

Counter Legal Draft-KHI (CLD-KHI) and The Reform of Islamic Family Law In Indonesia: Between A Humanistic-Prophetic Paradigm And Its Political-Legal Limits

Nirmalasanti Anindya Pramesi^{1*}, YUSDANI², and MUHAMMAD ROY PURWANTO³

^{1,2,3}Universitas Islam Indonesia Yogyakarta, Indonesia

*Corresponding author: 23933007@students.uii.ac.id

ARTICLE INFO

Article history

Received August 18, 2026

Revised September 27, 2026

Accepted October 11, 2026

Keywords:

Islamic Family Law
Reform, CLD-KHI, Gender
Equality, Humanistic-Prophetic
Paradigm

ABSTRACT

The Compilation of Islamic Law (KHI), issued through Presidential Instruction No. 1 of 1991, remains the main substantive source for Indonesian Religious Courts, yet several of its provisions conflict with contemporary standards of gender equality and human rights. The Counter Legal Draft (CLD-KHI) offered an alternative in 2004 but was never enacted. This article asks which contested KHI provisions can be reformed on Islamic grounds and why the CLD-KHI failed to become law. Using qualitative library research, it classifies provisions in eight domains of family law with Abdullah Saeed's hierarchy of values and tests how far they may be revised through Muhammad Shahrūr's *ḥudūd* theory. The contested rules in seven domains are implementational rather than obligatory and open to revision within God's boundaries, whereas the 2:1 inheritance ratio is the most contestable reform because its numerical share is stated in the text. The draft's failure reflects elite advocacy, weak institutional legitimacy, and the symbolic authority of classical *fiqh*, not conservative resistance alone. The article offers a text-sensitive framework for evaluating Islamic family law reform in Indonesia.

1. INTRODUCTION

Indonesia, the world's largest Muslim-majority country, codifies Islamic family law in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), issued through Presidential Instruction No. 1 of 1991 and applied by Religious Courts in marriage, inheritance, and waqf cases (Lukito, 2013; Hooker, 2003). Its formation was dominated by executive and judicial authorities with limited public participation (Bowen, 2003), and its legitimacy as an instruction rather than a statute remains contested (Nurlaelawati, 2010). Indonesia's ratification of CEDAW, ICCPR, ICESCR, CAT, and CRC has added pressure to align the KHI with gender equality and human rights standards (Menski, 2006; Mulia, 2015). Existing scholarship converges on three points. Studies of inheritance, domestic violence, polygamy, interfaith marriage, and the waiting period (*'iddah*) document KHI provisions that fit poorly with women's protection and social plurality (Antasari, 2023; Alfitri, 2020; Wirastri & van Huis, 2021; Nisa, 2023; Isla et al., 2023; Ridwan, 2022). Political-legal analyses attribute the KHI's conservative character to the New Order's political configuration (Mahfud, 2009; Bowen, 2003), and judicial studies show that judges often bypass it for classical *fiqh* texts (Nurlaelawati, 2010). Reformists locate the remedy in contextual, *ijtihad*-open interpretation (Mulia, 2015, 2020; Zayyadi et al., 2023; Ikhwan & Jamal, 2021), while comparative studies in Malaysia and Bangladesh show both the possibilities of reform and the distance between reform and popular legal consciousness (Moustafa, 2013; Hoque & Khan, 2007). Two gaps remain. First, the CLD-KHI, the most comprehensive alternative to the KHI, has been examined from partial normative or political-legal perspectives, and no study has applied Abdullah Saeed's contextual interpretation, Muhammad Shahrūr's *ḥudūd* theory, and Nurcholish Madjid's secularization theory within a single framework

that determines which provisions may change, how far, and why. Second, the literature seldom tests the CLD-KHI's reforms against the strongest textual and traditional objections, or explains why a methodologically sophisticated draft failed institutionally. This article therefore asks (1) which contested KHI provisions in eight domains of family law are obligatory and which are implementational and open to reform under Saeed's hierarchy of values; (2) how far, and on what philosophical grounds, those provisions can be revised under Shahrūr's *ḥudūd* theory and Madjid's concept of desacralization; and (3) what methodological and political-legal limits explain why the CLD-KHI has not become positive law. It argues that the CLD-KHI is best read as a contextual re-reading of the sources whose reforms differ in textual strength, and that its institutional failure cannot be explained by conservative resistance alone. The eight domains are analyzed as a whole, with extended discussion of spousal position, interfaith marriage, and inheritance, where the reform claims are most contested. Table 1 compares the CLD-KHI's proposals with Marriage Law No. 1 of 1974 and the KHI.

Table 1. Differences in Legal Substance between the Counter Legal Draft
Compilation of Islamic Law (CLD-KHI) and Marriage Law No. 1 of 1974 and the Compilation of Islamic
Law (KHI)

Substance	Law No. 1 of 1974	KHI	CLD-KHI
Nature of Marriage	Inward and outward bond between a man and a woman as husband and wife (Article 1)	Marriage is a solemn covenant (<i>mīthāqan ghalīẓan</i>) to obey Allah's command; marriage constitutes worship (<i>ibadah</i>) (Article 2)	Marriage is a social contract (<i>mu'āmalah</i>) between a man and a woman
Position of Husband and Wife	Article 31(3): Husband is the head of the family, while wife is the homemaker	Article 79: Husband is the head of the family, while wife is the homemaker	Article 45(1): The position, rights, and obligations of husband and wife are equal both in social life and household. Article 45(2): Husband and wife share equal rights and obligations to uphold a harmonious household (<i>sakīnah, mawaddah, wa rahmah</i>)
Conditions and Pillars of Marriage	Article 7(1): Minimum age 19 for men, 16 for women	Article 14: Marriage must fulfill pillars and conditions: (a) prospective husband; (b) prospective wife; (c) two witnesses; (d) guardian (<i>walī</i>); (e) consent (<i>ijāb qabūl</i>)	Article 7: Marriage is valid when fulfilling the following pillars: (a) prospective husband; (b) prospective wife; (c) consent (<i>ijāb qabūl</i>); (d) registration. In CLD-KHI, marriage registration constitutes a pillar
Dowry (<i>Mahr</i>)	Not regulated	Article 30: Dowry is given by husband to wife	Article 16: Dowry may be given by either prospective wife to husband or vice versa
Polygamy	Article 3(2): Court may grant permission for a husband to have more than one wife upon certain parties' consent	Articles 55–59: Polygamy permitted by court upon fulfilling certain conditions	Article 3: Polygamy is prohibited (<i>ḥarām lighayrihi</i>)

Marriage Guardian (<i>Walī</i>)	—	Article 14: Prospective wife must be married by a guardian, either lineage guardian (<i>walī nasab</i>) or judge guardian (<i>walī ḥakīm</i>)	Article 7: A woman who has reached 21 years of age may marry herself without a guardian
Interfaith Marriage	—	Articles 44 and 61: Absolutely prohibited	Article 54: Interfaith marriage is permitted within the boundaries of achieving marriage's objectives
Waiting Period (<i>Iddah</i>)	—	Article 153: Waiting period applies only to wife	Article 88: Waiting period applies to both wife and husband
Reconciliation (<i>Rujū</i>)	—	Article 163: Right of reconciliation belongs solely to husband	Article 105: Both husband and wife have equal right to reconciliation
Divorce by Wife (<i>Khulu</i>)	—	Article 119: <i>Khulu</i> is declared as irrevocable divorce (<i>ṭalāq bā'in ṣughrā</i>), thus wife cannot reconcile without new contract	Articles 1 and 59: <i>Khulu</i> and <i>ṭalāq</i> are equal; both husband and wife may reconcile
Inheritance	—	Articles 171–172: Religious difference constitutes barrier to inheritance. Article 186: Children born outside marriage cannot inherit from biological father, but inherit from mother. Articles 192–193: Application of <i>awl</i> and <i>radd</i> principles. Article 176: Share of sons and daughters is 2:1	Article 2: Religious difference does not constitute barrier to inheritance. Article 16: If biological father is known, children born outside marriage may inherit from biological father. <i>Awl</i> and <i>radd</i> principles do not apply. Article 8(3): Sons and daughters receive equal share (1:1)

Source: Summarized by authors (2026)

2. METHODS

This study uses qualitative library research with a descriptive-analytical design (Sugiyono, 2009; Kaelan, 2013). The unit of analysis is the substantive provision: the articles of the KHI and the CLD-KHI, read against Marriage Law No. 1 of 1974 and grouped into eight domains (Table 1). Because the data are documentary, the study examines the content, textual basis, and justification of provisions, not their reception by judges or litigants. *Source selection.* Primary sources were the Qur'ān, the KHI, the CLD-KHI draft, Marriage Law No. 1 of 1974, the 1945 Constitution, CEDAW, ICCPR, and Law No. 19 of 2011 on the CRPD. Secondary sources were journal articles, books, dissertations, and institutional reports on Islamic family law reform, gender equality, interpretive theory, and the political-legal setting of the KHI. A source was included if it (a) addressed one of these topics in Indonesia or comparable Muslim contexts, (b) came from a peer-reviewed journal, an academic publisher, a university, or an official institution, and (c) was written in English, Indonesian, or Arabic. Foundational works on the theories were retained regardless of date; for empirical and reform-oriented studies, publications from 2015 to 2025 were prioritized. Opinion pieces and sources that merely repeated others without new analysis were excluded. *Analytical procedure.* Analysis followed data reduction, data display, and conclusion drawing (Miles et al., 2014) in four stages.

Table 2 specifies the procedure, decision rule, and output applied under each theoretical framework: Saeed's hierarchy of values (Stage 2), Shahrūr's ḥudūd theory (Stage 3a), Madjid's desacralization (Stage 3b), and progressive and Islamic feminist legal theory (Stage 3c). Stages 1 and 2 yield the normative findings reported in the Results. Stages 3 and 4 yield the interpretive analysis reported in the Discussion, so the Results present the classification of each provision without the arguments for reform. *Saturation and credibility*. Library research has no statistical sampling frame, so saturation was defined thematically and judged by two indicators: (a) additional sources produced no new provisions, interpretive positions, or objections beyond those already recorded for a domain, and (b) each domain was supported by its legal text, at least one scholarly interpretation, and empirical or judicial evidence (Komnas Perempuan reports and court studies). Source collection stopped when both indicators were met for all eight domains. Credibility was supported by triangulating these three kinds of evidence within each domain.

Table 2. Four-Stage Analytical Procedure and Its Theoretical Frameworks

Stage	Procedure and decision rule	Theoretical framework	Output (reported in)
1. Categorization	All provisions of the KHI and CLD-KHI were coded into eight domains. A provision entered the analysis when the CLD-KHI changed, added, or removed it relative to the KHI.	Descriptive mapping (data reduction and display, Miles et al., 2014)	Comparative base (Table 1; Results)
2. Value classification	Each contested KHI provision was traced to its textual basis (verse, ḥadīth, or juristic ijtihad) and assigned a tier. <i>Obligatory</i> : concerns faith and worship or is categorical and context-independent. <i>Fundamental</i> : expresses justice, equality, or dignity. <i>Protectional</i> and <i>implementational</i> : measures that safeguard or realize those values and vary with context. <i>Instructional</i> : tied to a seventh-century circumstance. A rule grounded in juristic reasoning rather than in a text was treated as implementational.	Saeed's contextual interpretation and hierarchical values (Saeed, 2005, 2008; Athiyyah, 2001)	Value tier of each provision (Table 3; Results)
3a. Boundary analysis	For implementational provisions, the relevant verses were examined for a minimum or maximum limit (<i>ḥadd</i>), and the CLD-KHI alternative was judged to fall inside or outside that limit.	Shahrūr's ḥudūd theory (Syahrur, 1990; Purkon, 2023)	Permissible range of ijtihad (Discussion)
3b. Desacralization test	The contested rule was tested as a historical juristic construction (<i>ijtihādī</i>) rather than revelation; if so, revising it was not treated as departing from the sacred.	Madjid's secularization (<i>desakralisasi</i>) (Madjid, 1998; Gaus, 2010; Zaprulkhan, 2025)	Philosophical warrant (Discussion)
3c. Justice evaluation	The gendered impact of each provision was weighed against equality and substantive justice, using CATAHU data and court studies.	Progressive law and Islamic feminist theory (Rahardjo, 2009; Mahfud MD et al., 2013; Fakih, 2003; Abbott, 2017a; Weir, 2013)	Assessment of the CLD-KHI as a substantive-justice reform (Discussion)
4. Counter-testing	Each Stage 3 conclusion was confronted with the strongest opposing reading found in the literature (textual, traditional, or empirical) and was retained, qualified, or rejected.	Comparison with prior studies (Table 4)	Qualified conclusions (Discussion)

Source: Summarized by authors (2026)

Stage 2 thus establishes which provisions may change, Stage 3 how far and why, and Stage 4 whether those conclusions survive the strongest opposing reading.

3. RESULTS AND DISCUSSION

Results

Normative Findings: Contested Provisions and Their Value Classification

Stages 1 and 2 of the analysis produced the classification in Table 3. Table 1 shows how the CLD-KHI changes each provision; Table 3 records what each contested KHI provision rests on and the tier to which it was assigned. The table reports findings only. Their interpretation follows in the Discussion.

Table 3. Contested KHI Provisions, Textual Basis, and Value Classification (Stages 1 and 2)

Domain	Contested KHI provision	Textual basis	Value classification
Nature of marriage	Art. 2: marriage as a solemn covenant (<i>mūthāqan ghalīẓan</i>) to obey God and an act of worship (<i>ibadah</i>)	Q.S. al-Nisā' [4]:21; reciprocal rights and duties in the exegesis of Shihab (2002)	Covenantal character: obligatory. Its translation into spousal roles: implementational
Position of husband and wife	Art. 79: husband as head of family, wife as homemaker. Art. 84: wife is <i>nushūz</i> if she refuses obligations without valid reason, with no equivalent for husbands	Q.S. al-Nisā' [4]:34 (<i>qawwāmūn</i>), as read in classical exegesis	Implementational. Underlying value (reciprocity, equality): fundamental
Guardianship, conditions, and dowry	Art. 14: guardian as a pillar. Arts. 22 and 25: persons with speech or hearing impairments disqualified as guardians and witnesses. Art. 30: dowry given by husband	Juristic conditions built on the requirement of consent (<i>ijāb qabūl</i>); CRPD (Law No. 19/2011) as the national standard	Consent: fundamental. Blanket disability disqualification: implementational
Polygamy	Arts. 55–59 (Art. 57): court permission where the wife cannot perform her duties, has an incurable disability or disease, or cannot bear children	Q.S. al-Nisā' [4]:3 (conditional on justice)	Implementational (the listed grounds are juristic additions)
Interfaith marriage	Arts. 40(c), 44, and 61: prohibition in both directions	Q.S. al-Baqarah [2]:221 (polytheists); Q.S. al-Mā'idah [5]:5 (People of the Book); the ban on Muslim women is derived by <i>ijtihad</i>	Marriage with polytheists: obligatory. Extension to all non-Muslims and to women: implementational
Waiting period (<i>'iddah</i>)	Art. 153: waiting period applies only to the wife	Q.S. al-Baqarah [2]:228; purposes (certainty of lineage, room for reconciliation) stated in juristic literature	Purpose: fundamental. One-sided application: implementational
Divorce (<i>ṭalāq</i> , <i>khulu'</i> , <i>rujū'</i>)	Arts. 117, 129, 132: husband pronounces <i>ṭalāq</i> , wife may only sue. Art. 119: <i>khulu'</i> is irrevocable. Art. 163: <i>rujū'</i> belongs to the husband	Classical <i>fiqh</i> positioning of men as <i>qawwām</i>	Implementational
Inheritance	Arts. 171–172: religious difference bars inheritance. Art. 176: 2:1 share. Art. 186: children born outside marriage. Arts. 192–193: <i>'awl</i> and <i>radd</i>	Q.S. al-Nisā' [4]:11 (explicit shares)	Share in textual form: closest to obligatory. Rationale (male financial responsibility): contingent

Source: Summarized by authors (2026)

Three patterns emerge. First, in seven of the eight domains the contested rule is implementational: a juristic or historically conditioned arrangement serving a value (reciprocity,

valid consent, justice in plural marriage, certainty of lineage) that sits in a higher tier. Second, obligatory elements appear only in the covenantal character of marriage, the prohibition of marriage with polytheists, and, in textual form, the inheritance shares. Third, inheritance is the only domain in which the contested rule is a numerical allocation stated in the text, and it was therefore classified separately.

Empirical Evidence of KHI's Limitations in Judicial Practice

Komnas Perempuan's CATAHU reports record 321,752 cases of violence against women in 2015, of which 305,535 came from Religious Courts/BADILAG; domestic violence accounted for 11,207 cases (69%), and violence against wives was the largest single category (Komnas Perempuan, 2016). Recorded cases fell to 299,911 in 2020, a year in which child-marriage dispensations nearly tripled from 23,126 to 64,211, and rose to 445,502 by 2024, of which gender-based violence accounted for 330,097 cases and domestic violence for 83.70% of personal-domain reports (Komnas Perempuan, 2025). PUSKUMHAM (2008) found that Religious Court judges face difficulty in gender-sensitive cases because the KHI offers little grounding beyond its narrow violence-related provisions, while the Domestic Violence Law (UU PKDRT) is oriented toward criminal rather than Religious Courts. In inheritance adjudication, respondents in Sutomo's study judged the 2:1 ratio unable to deliver contextual justice, and Nurlaelawati found that the KHI's contested legitimacy leads lower-court judges to revert to classical fiqh, with more progressive reasoning appearing only at the cassation level, so that lower courts function as "stepping stones" (Suadi et al., 2016; Nurlaelawati, 2010).

Discussion

Theoretical Frameworks: Convergence of Saeed, Shahrūr, and Madjid

The classification above rests on two complementary instruments. Saeed's hierarchy distinguishes what must remain fixed from what may adapt, following the argument that legal-literal interpretation became dominant once *ijtihād* was treated as closed around the eleventh to twelfth centuries, and that Fazlur Rahman's emphasis on the Qur'ān's moral orientation reopened that space (Rahman, 1966; Saeed, 2005, 2014). Shahrūr's *ḥudūd* theory supplies the boundary test: the plural form of *ḥudūd Allāh* in Q.S. al-Nisā' [4]:13–14 indicates a permissible range rather than a single point, and the pronoun in *ḥudūdahu* refers to God alone, so the Prophet's own applications are read as contextual *ijtihād* within that range (Syahrur, 1990; Purkon, 2023). Saeed thus answers which provisions may move, and Shahrūr how far. Madjid's distinction between secularization (*desakralisasi*) and secularism answers the objection that such movement secularizes Islamic law: what is desacralized is the classical fiqh construction, not the Qur'ānic text (Madjid, 1998; Gaus, 2010; Zaprul Khan, 2025), a point consistent with Sadari's *ḥudūd*-based study of the sacralization of family law (Sadari, 2014). The view that discrimination arises from interpretation rather than from the Qur'ān itself is shared by Barlas (2002), Shah (2006), and Mukharrom and Abdi (2023), and it supports reading equality and dignity as values rooted in Islamic sources rather than late Western imports (Saleem, 2023). The claim is interpretive, however. It holds for provisions classed implementational and is least secure where the text states a rule explicitly, as the discussion of inheritance below shows.

Reconstructing Qawwām and Its Implications for Divorce and Polygamy

The divorce, spousal-position, and polygamy rules classed as implementational rest on one reading of Q.S. al-Nisā' [4]:34, which designates men as *qawwāmūn*. Classical commentators such as al-Ṭabarī, al-Rāzī, and Ibn Kathīr read the term as male leadership. Engineer observes that the verse was revealed after an incident of spousal violence and therefore accommodates rather than endorses the patriarchal setting it addresses (Engineer, 1999). The verse prefers men over "some"

(*ba'd*), not all, women, and its two stated grounds, capability and financial responsibility, are socially contingent (Wijaya, 2020). Where women share or carry the financial burden, those grounds no longer hold uniformly, which places the CLD-KHI's equalization of *ṭalāq*, *khulu'*, and *rujū'* within the *ḥudūd* space. Proposals on *nushūz* and on *'iddah* for husbands follow the same logic (Ayu, 2022; Isla et al., 2023). Two objections test this reading. The first is textual: the verse itself links *qiwāma* to men's spending, so a reading that equalizes authority is persuasive only if it also equalizes the duties on which authority was said to rest. The CLD-KHI does so by making spousal rights and obligations equal (Article 45), but the KHI still assigns maintenance to the husband (for example, Article 80), so the reform is coherent only as a package. The second concerns polygamy. Kaumpungan (2022) shows that polygamy has drifted from its welfare purpose, and Wirastri and van Huis (2021) document the ambivalence of second wives in unregistered unions under legal pluralism. These studies establish the harm of poorly regulated polygamy, but they do not show that total prohibition (*ḥarām lighayrihi*) works better than strict judicial control. The evidence reviewed supports the implementational status of the KHI's grounds for polygamy, not the superiority of prohibition over regulation, and the CLD-KHI's registration pillar addresses only part of the problem.

Interfaith Marriage: From Prohibition to Conditional Permission

The classification turns on separating the prohibition of marriage with polytheists (*mushrikīn*) in Q.S. al-Baqarah [2]:221, which is arguably obligatory, from its extension to a blanket ban on Muslim women marrying any non-Muslim man. The extension is a product of *ijtihād* conditioned by classical assumptions about social hierarchy, challenged as patriarchal cultural authority rather than revelation (Wijaya, 2020), and in tension with Q.S. al-Baqarah [2]:62 and Q.S. al-Ḥajj [22]:17, which affirm divine reward for righteous believers of different communities. On that basis, the CLD-KHI's conditional permission (Article 54) is a legitimate reinterpretation. The majority view must be answered on its own terms. In the classical literature, its defenders rely on the same verse, on other verses read as barring Muslim women from non-Muslim husbands (notably Q.S. al-Mumtaḥanah [60]:10), and above all on a claim of scholarly consensus (*ijmā'*) reported by jurists such as Ibn al-Mundhir and Ibn Qudāmah (Haqqani, 2023), which is a stronger obstacle than any single text. Reformist argument must therefore show either that no binding consensus exists or that its rationale, protecting a wife's religion from a husband's dominance, no longer applies. Haqqani (2023) takes the first route, tracing the prohibition largely to premodern assumptions about religious and gender hierarchy and to consensus rather than to an explicit verse. Nisa (2023) shows that progressive and conservative Muslim voices in Indonesia remain divided on exactly this point, Abdelnour (2020) places the disagreement within a wider debate over theology, law, and individual *ijtihād*, and Moustafa (2013) found that many Muslims in Malaysia regard Islamic law as having one divinely fixed answer. The textual case for conditional permission is thus stronger than its prospects of social acceptance, which makes interfaith marriage the domain most likely to provoke resistance.

Inheritance: The Limits of Ḥudūd Analysis

Inheritance needs the most caution because the 2:1 ratio in Q.S. al-Nisā' [4]:11 is stated explicitly. Two routes lead to the CLD-KHI's 1:1 share. Following Saeed's distinction between a ruling's form and its rationale (*'illah*), the ratio rests on a presumption of men's exclusive financial responsibility, a socio-economic condition and not a claim about gender worth. Following Shahrūr, as presented by Ridwan (2022), the shares fixed in the verse are limits within which justice-oriented adjustment is possible. Respondents in Sutomo's study regard the ratio as failing to deliver contextual justice (Suadi et al., 2016), and studies of inheritance disputes document dualism and inconsistent outcomes (Anggraeni, 2023; Kusmayanti et al., 2021; Suwarti et al., 2022). Both routes face objections. The textual objection holds that an explicit allocation (*naṣṣ qaṭ'i*) admits no *ijtihād*, so a

1:1 share exceeds the *ḥudūd* however the *‘illah* is read. In classical *uṣūl al-fiqh*, rulings conveyed by a definitive text, including the specified shares in inheritance, are binding and not open to *ijtihād* (Kamali, 2003). The reformist reply that the verse sets limits rather than a single point depends on rejecting this classical understanding of definitiveness, which is the very premise at issue. The practical objection is that the ratio is paired with the husband's duty of maintenance, so equalizing shares without a matching change of duties would simply shift the burden. The CLD-KHI's equalization of spousal rights and obligations answers this only if the reform is adopted as a package. For these reasons the 1:1 share is treated here as the CLD-KHI's most contestable reform: defensible as an argument from rationale, but without the textual security of the other seven domains.

Comparison with Previous Research and Alternative Readings

Table 4 sets the findings against the main studies on which this article draws. Three points stand out. The study agrees with Mulia (2015, 2020) and Zayyadi et al. (2023) that reform of the KHI is warranted, but it replaces a general case for contextual reform with provision-by-provision tests, which show that the CLD-KHI's proposals differ in textual strength. It qualifies the reformist reading of polygamy and interfaith marriage, because the evidence supports the implementational status of the KHI's rules more strongly than it supports the particular remedy the CLD-KHI chose. And it supports Nurlaelawati (2010) and Moustafa (2013) on the limits of legal change that lacks social and judicial legitimacy.

Table 4. Findings Compared with Previous Research

Prior study	Position or finding	This study	Relation
Mulia (2015, 2020)	CLD-KHI as a progressive reading promoting marital equality in line with the Constitution	Confirms the direction of reform but classifies provisions by tier, showing that reform claims differ in textual strength	Confirms and refines
Ridwan (2022)	Shahrūr's <i>ḥudūd</i> theory supports a gender-responsive reading of inheritance	Accepts this route but adds Saeed's rationale test as a second route and notes the textual objection	Agrees and qualifies
Nurlaelawati (2010)	Judges often bypass the KHI and revert to classical <i>fiqh</i> ; its legitimacy is contested	Consistent; a codified alternative with weaker institutional legitimacy faces the same reversion	Consistent
Wirastri & van Huis (2021); Kaumpungan (2022)	Polygamy under legal pluralism produces ambivalence and has drifted from its welfare purpose	Agrees that the KHI's grounds are not text-bound; doubts that prohibition is the only remedy	Partly diverges
Nisa (2023)	Constitutional recognition of diversity has not produced legal accommodation for interfaith couples; progressive and conservative voices are divided	Finds conditional permission textually defensible but socially the least settled reform	Consistent
Zayyadi et al. (2023); Ikhwan & Jamal (2021)	Reform should respond to social reality through sociological jurisprudence	Operationalizes this through explicit tier and boundary tests; sociological argument alone does not answer textual objections	Extends
Moustafa (2013)	Gap between popular legal consciousness and reformist legal theory in Malaysia	Indonesian case shows a similar need for social legitimization	Consistent (comparative)

Source: Summarized by authors (2026)

Critical Reflection: Methodological, Political-Legal, and Procedural Limits

CLD-KHI's emergence must be understood as a political as well as intellectual act. Mulia identifies converging factors behind its formulation: the government's 2001 Zero Tolerance Policy

on violence against women, academic findings that KHI provisions contradicted Indonesia's CEDAW obligations, a 2003 proposal to elevate KHI's status to statute, and rising *sharī'a*-formalization demands that CLD-KHI sought to counter with universalist Islamic values (Mulia, 2020) formed within a post-Suharto climate of simultaneous democratization and rising Islamic conservatism (Robinson, 2006). Notwithstanding the theoretical coherence established above, CLD-KHI's reforms must also be read as a social and political product embedded within Indonesia's institutional context—its most textually contested reform, inheritance, illustrating why this caution matters. Methodologically, Saeed's and Shahrūr's approaches both depart from the normative fiqh tradition anchoring Religious Court judges, generating tension with the prevailing legal-positivistic culture documented in the judicial-practice findings above. Politically, CLD-KHI was advanced primarily through elite academic and activist networks rather than broad-based consensus-building, making it vulnerable to characterization as an intellectual project rather than a societally-grounded necessity—coinciding with a democratic transition alongside rising conservatism in which the state chose to retain the symbolically established KHI rather than risk institutional contestation. Drawing on Bourdieu's account of symbolic power, this outcome reflects the hegemonic status classical fiqh knowledge retains as the most institutionally legitimate source of Islamic law, against which alternative epistemologies are readily positioned as deviant (Bourdieu, 1989) operating through categories of thought and assumptions of "normality" rather than coercion, which is why CLD-KHI's failure to attain positive-law status cannot be attributed to conservative resistance alone, but equally to strategic and legitimation choices in how the reform was advanced. This positions CLD-KHI proportionally: a rigorous reform proposal whose institutional fate was shaped as much by legal-political structure as by the substance of its arguments.

Two explanations for the draft's failure compete and should be tested against each other. The first attributes it to conservative resistance in a period of rising Islamization. The second attributes it to elite advocacy, the draft's distance from the fiqh tradition, and the state's preference for the established KHI. The documents reviewed show the political climate and the features of the drafting process, but not the calculations of state actors, so they cannot rank the two explanations, which are better read as cumulative. The obstacles to gender-equality reform, including stereotyping and misreadings of religious texts (Rahmawati, 2020), and the constraints that conservatism places on reform in other transitional settings (Abbott & Teti, 2017b), point to resistance as a real factor. Hoque and Khan's (2007) account of judicial activism in Bangladesh, read with the KHI's contested position in the courts (Nurlaelawati, 2010), suggests incremental reform through the judiciary as a path worth testing in Indonesia alongside comprehensive codification. The eight domains examined correspond to five broader problem clusters underlying CLD-KHI's reform agenda: polygamy; gender relations marked by unequal power (spousal position, divorce asymmetries); inheritance and women's economic empowerment; ethical norms confining women to domestic roles; and further problems interfaith marriage, *iddah*, rising domestic violence reflecting KHI's broader unresponsiveness to human rights and pluralism. Figure 1 synthesizes this structure alongside CLD-KHI's response and its underlying humanistic-prophetic paradigm. In this article, "humanistic-prophetic" denotes a paradigm that is humanistic in committing to the removal of gender- and disability-based exclusion and prophetic in grounding that commitment in the Qur'ān's ethical orientation toward liberating people from injustice.

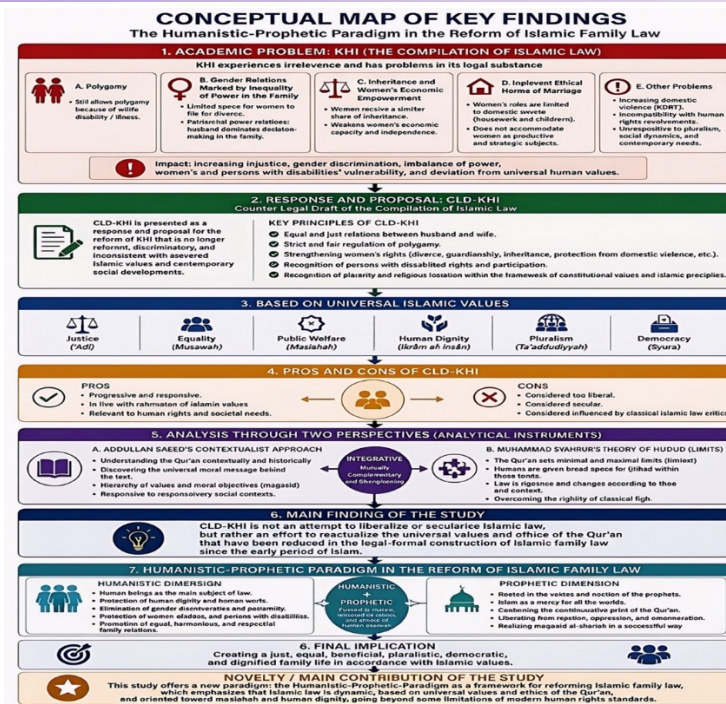


Figure 1. Conceptual Map of Key Findings
The Humanistic-Prophetic Paradigm in the Reform of Islamic Family Law

4. CONCLUSION

This study asked which contested provisions of the KHI can be reformed within Islamic legal reasoning and why the CLD-KHI did not become law. Classified with Saeed's hierarchy of values, the contested rules in seven of the eight domains are implementational and therefore open to reform within the hudud space described by Shahrur, whereas inheritance is the exception, because the 2:1 ratio is stated in the text and can be revised only by reasoning from its rationale, which makes it the most contestable of the CLD-KHI's proposals. The study contributes a tiered, text-sensitive framework that lets legislators, Religious Court judges, and reform advocates separate reforms resting on strong textual ground from those needing further justification, and it shows that the humanistic-prophetic paradigm of the CLD-KHI is a contested reading of the sources, not a departure from them. The draft's failure reflects elite advocacy, weak institutional legitimacy, and the symbolic authority of classical fiqh, not conservative resistance alone. As library research, the study cannot show how judges and litigants receive such reforms; future research should test this empirically and compare Indonesia with Egypt, Morocco, Malaysia, and Bangladesh.

5. REFERENCES

- Abbott, P. (2017a). Gender equality, human rights and economic and political development. *Arab Transformations Project*, 8–14.
- Abbott, P., & Teti, A. (2017b). Conservatism, gender equality and the possibilities for a democracy which includes Arab women. *Arab Transformations Project*, 1–6.
- Abdelnour, M. G. (2020, June 17). The Islamic theology of interfaith marriages between theology, law, and individual ijtihad. *Rajaratnam School of International Studies*. <http://www.jstor.org/stable/resrep40176>
- Alfitri. (2020). Protecting women from domestic violence: Islam, family law, and the state in Indonesia. *Studia Islamika*, 27(2), 273–307. <https://doi.org/10.36712/sdi.v27i2.9408>
- Anggraeni, R. D. (2023). Islamic law and customary law in contemporary legal pluralism in Indonesia: Tension and constraints. *Jurnal: AHKAM*, 23(1), 25–48.

- Antasari, R. (2023). Islam and domestic violence between husbands and wives: Indonesian social and cultural perceptions. *The Islamic Quarterly*, 65(3), 303–326.
- Athiyyah, J. (2001). *Nahwa tafīl maqāṣid al-syarī'ah*. Dār al-Fikr.
- Ayu, R. F. (2022). Reformation of Islamic family law in Indonesia: The nusyuz resolution process. *Al Hurriyah: Jurnal Hukum Islam*, 6(2), 192–1207. <https://doi.org/10.30983/alhurriyah.v6i2.4644>
- Barlas, A. (2002). *"Believing women" in Islam: Unreading patriarchal interpretations of the Qur'an*. University of Texas Press.
- Bourdieu, P. (1989). Social space and symbolic power. *Sociological Theory*, 7(1), 14–25. <https://doi.org/10.2307/202060>
- Bowen, J. R. (2003). *Islam, law and equality in Indonesia: An anthropology of public reasoning*. Cambridge University Press.
- Engineer, A. A. (1999). *The Qur'an, women, and modern society*. Sterling.
- Fakih, M. (2003). *Analisis gender dan transformasi sosial*. Pustaka Belajar.
- Gaus, A. F. (2010). *Api Islam Nurcholis Madjid*. Kompas.
- Haqqani, S. (2023). The Qur'ān on Muslim women's marriage to non-Muslims: Premodern exegetical strategies, contradictions, and assumptions. *Journal of Qur'anic Studies*, 25 (1), 36–78. <https://doi.org/10.3366/jqs.2023.0529>
- Hooker, M. B. (2003). *Indonesian Islam: Social change through contemporary fatawa*. University of Hawai'i Press.
- Hoque, R., & Khan, M. M. (2007). Judicial activism and Islamic family law: A socio-legal evaluation of recent trends in Bangladesh. *Islamic Law and Society*, 14(2), 204–239. <https://doi.org/10.1163/156851907781492511>
- Ikhwan, M., & Jamal, A. (2021). Diskursus hukum Islam dalam konteks keindonesiaan: Memahami kembali nilai-nilai substantif agama. *Al-Manahij: Jurnal Kajian Hukum Islam*, 15(1), 173–186. <https://doi.org/10.24090/mnh.v15i1.4689>
- Isla, R., Kurniawan, A., & Amelia, L. (2023). Islamic family law reform: Iddah for husbands as an effort for gender equality. *Indonesian Journal of Islamic Law*, 6(1), 1–16. <https://doi.org/10.35719/ijil.v6i1.2021>
- Kaelan. (2013). *Metodologi penelitian kualitatif interdisipliner*. Paradigma.
- Kamali, M. H. (2003). *Principles of Islamic jurisprudence* (3rd ed.). Islamic Texts Society.
- Kaumpungan, B. (2022). Studying families in Southeast Asia: Exploring polygamy and its dynamics in Indonesia. *Human Behavior, Development & Society*, 23(1).
- Komnas Perempuan. (2016). *Catatan tahunan (CATAHU) kekerasan terhadap perempuan tahun 2015*. Komisi Nasional Anti Kekerasan terhadap Perempuan.
- Komnas Perempuan. (2025). *Menata data, menajamkan arah: Refleksi pendokumentasian dan tren kasus kekerasan terhadap perempuan 2024*. Komisi Nasional Anti Kekerasan terhadap Perempuan.
- Kusmayanti, H., Rachmainy, L., & Mulyanto, D. (2021). Settlement of customary inheritance dispute cases according to sharia (Islamic law) in indigenous communities in Indonesia. *Natural Volatiles & Essential Oils*, 8(6).
- Lukito, R. (2013). *Legal pluralism in Indonesia: Bridging the unbridgeable*. Routledge.
- Madjid, N. (1998). *Islam kemodernan dan keindonesiaan* (11th ed.). Mizan.
- MaHFud MD, M., Hartono, S., Sidharta, Tanya, B. L., & Susanto, A. F. (2013). *Dekonstruksi dan gerakan pemikiran hukum progresif*. Konsorsium Hukum Progresif Universitas Diponegoro & Thafa Media.
- MaHFud, M. D. (2009). *Politik hukum di Indonesia*. Rajawali Pers.
- Menski, W. (2006). *Comparative law in a global context: The legal systems of Asia and Africa* (2nd ed.). Cambridge University Press.
- Miles, M. B., Huberman, A. M., & Saldaña, J. (2014). *Qualitative data analysis: A methods sourcebook* (3rd ed.). SAGE Publications.
- Moustafa, T. (2013). Islamic law, women's rights, and popular legal consciousness in Malaysia. *Law & Social Inquiry*, 38(1), 168–188. <https://doi.org/10.1111/j.1747-4469.2012.01298.x>

- Mukharrom, T., & Abdi, S. (2023). Harmonizing Islam and human rights through the reconstruction of classical Islamic tradition. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 7(1), 40. <https://doi.org/10.22373/sjhk.v7i1.16436>
- Mulia, S. M. (2015). Muslim family law reform in Indonesia: A progressive interpretation of the Qur'an. *Al-Mawarid*, 15(2), 1–18. <https://doi.org/10.20885/almawarid.vol15.iss2.art1>
- Mulia, S. M. (2020). *Ensiklopedia Muslimah reformis (Pokok-pokok pemikiran untuk reinterpretasi dan aksi)*. BACA.
- Nisa, E. F. (2023). Interfaith marriages in Indonesia: Between the law, state ideology, and progressive Muslim voices. In *Muslim marriage and non-marriage: Where religion and politics meet intimate life*. Leuven University Press.
- Nurlaelawati, E. (2010). *Modernization, tradition and identity: The Kompilasi Hukum Islam and legal practice in the Indonesian religious courts* (ICAS Publications Series 4). Amsterdam University Press.
- Purkon, A. (2023). Al-Quran sebagai sumber hukum dalam bacaan kontemporer Muhammad Syahrur. *Jurnal Ilmiah Multidisiplin*, 1(5), 279–278.
- Rahardjo, S. (2009). *Hukum progresif* (1st ed.). Genta Publishing.
- Rahman, F. (1966). The impact of modernity of Islam. *Islamic Studies*, 5(2), 113–128.
- Rahmawati, S. (2020). Mainstreaming of gender equality in Islamic family law: Opportunities and challenges. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 4(2), 360. <https://doi.org/10.22373/sjhk.v4i2.8110>
- Ridwan. (2022). Gender equality in Islamic inheritance law: Rereading Muhammad Shahrur's thought. *Al-Manahij: Jurnal Kajian Hukum Islam*, 16(2), 181–190. <https://doi.org/10.24090/mnh.v16i2.6916>
- Robinson, K. (2006). Islamic influences on Indonesian feminism. *Social Analysis: The International Journal of Social and Cultural Practice*, 50(1), 171–177.
- Sadari. (2014). *Sakralisasi vis a vis desakralisasi hukum keluarga di Indonesia (Studi hududi untuk relevansi modernitas dan keindonesiaan)*. UIN Syarif Hidayatullah.
- Saeed, A. (2005). *Interpreting the Quran: Towards a contemporary approach*. Routledge.
- Saeed, A. (2008). Some reflections on the contextualist approach to ethico-legal texts of the Quran. *Bulletin of the School of Oriental and African Studies, University of London*, 71(2), 221–237.
- Saeed, A. (2014). *Reading the Qur'an in the twenty-first century*. Routledge.
- Saleem, Z. (2023). Comments on "Progressive Muslims and Islamic jurisprudence," by Kecia Ali. *Islamic Studies*, 62(2), 289–294. <https://doi.org/10.52541/isiri.v62i2.2660>
- Shah, N. A. (2006). Women's human rights in the Koran: An interpretive approach. *Human Rights Quarterly*, 28(4), 868–903. <https://doi.org/10.1353/hrq.2006.0053>
- Shihab, M. Q. (2002). *Tafsir Al-Mishbah: Pesan, kesan, dan keserasian Al-Qur'an*. Lentera Hati.
- Suadi, A., Nessa, M. R., Abdullah, M. A., Maksoem, N. R., Sutomo, M., Jaliensyah, & Salam, A. (2016). *Menggugat stagnasi pembaruan hukum Islam di Indonesia* (1st ed.). UII Press.
- Sugiyono. (2009). *Metode penelitian kuantitatif dan kualitatif dan R&D*. Alfabeta.
- Suwarti, Khunmay, D., & Abannokovya, S. (2022). Conflicts occurring due to the application of different legal inheritance systems in Indonesia. *Legality: Jurnal Ilmiah Hukum*, 30(2), 214–227. <https://doi.org/10.22219/ljih.v30i2.21020>
- Syahrur, M. (1990). *Al-Kitāb wa al-Qur'ān: Qirā'ah mu'aṣirah*. Al-Ahālī li al-Ṭibā'ah wa al-Nasyr wa al-Tawzī.
- Weir, A. (2013). Islamic feminisms and freedom. *Philosophical Topics*, 41(2), 97–119.
- Wijaya, A. (2020). *Menalar autensitas wahyu Tuhan: Kritik atas nalar tafsir gender*. Ircisod.
- Wirastri, T. D., & van Huis, S. C. (2021). The second wife: Ambivalences towards state regulation of polygamy in Indonesia. *The Journal of Legal Pluralism and Unofficial Law*, 53(2), 246–268. <https://doi.org/10.1080/07329113.2021.1912579>
- Zaprulkhan. (2025). *Pembaruan Islam: Mewarisi kearifan pemikiran Cak Nur, sang guru bangsa*. Ircisod.
- Zayyadi, A., Ridwan, Hidayat, A., Ubaidillah, & Masuwd, M. A. (2023, November 20). Understanding of legal reform on sociology of Islamic law: Its relevance to Islamic family

law in Indonesia. *Al-Manahij: Jurnal Kajian Hukum Islam*, 249–262.
<https://doi.org/10.24090/mnh.v17i2.7584>