2026). The significance of this development lies less in creating a new legal category than in broadening the interpretation of an existing one. Conceptual recognition, however, remains insufficient unless it is followed by corresponding changes in judicial reasoning capable of connecting relational patterns of harm with their legal consequences.

At this point, the present study extends earlier scholarship by moving beyond the general proposition that psychological considerations matter in family law. Its focus is more specifically adjudicative: how psychological suffering becomes legally relevant within judicial reasoning. The contribution therefore lies in showing how ḍarar, progressive legal thought, and *maqāṣid al-sharīʿah* can work together to bridge victims' psychological experiences with a model of legal interpretation oriented toward substantive justice.

Evidentiary Justice, Power Relations, and Trauma Sensitive Adjudication

A second difficulty arises from the mismatch between the nature of psychological violence and evidentiary practices that work more readily with discrete incidents and observable consequences. Physical violence is often linked to identifiable events, visible injuries, or medical documentation. Psychological violence, by contrast, more commonly develops through repeated conduct, relational control, and cumulative emotional deterioration. Applying exactly the same evidentiary expectations to both forms of harm may therefore create unequal possibilities for legal recognition.

This argument does not call for abandoning evidentiary discipline. The issue is not whether psychological violence should be subject to a lower standard of proof, but whether the evidentiary process is capable of evaluating material that corresponds to the character of the alleged harm. Communication records, patterns of interaction, counselling histories, observable behavioural changes, and psychological assessments may help reveal the broader context of a relationship when considered together (McLindon et al., 2026; Salcioglu & Cankardas, 2026). This is especially important because psychological abuse often develops through several overlapping forms of control, such as emotional coercion, isolation, and repeated psychological pressure. For this reason, the evidence should be assessed as part of an ongoing pattern rather than as separate incidents. Considering a wider range of evidence does not weaken judicial scrutiny. Instead, it allows the court to assess the harm in a way that is more consistent with how psychological violence is actually experienced.

Psychological perspectives help explain why this adjustment matters. Trauma may affect memory, emotional expression, the timing of disclosure, and a victim's ability to recount experiences in a linear chronology. A fragmented narrative does not automatically establish the truth of an allegation, but neither should it automatically be interpreted as evidence of fabrication. Trauma-informed scholarship emphasises the importance of legal environments that reduce victim-blaming, disproportionate disbelief, and unnecessary re-exposure to distressing experiences (Cogan et al., 2025). The way victims communicate emotionally charged experiences in court is also shaped by psychological circumstances and by the legal process itself. Such narratives therefore require contextual judicial consideration so that emotional expression can be understood without silencing the victim or compromising the objectivity of legal assessment (Bosma, 2024). Evidentiary justice, in this sense, concerns not only what evidence is presented but also how the circumstances in which that evidence is produced are interpreted.

These findings are consistent with scholarship arguing that family law should incorporate psychological and mental-health considerations rather than rely exclusively on formal legal responses to family disputes (Iwannudin, 2024). The present study develops that argument further by moving psychological knowledge beyond counselling, rehabilitation, and family resilience into the adjudicative process itself, particularly the assessment of evidence and the judicial interpretation of psychological suffering.

Evidentiary assessment must also be understood in relation to power. Not every troubled marriage constitutes abuse. The decisive distinction lies not merely in whether disagreement occurs, but in the structure of the relationship within which that disagreement takes place. Psychological violence becomes legally significant where patterns of behaviour are used to intimidate, isolate, control, humiliate, or gradually diminish another person's autonomy. Formal equality between the parties therefore does not necessarily produce equitable outcomes. When courts assume that both parties occupy comparable positions simply because both participate in an argument, they risk overlooking the cumulative effects of domination. A victim may resist, become angry, withdraw, or respond inconsistently without thereby demonstrating an equality of power. Judicial assessment must therefore distinguish reciprocal disagreement from repeated conduct that systematically places one party in a position of insecurity.

These power dynamics become particularly important in mediation. Identifying domestic and family violence before or during mediation is necessary to ensure that dispute resolution procedures do not overlook structural inequality between the parties (Abidin et al., 2025). Psychological violence requires particular attention because it can easily resemble ordinary marital discord, creating a risk

that victims are channelled into reconciliation without adequate assessment. In such circumstances, procedural neutrality may conceal substantive inequality. Formal equality in mediation does not necessarily produce substantive fairness, particularly where existing power imbalances remain unaddressed. Under such conditions, mediation may reproduce rather than alleviate the vulnerability experienced by victims (Suryani et al., 2026). Mediation remains valuable in family disputes, but its legitimacy depends on whether the parties can genuinely participate without intimidation or unequal emotional pressure. Reconciliation should therefore be treated as a legal possibility rather than an institutional objective that overrides safety and dignity.

This discussion leads directly to the need for trauma-sensitive Religious Court practice. Protection against psychological violence cannot depend solely on normative recognition. Law No. 23 of 2004 already provides a legal basis for recognising psychological violence, while Supreme Court Regulation No. 3 of 2017 offers a framework for judicial sensitivity to vulnerability, gender stereotypes, and unequal power relations. These principles are particularly relevant to gender-sensitive adjudication (Putri & Ma'ruf, 2021), yet the unresolved question concerns how consistently they shape everyday judicial reasoning.

The distance between favourable norms and their practical implementation also appears in broader areas of family law. Protective legal provisions do not automatically guarantee the effective realisation of women's and children's post-divorce rights (Syukrawati et al., 2024), while women continue to encounter barriers to justice in family disputes involving domestic violence (Musawwamah, 2022). The present study is consistent with these observations but identifies a more specific difficulty. In cases of psychological violence, implementation is complicated not only by institutional constraints but also by the nature of the harm itself, which may remain concealed beneath the appearance of ordinary marital conflict.

A trauma-sensitive approach offers a practical means of narrowing this gap without transforming the Religious Courts into therapeutic institutions. Psychological knowledge is not intended to replace judicial reasoning, but to help judges and mediators avoid assumptions that may distort the interpretation of victims' behaviour. Silence, delayed reporting, emotional instability, or difficulty presenting a linear account should be assessed within the wider context of the case rather than through predetermined stereotypes. In practice, early screening for indications of violence, careful consideration of the appropriateness of mediation, access to psychological expertise, and communication that avoids victim blaming may improve the accuracy of judicial assessment. Trauma sensitivity therefore has both procedural and substantive value: it protects the

integrity of legal proceedings while strengthening the court's capacity to understand the human realities underlying the dispute.

An Integrated Reconstruction of Islamic Family Law and Its Scientific Contribution

The third issue cannot be resolved by simply placing progressive legal philosophy, psychology, and *maqāṣid al-sharīʿah* side by side as three independent theories. Their value lies in the different functions they perform within a single reconstructive framework. Progressive law operates primarily at the interpretive level, psychology at the explanatory level, while *maqāṣid al-sharīʿah* and *ḍarar* provide the Islamic normative foundation. This functional relationship allows reconstruction to move beyond abstract theory and reach evidentiary reasoning and institutional practice.

Progressive legal philosophy provides an interpretive orientation that keeps legal doctrine and procedure responsive to social realities and substantive justice rather than allowing them to operate through rigid formalism. Within Islamic family law, this orientation enables judicial reasoning to move beyond mechanical application when formal rules fail to protect dignity, welfare, and fairness, while remaining aligned with the protective purposes of *maqāṣid al-sharīʿah* (Azmi et al., 2024). Psychology contributes an explanatory dimension by clarifying how trauma, emotional control, relational patterns, and behavioural responses operate in victims' experiences. *Maqāṣid al-sharīʿah*, reinforced by the principle of *ḍarar*, provides the Islamic normative foundation for safeguarding human dignity and psychological well-being. At the family-law level, maqāṣid al-usrah further directs legal development toward the protection of dignity, justice, family welfare, and vulnerable family members rather than the formal preservation of marital status alone (Busriyanti et al., 2025; Cholil et al., 2025). From this perspective, Islamic family law is not limited to preserving marital status, it also requires the prevention of physical and psychological harm that undermines the ethical purposes of family life (Abdul Aziz et al., 2025; Azmi et al., 2024).

The convergence of these perspectives produces reconstruction at three interconnected levels. At the normative-conceptual level, psychological violence is treated as legally and ethically significant *ḍarar*. At the evidentiary level, assessment must be sufficiently responsive to recognise relational patterns and psychologically relevant forms of supporting evidence while preserving judicial scrutiny. At the institutional level, courts require mechanisms that enable judges and mediators to identify vulnerability before procedures such as mediation inadvertently reproduce existing power imbalances.

The scientific contribution of the study becomes clearer at this point. Earlier scholarship has established the relevance of psychological perspectives to family law (Selinah et al., 2025), the need for protection in cases of family violence (Musawwamah, 2022), difficulties in implementing family rights (Syukrawati et al., 2024), and the risks associated with mediation where domestic violence is present (Jones & Aftab, 2023). The present study does not challenge these findings. Rather, its contribution lies in bringing issues that have often been discussed separately into a single adjudicative framework centred specifically on psychological violence and its evidentiary consequences. Reform is therefore located at the intersection of legal interpretation, psychological understanding, and Islamic normativity.

This originality also shifts the direction of Islamic family law reform. The primary need is not simply to create additional legal rules, as Indonesian law already contains substantial normative resources for recognising psychological violence. The more pressing task is to develop a model of legal reasoning capable of translating those resources into judicial decisions that reflect the actual nature of psychological harm. Substantive justice therefore depends not only on what the law formally provides, but also on the quality of interpretation through which legal protection becomes genuinely accessible.

Conceptually, the proposed model broadens the protective horizon of Islamic family law by treating psychological well-being and human dignity as legitimate objects of legal protection. Methodologically, it offers a way of assessing non physical harm through contextual, relational, and cumulative evidence without sacrificing evidentiary objectivity. Institutionally, it calls for a stronger operational relationship between law and psychological knowledge through clearer screening mechanisms, greater judicial understanding of trauma and power relations, and more structured cooperation with psychologists and victim-support professionals. These measures should function as safeguards for judicial accuracy rather than substitutes for judicial authority.

The framework may also have conceptual relevance for other areas of family law involving psychological vulnerability, unequal power relations, or harm that does not leave immediate physical evidence. Its applicability, however, must be approached cautiously. Because this study is conceptual and based on library research, it cannot determine how consistently judges and mediators across different Religious Courts currently identify psychological violence. Future research should therefore examine judicial decisions involving allegations of psychological abuse and compare patterns of judicial reasoning. Interviews with judges, mediators, psychologists, advocates, and litigants could further clarify how psychological evidence is understood in practice, while courtroom

observation could reveal the extent to which trauma-sensitive principles shape communication, mediation, and evidentiary assessment.

Such empirical work would allow the proposed reconstruction to be tested against actual judicial practice. It could also identify regional variation, institutional constraints, and the forms of evidence judges regard as most reliable. In this way, future research may move from conceptual reconstruction toward a more operational model of Islamic family justice one that remains procedurally accountable while becoming more responsive to psychological vulnerability and the demands of substantive justice.

Conclusion

The study finds that psychological violence constitutes legally relevant harm within Indonesian Islamic family law. The main challenge lies not in the absence of normative protection but in the limited capacity of evidentiary and judicial practice to recognise its relational and cumulative character. The proposed framework combines progressive legal thought, psychological and trauma-informed perspectives, and *maqāṣid al-sharīʿah* to support more context-sensitive adjudication in the Religious Courts. Its scientific contribution lies in linking normative recognition with evidentiary reasoning and institutional practice within a single adjudicative model. As this study is conceptual and based on library research, its practical application across Religious Courts still requires empirical examination.

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