

The Status of Pre-Islamic Arab Women: Reform and the Challenge of Fulfilling Women's Rights in Contemporary Islamic Family Law Practice

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ABSTRACT

Purpose - This study aims to analyze the social status of Arab women during the *Jabiliyyah* period, within the context of the patriarchal social system that dominated Arab society at that time, and to evaluate how these conditions influenced the development of contemporary Islamic family law, particularly in terms of fulfilling women's rights.

Methods - The research method used was a literature study with a historical approach. The primary data in this study consisted of verses from the Qur'an, while the secondary data included scientific references related to the research theme. Data were collected using documentation techniques and analyzed using content analysis techniques.

Findings - The status of women in pre-Islamic Arabia was very marginalized, and they did not have proper legal status (in terms of inheritance, marriage, and social status). The arrival of Islam brought significant changes that improved the status of women by granting them basic rights. Reform efforts undertaken by Muslim countries, such as restrictions on polygamy, child custody rights, and fairer inheritance rules, are manifestations of the spirit of the Qur'an in creating justice and protecting women's rights.

Research implications - Practically, the findings can be used as a basis for normative reflection for family law legislation with a gender justice perspective in contemporary Muslim societies.

Originality/value - The originality of this research lies in its critical approach to the dominant narrative about pre-Islamic Arab women and its contextual connection to the development of Islamic family law.

Keywords: *Pre-Islamic Women, Arab Patriarchy, Islamic Family Law Reform, Social History, Gender Justice*

Introduction

In global feminist discourse, Islam is often confronted with a negative image rooted in the perception that Islamic religious practices legitimize discrimination against women. This narrative often ignores the complexity of textual and historical interpretations within

Islam and assumes homogeneity in Muslim religious practice.¹ Western thought products, in particular, tend to produce the view that Islam inherently supports the marginalization of women, both in the domestic and public spheres. This stereotype is exacerbated by the highlighting of certain practices that, while they may be the result of patriarchal interpretations or local cultural traditions, are often misconstrued as universal and inviolable teachings of Islam.² As a result, the focus often shifts from analysis of the socio-historical context and diversity of interpretations within Islam to generalizations that reinforce the image of Islam as a religion repressive of women.³

Despite the debate over the negative image of Islam in global feminist discourse, it cannot be denied that a number of religious practices in Islam exhibit significant gender bias, particularly in domestic and public contexts. In the domestic sphere, patriarchal textual interpretations often place women in an inferior position under men, limiting their autonomy and role in decision-making.⁴ Meanwhile, in the public sphere, this bias manifests in the lack of opportunities for women in social and political spaces, often justified by theological arguments rooted in narrow interpretations of religious texts.⁵ This phenomenon shows that discrimination is not inherent in the teachings of Islam itself, but rather a product of patriarchal-biased textual interpretations, in which pre-Islamic or male-dominated social and cultural norms are projected onto the understanding of the Qur'an and Hadith.⁶

Historically, the pre-Islamic *Jahiliyyah* Arab society had a precedent of being a discriminatory nation that viewed women as inferior beings. The Arabs accepted the presence of women in two different ways. The majority of them buried their daughters alive because, along with that, they thought that all the disgrace that befell her was also buried. Another tradition is to keep the child, but it is done unfairly and far from human values

¹ Suud Sarim Karimullah, "Feminist Criticism of Traditional Understanding of Women's Roles in Islam," *An-Nisa Journal of Gender Studies* 16, no. 2 (2023): 199, <https://doi.org/10.35719/annisa.v16i2.177>.

² Maryam Zaka, "Contrasts and Commonalities: Understanding Western Feminism and Islamic Women's Rights," *Tanazur Research Journal* 4, no. 2 (2023): 15, <https://tanazur.com.pk/index.php/tanazur/article/view/54>.

³ Moha Ennaji, "Mernissi's Impact on Islamic Feminism: A Critique of the Religious Approach," *British Journal of Middle Eastern Studies* 49, no. 4 (2020): 629, <https://doi.org/10.1080/13530194.2020.1840963>.

⁴ Sally White et al., "Voting against Women: Political Patriarchy, Islam, and Representation in Indonesia," *Politics & Gender* 20, no. 2 (2024): 392, <https://doi.org/10.1017/S1743923X23000648>.

⁵ Muhammad Aziz, "Women's Double Burden in the Family Between Culture and Discrimination," *Potret Pemikiran* 27, no. 2 (2023): 230, <http://dx.doi.org/10.30984/pp.v27i2.2782>.

⁶ Hamka Hasan et al., "Polygamy: Uncovering the Effect of Patriarchal Ideology on Gender-Biased Interpretation," *HTS Theological Studies* 78, no. 1 (2022): 1, <http://dx.doi.org/10.4102/hts.v78i4.7970>.

(humanity).⁷ This is revealed by Asghar Ali, who states that Arab social life has two categories, namely urban communities that live in settlements and Bedouins who live nomadically. Culturally and socially, the two societies are very different.⁸

In general, women's rights are considered to have received strong significance in modern times, and particularly in the Islamic world. However, historically, women have remained subordinated to men. Women have always been considered the “second sex”, as Simon de Beavoir, as cited by Nicholas, revealed that women are not active economic agents; they are highly subordinate to men. Furthermore, Arab societies are highly patriarchal, so that women's role in public life is very limited. Women are treated like chattel, without any rights; a few powerful women are rare exceptions to this.⁹

Although Islam progressively came to the Arabian Peninsula with an inherent mission to elevate the dignity of women and fulfill their human rights, this challenge significantly persists in the contemporary era.¹⁰ This reality is largely due to the tendency of many Muslims to get caught up in the socio-historical context of early Islam, failing to understand the continuous and adaptive nature of the Prophet's visionary efforts to empower women. They often fail to understand that this mission of enlightenment does not stop after the death of the Prophet, but requires dynamic reinterpretation in accordance with changing times.¹¹ As a result, textual interpretations emerge that are ahistorical and ignorant of contemporary social realities and dynamics, ignoring the principles of substantive justice that should be the foundation of sharia.

Scientific data and critical studies show that today's discriminatory religious practices are often the result of rigid interpretations, which fail to integrate the objectives of sharia (*maqāṣid al-sharīʿah*) in a modern context, hindering women's advancement and creating a gap

⁷ Muhammad Asadurrohmah, “Historical Analysis of the Influence of Pre-Islamic Traditions in Jurisprudence and the Importance of Recontextualization,” *Tajdid* 30, no. 2 (2023): 215, <https://doi.org/10.36667/tajdid.v30i2.1587>.

⁸ Rifqi Aulia Rahman et al., “Contextual Interpretation Of Asghar Ali Engineer: Efforts To Reconstruct Nash On The Women Position In Primordial Society,” *Muwazab: Jurnal Kajian Gender* 16, no. 1 (2024): 15, <https://doi.org/10.28918/muwazab.v16i1.6846>.

⁹ Lucy Nicholas, “Remembering Simone de Beauvoir’s ‘Ethics of Ambiguity’ to Challenge Contemporary Divides: Feminism Beyond Both Sex and Gender,” *Feminist Theory* 22, no. 4 (2021): 2, <http://dx.doi.org/10.1177/1464700120988641>.

¹⁰ Aafia Mehr and Hajira Maryam, “From Jahiliyyah to Justice: Islamic Social Reforms,” *Al-Āfāq Islamic Research Journal* 4, no. 1 (2024): 140, <http://alaafaqjournal.com/index.php/alaafaq/article/view/175>.

¹¹ Azam Sarwar and Hong Zeng, “Breaking Free from Patriarchal Appropriation of Sacred Texts: An Islamic Feminist Critique of Bol,” *Asian Journal of Women’s Studies* 27, no. 4 (2021): 465, <https://doi.org/10.1080/12259276.2021.1981526>.

between the ideals of Islam and the actual practices of its people.¹² Even these patriarchal narratives that discriminate against women are often propagated through online media platforms that are openly accessible to the public. In this case, the issue that is often raised is dominantly about the theme of marriage law, namely, the relationship between husband and wife in the household. For example, the practice of arbitrary polygamy without the wife's permission, the wife's obligations that are full of elements of double burden in the household, and the law of divorce that ignores the rights of the wife.¹³ This is a major challenge for the dialogue between feminism and Islam, which, of course, also has implications for hampering the reform of contemporary Islamic family law.

The topic of the status of pre-Islamic Arab women and their influence on Islamic family law reform in the contemporary era is a very interesting issue to study. Some previous researchers have studied the status of women in the pre-Islamic period, such as those conducted by Ariziq¹⁴, Badruzaman¹⁵, Rahmadani¹⁶, and Prakoso.¹⁷ Through the lens of gender, this study highlights the position of women who are very concerned and very wary of the power of men. This study is still general and covers various fields. Meanwhile, in the field of marriage, research that examines the status of women in the context of the household was conducted by Setiyawanti¹⁸, Thoyib¹⁹, and Nuroniyah.²⁰ This research is still limited to descriptions and historical analysis based on classical books. Meanwhile, the historicity of the position of Arab women in the pre-Islamic period and its influence on the reform of

¹² Fatimah Salma Az-Zahra and Ahmad Nurrohim, "Contemporary Interpretation Approach In The Culture Of Patriarchal Analysis In Surah An-Nisa Verse 34: Literature Review," *Eduvest - Journal of Universal Studies* 4, no. 10 (2024): 9062, <https://doi.org/10.59188/eduvest.v4i10.43671>.

¹³ Nikmatullah and Emawati, "Conservative Muslim and Textual Interpretation of the Hadiths in Polygamy Propaganda in Indonesia," *Humanities, Arts and Social Sciences Studies* 24, no. 3 (2024): 558, <https://doi.org/10.69598/hasss.24.3.263308>.

¹⁴ Bagas Luay Ariziq, "Kedudukan Dan Kondisi Wanita Sebelum Dan Sesudah Datangnya Agama Islam," *Jurnal Keislaman* 5, no. 1 (2022), <https://doi.org/10.54298/jk.v5i1.3398>.

¹⁵ Abad Badruzaman, "Protret Kaum Perempuan Pra-Islam Dalam Al-Qur'an," *QOF: Jurnal Studi al-Qur'an Dan Tafsir* 3, no. 2 (2019), <https://doi.org/10.30762/qof.v3i2.1577>.

¹⁶ Rahmadani et al., "Studi Sistem-Sistem Kebudayaan Masyarakat Arab Pra Islam," *Journal of Human and Education (JAHE)* 4, no. 6 (2024), <https://doi.org/10.31004/jh.v4i6.1973>.

¹⁷ Muhammad Dimas Prakoso and Febri Priyoyudanto, "Peran Gender Dalam Masyarakat Arab Pra-Islam," *Morfologi: Jurnal Ilmu Pendidikan, Bahasa, Sastra Dan Budaya* 2, no. 2 (2024), <https://doi.org/10.61132/morfologi.v2i2.446>.

¹⁸ Retni Setiyawanti, "Pembaruan Islam Dalam Bidang Hukum Keluarga (Era Tradisi Arab (Pra Islam), Era Setelah Datangnya Islam, Era Kodifikasi)," *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 10, no. 2 (2024), <https://doi.org/10.58401/faqih.v10i2.1343>.

¹⁹ Muhammad Thoyib and Muhammad Chairul Huda, "Dinamika Hukum Keluarga Islam: Dari Pra Kenabian Hingga Kenabian," *Bidayah: Studi Ilmu-Ilmu Keislaman* 13, no. 1 (2022), <https://doi.org/10.47498/bidayah.v13i1.1054>.

²⁰ Wardah Nuroniyah, "Perempuan Arabia Dalam Lingkaran Perkawinan Di Era Pra-Islam: Sebuah Kajian Sejarah Untuk Memahami Posisi Perempuan Dalam Sistem Perkawinan Islam Author," *Yinyang: Jurnal Studi Islam Gender Dan Anak* 14, no. 2 (2019), <https://doi.org/10.24090/yinyang.v14i2.3044>.

contemporary Islamic family law has never been studied. This research fills the gap in the literature by contextually analysing the social status of pre-Islamic Arab women as a starting point for reforming Islamic family law in the contemporary era.

This study aims to analyze the social status of pre-Islamic Arab women in the context of the patriarchal social system that dominated Arab society at the time, and evaluate how these conditions affect the construction of contemporary Islamic family law, particularly in terms of the fulfillment of women's rights. This research makes a significant contribution by critically examining the continuities and discontinuities between the status of pre-Islamic Arab women and their position in contemporary Islamic family law practice, highlighting how historical legacies and textual interpretations shape current realities. As such, this study offers a new analytical framework for understanding the complexity of the fulfillment of Muslim women's rights, while paving the way for more progressive family law advocacy and reform in the contemporary era.

Methods

This research uses a qualitative approach with a type of library research that focuses on historical and normative analysis. The historical approach is used to trace the social and cultural conditions of pre-Islamic Arab society that shaped patriarchal patterns of gender relations. Data were collected from primary sources, such as classical Arabic history books, Qur'anic tafsir literature, and hadith related to the status of women. Some of the Qur'anic verses and their interpretations that become primary sources in this study include Surah an-Nahl verses 58-59, Surah al-Baqarah verse 228, Surah an-Nisa verse 22, and Surah an-Nisa verse 19. Secondary sources include contemporary scientific works on the history of women in Islam and gender studies. The data analysis technique is descriptive-analytical and critical, by contextually interpreting the verses and hadiths and comparing them with the social reality of the time in order to identify the form of Islamic reform against the patriarchal structure and its impact on the construction of contemporary Islamic family law.

Results and Discussion

Status and Rights of Arab Women in Pre-Islamic Times

In general, the pre-Islamic Makkah period is referred to as the *Jabiliyah* period, which means ignorance and barbarism. In fact, stated by Philip K. Hitti, the pre-Islamic Makkah society was a society that did not have a certain special destiny (no dispensation), did not

have a certain prophet who was sent and led (no inspired prophet) and did not have a special holy book that was revealed (no revealed book) and became a guide to life.²¹

Patriarchal culture is a culture inherent in the *Jabiliyah* era. In Haifaa's research, men at that time held high power in the relationship between men and women, positioned higher than women; women received discriminatory, unfair treatment and were even considered the cause of poverty and a symbol of disgrace (embodiment of sin). In the *Jabiliyah* legal system, women did not get inheritance rights, and they were even used as inheritance property. The birth of a girl was considered a disgrace, so many were then buried alive as babies. In short, women were treated as a thing and not as a person.²²

The condition of women during the *Jabiliyah* period as in Haifaa's research, is described in al-Qur'an letter al-Nahl verses 58-59 as follows:

وَإِذَا بُشِّرَ أَحَدُهُم بِالْأُنثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًّا وَهُوَ كَظِيمٌ يَتَوَارَىٰ مِنَ الْقَوْمِ مِنْ سُوءِ مَا بُشِّرَ بِهِ ۚ أَيُمْسِكُهُ عَلَىٰ هُونٍ أَمْ يَدُسُّهُ فِي التُّرَابِ ۗ أَلَا سَاءَ مَا يَحْكُمُونَ

Meaning: "And when one of them is informed of the birth of a daughter, his face is blackened, and he is furious, and he hides himself from the people because of the evil of the news that has been brought to him. Whether he will keep her in disgrace or bury her in the ground (alive), behold, how terrible is that which they have decreed." (QS al-Nahl 58-59).

The verse tells about the attitude of the *Jabiliyah* people in responding to the news of the birth of their daughter, which was considered very shameful, lowering the dignity of parents and family, so that the girl, if necessary, was killed or buried alive. These and other stories about pre-Islamic Arab women are representative of the patriarchal nature of the *Jabiliyyah* legal system.²³

Historical records reveal some of the heinous practices of the pre-Islamic Arabs towards women. The following is a description of various customs and habits of the pre-Islamic Arabs that reflect the low status of women at that time.

²¹ Obaidul Hoque, "Emergence of Arab Studies in U.S.: A Critical Inquiry Into the Works of Philip K Hitti" (Disertasi, Darul Huda Islamic University, 2024), 57.

²² Arthur Arintonang, "History of Arabs: Rujukan Induk Dan Paling Otoritatif Tentang Sejarah Peradaban Islam," *Jurnal Amanat Agung* 16, no. 1 (2021): 85, <https://ojs.sttaa.ac.id/index.php/JAA/article/view/466>.

²³ Bannan Naelin Najihah, "Pembunuhan Perempuan: Langkah Al-Qur'an Menghadapi Praktik Budaya Femisida Honour Killing," Sekolah Tinggi Agama Islam PERSIS Bandung, 2021, 2, <https://d1wqtxts1xzle7.cloudfront.net/106861077>.

1. Burying Baby Girls Alive

The practice of *wa'd al-banāt* (burying baby girls alive) was an extreme manifestation of the low value of women in *Jabiliyya* society. This phenomenon was driven by several factors, including the fear of poverty and the shame associated with having a daughter. In patriarchal societies, sons are seen as assets that bring strength and honor to the tribe. At the same time, daughters are considered an economic burden and a potential source of disgrace if captured or humiliated.²⁴

The practice of *wa'd al-banāt* (burial of female infants alive) is an extreme manifestation of the low value placed on women in *Jabiliyyah* society. This phenomenon was driven by several factors, including fear of poverty and the shame associated with having a daughter. In patriarchal societies, sons were seen as assets that brought strength and honor to the tribe. At the same time, daughters were considered an economic burden and a potential source of shame if captured or humiliated.²⁵

2. The Absence of Divorce Rights for Women

In *Jabiliyyah* society, the right to end a marriage (divorce) was entirely in the hands of men. Women had no right to initiate divorce or *fasakh* (annulment of marriage) even in the worst circumstances. They were bound in marriage without any legal mechanism that would allow them to free themselves from the bond, even in cases of violence or neglect.

This situation reflects a highly unequal power structure in marital relationships, where women were completely subordinate to their husbands' authority. Women were considered the property of men, and divorce was seen as a financial or social loss for the husband. This concept of ownership eliminates women's agency in fundamental decisions regarding their personal lives. The arrival of Islam introduced the concept of “*khulu*” (divorce initiated by the wife with compensation), which provides women with a legal mechanism to end their marriage, albeit with certain conditions, marking a significant improvement from the conditions of the *Jabiliyyah*.²⁶

3. Absence of Inheritance Rights for Women

²⁴ Aqsa Tasgheer and Muhammad Ishfaq, “Female Infanticide in Pre-Islamic Arab Society: A Quranic and Historical Perspective,” *Al-Qawārīr* 3, no. 1 (2024): 5, <https://journal.al-qawarir.com/index.php/alqawarir/article/view/128>.

²⁵ Khaled Abou El Fadl, “Tensions in Tradition: Hadith, Gender, and Reasonable Interpretation,” *UCLA Journal of Islamic and Near Eastern Law* 19, no. 1 (2022): 8, <http://dx.doi.org/10.5070/N419156050>.

²⁶ Qurrotul Ainiyah and Julianne Kamelia Riza, “Khulu’ as Evidence of Women Equality Right in Islam,” *Proceedings of the 2nd Southeast Asian Academic Forum on Sustainable Development (SEA-AFSID 2018)*, Atlantis Press, 2021, 114, <https://doi.org/10.2991/aebmr.k.210305.020>.

The pre-Islamic inheritance system was based on the principles of patriarchy and military membership. Only adult men who were capable of fighting and defending the tribe had the right to inherit property. Women, children, and those who were unable to fight (such as older people) had no inheritance rights whatsoever. This placed women in a very vulnerable economic position, as their survival depended entirely on the support of men in the family.²⁷

The *Jabiliyah* inheritance system not only reflected gender discrimination but was also a reflection of a militaristic social structure in which physical strength and contribution were the main determinants of rights and status. This economic powerlessness further entrenched women's dependence on men and eliminated their financial autonomy. Islam then revolutionized this system by introducing specific inheritance rights for women, affirming their rights to property ownership and economic autonomy.²⁸

4. Women's Testimony Not Recognized

In the *Jabiliyah* legal system, women's testimony is not recognized in court or dispute resolution. This implies that women are not considered to have sufficient rational and moral capacity to give valid testimony, or that the value of their testimony is far below that of men. As a result, women's rights in legal cases, such as civil or criminal cases, were severely limited.

This practice reflected deep-seated prejudices against women's intellectual capacity and credibility. In many pre-modern societies, women were often considered too emotional or lacking in public experience to provide reliable testimony. The rejection of their testimony effectively silences women's voices and deprives them of access to legal justice, leaving them vulnerable to exploitation and injustice without any means of self-defense. Islam, although some interpretations differentiate between the value of male and female testimony, fundamentally recognizes women's right to testify, which is a significant advancement from the conditions of the *Jabiliyah* era.²⁹

5. Unlimited Polygamy

One of the most prominent practices in *Jabiliyyah* society was unlimited polygamy, where a man could marry as many women as he wanted without any restrictions on the

²⁷ Tasgheer and Ishfaq, "Female Infanticide in Pre-Islamic Arab Society: A Quranic and Historical Perspective."

²⁸ Duman Bahrami-Rad, "Keeping It in the Family: Female Inheritance, in Marriage, and the Status of Women," *Journal of Development Economics* 153 (2021): 53, <https://doi.org/10.1016/j.jdevco.2021.102714>.

²⁹ Sukron Ma'mun and Ibnu Akbar Maliki, "A Socio-Historical Study of Women's Rights Advocacy in Islamic Legal Construction," *Journal of Southeast Asian Human Rights* 7, no. 1 (2023): 7, <https://doi.org/10.19184/jseahr.v7i1.39156>.

number or specific conditions. This practice not only demonstrates the absence of legal protection for women but also places them in a highly vulnerable position, both emotionally and financially, as husbands have no obligation to treat their wives fairly.³⁰

Unrestricted polygamy reflects the view that women are commodities or tools to fulfill men's desires, without considering their rights or well-being. Marriage functions more as a means to expand clan networks, enhance social status, or fulfill biological needs, rather than a bond based on equality or mutual responsibility. This practice also causes household instability and competition among wives, as there are no rules limiting the number or regulating fair treatment. The arrival of Islam then introduced strict restrictions on the practice of polygamy, limiting it to four wives with the absolute condition of fairness, and even strongly encouraging monogamy if fairness cannot be achieved. These restrictions were a revolutionary step toward protecting women's rights and ensuring fairer treatment in marriage.³¹

Overall, these five *Jabiliyyah* practices collectively illustrate the dehumanization of women in pre-Islamic Arab society. They not only deprived women of their basic rights but also placed them in an extremely subordinate position, physically, economically, and legally. The social transformation brought about by Islam then radically altered this situation, introducing rights and protections for women that had previously been nonexistent, affirming their dignity and status within society.

The Arrival of Islam in Arabia and the Mission to Elevate the Status of Women

The arrival of Islam in the Arabian Peninsula through the Prophet Muhammad SAW brought about a profound social and ethical revolution, particularly in terms of how women were viewed and treated, as they had previously been extremely discriminated against during the *Jabiliyyah* period. The core principle upheld by Islam, as reflected in the teachings of the Quran and the Sunnah of the Prophet, is the emphasis on the fundamental equality of all humans before God, regardless of gender, race, or social status. The Qur'an explicitly condemns such heinous practices and affirms that women have the right to live with dignity and be respected. This theological foundation radically opposes the pre-Islamic view that

³⁰ A. Kumedi Ja'far et al., "A Sociohistorical Study of Polygamy and Justice," *Proceedings of the 1st Raden Intan International Conference on Muslim Societies and Social Sciences (RIICMuSSS 2019)* (Lampung, Atlantis Press, 2020), 340, <https://doi.org/10.2991/assehr.k.201113.064>.

³¹ Sumanto Al Qurtuby, "Between Polygyny and Monogamy: Marriage in Saudi Arabia and Beyond," *Al-Jāmi'ab: Journal of Islamic Studies* 60, no. 1 (2022): 30, <https://ssrn.com/abstract=4197532>.

treated women as property or second-class citizens.³² Barlas, A. (2002), in her work 'Believing Women' in Islam: Unreading Patriarchal Interpretations of the Qur'an, highlights how the Qur'an directly challenges existing patriarchal structures by granting women unprecedented autonomy and legal protection.³³

The previous discussion outlined the condition of women during the pre-Islamic era, when they were in a subordinate and inferior position. Meanwhile, this sub-section will discuss the arrival and mission of Islam in elevating the status of women through the revelation of verses from the Qur'an. Regarding the practice of burying female infants alive, Allah SWT revealed Surat an-Nahl verses 58-59, which read as follows.

وَإِذَا بُشِّرَ أَحَدُهُم بِالْأُنثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًّا وَهُوَ كَظِيمٌ يَتَوَارَىٰ مِنَ الْقَوْمِ مِن سُوءِ مَا بُشِّرَ بِهِ أَيُمْسِكُهُ عَلَىٰ هُونٍ أَمْ يَدُسُّهُ فِي التُّرَابِ أَلَّا سَاءَ مَا يَحْكُمُونَ

Meaning: But when one of them is given news of the birth of a girl, his face darkens and he is filled with anger. He hides himself from the people because of the bad news that has been conveyed to him. Will he keep her and bear the disgrace, or will he bury her alive in the ground? Remember how terrible the decision they made was (An-Nahl [16]: 58-59).

Verses 58 and 59 of Surah An-Nahl in the Qur'an directly condemn the heinous practice of burying female infants alive (*wa'd al-banāt*), which was common during the *Jahiliyyah* period. The *asbāb al-nuzūl* (the reason for the revelation of the Qur'an) of these verses stems from the social reality of pre-Islamic Arab society, which extremely discriminated against women. At that time, the birth of a girl was often seen as a disgrace and an economic burden for the family.³⁴ Shame and fear of poverty were the primary drivers for fathers to engage in this heinous practice. This social context directly served as the backdrop for the revelation of these verses, which strongly condemn actions that deprive a human being of their right to life and dignity solely based on their gender.³⁵

³² Amrina Rosyada et al., "Gender Justice in Husband and Wife Relations According to Shaykh Nawawi Al-Bantani: A Study of the Kitab Syarah 'Uqūd al-Lujain," *Qanun: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 33, <https://dx.doi.org/10.62870/qanun.v2i2.27087>.

³³ Asma Barlas, *Believing Women' in Islam: Unreading Patriarchal Interpretations of the Qur'an* (University of Texas Press, 2022), 129.

³⁴ Ellys Lestari Pambayun and Nasaruddin Umar, "Rekonsepsi Komunikasi Gender Dalam Al-Qur'an," *El Madani: Jurnal Dakwah Dan Komunikasi Islam* 3, no. 2 (2022): 202.

³⁵ Hesham Mohammed Ghaleb Saeed and Gurusiddaiah, "Jahiliyah in Arab Culture, Pre and Post Islam," *International Journal of Management and Social Science Research Review* 7, no. 1 (2020): 39.

This verse is not merely a prohibition but a theological and moral foundation affirming the intrinsic value of every individual, regardless of gender. From a legal perspective, this verse serves as a strong foundation for the elimination of all forms of gender discrimination in Islamic law. It encourages legal reforms that guarantee women's rights to life, security, education, property, and social participation.³⁶ Thus, this verse serves as an eternal reminder of the need for justice and compassion in all aspects of law and society, ensuring that the universal principles of humanity upheld by Islam remain relevant and applied in a modern context.³⁷

In addition to eliminating cruel practices against women, Islam also recognizes the existence of women in law. One manifestation of this recognition is the acceptance of women's testimony as valid evidence in law and court.³⁸ This is confirmed in Surah al-Baqarah, verse 282:

وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رَجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ

Meaning: And call to witness two witnesses from among your men. If two men are not available, then one man and two women from among those whom you approve as witnesses, so that if one of them forgets, the other may remind her (Q.S. al-Baqarah [2]: 282).

This verse explicitly acknowledges the existence and validity of women's testimony in the legal sphere, a significant breakthrough from the *Jabilyyyah* tradition that completely rejected women's testimony. Although this verse stipulates that two women are equivalent to one man in certain cases (financial transactions), it is important to understand that this is not a rejection of women's testimony, but rather a valuable recognition of their right to testify. The placement of two women in complex financial testimony in this verse can be seen as a protective mechanism and an adjustment to the social reality at the time, where

³⁶ Sayed Sikandar Shah Haneef et al., "Muslim Feminists' Reading of the Quran: A Juristic Analysis on Family Law Issues," *Mazabib: Jurnal Pemikiran Hukum Islam* 17, no. 1 (2018): 15, <https://doi.org/10.21093/mj.v17i1.1056>.

³⁷ Busran Qadri and Ihsan Mulia Siregar, "Islamic Renewal in the Field of Family Law: A Historical Analysis of Gender Equality," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 450, <https://doi.org/10.22373/ujhk.v6i2.17128>.

³⁸ Muhammad Patri Arifin, "Penafsiran Kontekstual Kesaksian Perempuan," *Musawa: Journal for Gender Studies* 9, no. 1 (2017): 105, <https://doi.org/10.24239/msw.v9i1.402>.

women were generally less involved in formal economic transactions.³⁹ As explained by Engineer, A. A. (1992) in “The Rights of Women in Islam,” this verse actually serves as evidence of Islam’s recognition of women’s rights to participate in legal processes, a radical step forward from the total rejection of such rights during the pre-Islamic era.⁴⁰

The next step taken by Islam in elevating the status of women is to fulfill their natural rights. In the field of marriage, Islam recognizes the right of divorce for women. Although the right to divorce lies with the husband, the wife also has the right to file for divorce through the process of *fasakh* (annulment of marriage by the court for specific reasons) or *khulu'* (divorce at the wife's request with compensation to the husband).⁴¹ This right to divorce is emphasized in Surah al-Baqarah, verse 229, as follows:

فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

Meaning: If you (guardian) are concerned that the two of them are unable to fulfill the limits (provisions) of Allah, then the two of them are not sinful for the payment (that must be given) by the wife to redeem herself. Those are the limits (provisions) of Allah; do not violate them. Whoever violates the limits (provisions) of Allah, they are the wrongdoers (Q.S. al-Baqarah [2]: 229).

In addition to the right of divorce (*khulu'*), the Qur'an also grants inheritance rights to women, as stated in Surah an-Nisa verse 11 as follows:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

Meaning: Allah has prescribed (made obligatory) for you concerning (the distribution of inheritance to) your children, (namely) that the share of a male child is equal to the share of two female children (Q.S. an-Nisa: 11).

³⁹ Hamdiah A. Latif, “Kesaksian Dua Perempuan Dalam Al-Quran: Studi Komparatif Kitab Tafsir,” *Jurnal Ilmiah Al-Mu'asirah: Media Kajian Al-Qur'an Dan Al-Hadits Multi Perspektif* 15, no. 2 (2018): 129, <https://doi.org/10.22373/jim.v15i2.5275>.

⁴⁰ Asghar Ali Engineer, *The Rights of Women in Islam* (Sterling Publishers, 2020), 23.

⁴¹ Fathonah K. Daud, “Khulu' and Talak, Is It Same? Philosophical-Comparative Study of Women's Divorce Rights in Fiqh and Positive Law,” *Al Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 1, no. 1 (2021): 20, <https://doi.org/10.35896/alhakam.v1i1.175>.

The right of custody given to mothers is also one of Islam's progressive steps in recognizing women's rights. This right of custody is confirmed in the Qur'an, Surah al-Baqarah, verse 233, which reads as follows:

﴿وَالْوَالِدَتُ يُرَضِعْنَ أَوْلَدَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ ۚ﴾

Meaning: “Mothers should breastfeed their children for two full years, for those who wish to complete breastfeeding. The father must provide for their food and clothing properly. No one is burdened beyond their capacity. Do not cause a mother to suffer because of her child, nor a father to suffer because of his child” (Q.S. al-Baqarah: 233).

This verse specifically addresses the period of breastfeeding (*radā'ah*) and its implications for custody rights after divorce. From a gender perspective, this verse places significant emphasis on the mother's role in caring for the child, particularly during the breastfeeding period, by stating that “mothers should breastfeed their children for two full years, for those who wish to complete the breastfeeding period.” This implicitly establishes the mother's priority right in early childhood care, given the biological and emotional bonds formed during the breastfeeding period.⁴² However, this verse also highlights the father's responsibilities, “and the father's obligation to provide food and clothing to the mothers in a manner that is appropriate,” indicating that while primary custody lies with the mother, the father still has financial and moral obligations to support the mother and child, ensuring their well-being.⁴³

This verse also explicitly affirms the husband's obligation to provide food and clothing to mothers who are breastfeeding their children. The phrase “and the obligation of the father to provide food and clothing to mothers in a manner that is *ma'ruf*” serves as a strong legal foundation for women's economic rights, particularly in the context of post-divorce custody. “*ma'ruf*” here does not merely mean in accordance with the father's financial capacity, but must also be fair, reasonable, and consistent with a standard of living that is

⁴² Siti Iraini Subaini and Danil Putra Arisandy, “Rada’ah Perspektif Al-Qur’an Surat Al-Baqarah Ayat 233 (Sudut Pandang Ilmu Kesehatan),” *Bashair: Jurnal Studi Al-Qur’an Dan Tafsir* 2, no. 1 (2022): 5, <https://doi.org/10.47498/bashair.v2i1.857>.

⁴³ Mohammad Rafli et al., “Penafsiran Interelasi Q.S. Al Baqarah:233 Sebagai Upaya Meningkatkan Kesejahteraan Keluarga: Perspektif Qira’ah Mubadalah,” *Indonesian Proceedings and Annual Conference of Islamic Law And Sharia Economic (IPACILSE)* 1, no. 1 (2023): 213.

appropriate, without diminishing the basic rights of the mother and child. This indicates that while women have priority rights in caring for children during their early years, they are not solely burdened with financial responsibilities. Instead, this verse ensures the continued economic support from the father, which in turn preserves the dignity and well-being of the mother, allowing her to focus on child-rearing without excessive economic pressure.⁴⁴

The Dynamics of the Social Status of Pre-Islamic Arab Women and Its Relevance to Islamic Family Law Reform in the Contemporary Era

Based on the previous discussion, it is known that historically, the condition of women in Arabia before the arrival of Islam was very marginal, and they did not have adequate legal protection. In *Jabiliyah* society, women were considered part of men's property, whether as daughters, wives, or widows.⁴⁵ They had no right to inherit, voice their opinions in family decisions, or defend their rights over their bodies and lives. In many cases, female infants were considered a disgrace to the family and were buried alive to preserve the honor of the tribe.⁴⁶ The practice of polygamy had no moral or quantitative limits, and women were treated as sexual objects or tools to strengthen inter-clan relations. Women's testimony was not legally recognized, reflecting a structural distrust of their intellectual abilities and moral integrity. Thus, women were systematically subordinated in both the public and private spheres.⁴⁷

The arrival of Islam brought fundamental changes to the oppressive social structure that marginalized women. Islam affirmed women's rights as part of the principle of social justice brought by the teachings of monotheism. Women were granted inheritance rights, rights to dowries, and the right to receive and demand financial support from their husbands.⁴⁸ Islam also restricted the practice of polygamy with strict fairness provisions and introduced family values based on love, responsibility, and mutuality. In the legal field, Islam provided space for women to be witnesses, albeit with certain conditions, and guaranteed

⁴⁴ Rieza Rizki and Habibi Al Amin, "The Practice of Fulfilling the Right of Post-Divorce Child Maintenance by the Mother According to Q.S. Al-Baqarah Verse 233 (Case Study at Al-Mahrusiyah Islamic Boarding School III Ngampel Kediri City)," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 10, no. 2 (2023): 204, <https://doi.org/10.24252/al-qadau.v10i2.38825>.

⁴⁵ Dumitrița Florea, "The Legal Status of Women in Islam," *Logos, Universality, Mentality, Education, Novelty* 2 (2022).

⁴⁶ Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press, 2021), 25.

⁴⁷ Fazlur Rahman, "Status of Women in the Qur'an," in *Women And Revolution In Iran* (Routledge, 2021).

⁴⁸ Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 540, <https://doi.org/10.22373/sjhk.v6i2.13882>.

the honor and safety of women from birth. The spiritual concept in Islam also places women on equal footing with men in moral responsibility before God (QS Al-Ahzab: 35).⁴⁹ Thus, Islam becomes a transformative force that redefines the position of women in Arab society. However, the implementation of these ideal teachings is often still influenced by local patriarchal culture.

The following table provides a brief overview of the status of women in Arabia before and after the advent of Islam.

Table 1: Comparison of Women's Conditions in the Pre- and Post-Islamic Eras

No	Aspect	Pre-Islamic Period (Jahiliyah)	Arrival of Islam
1	Inheritance Rights	Women do not have inheritance rights. Property is inherited only by men, especially those who can fight.	Islam grants inheritance rights to women (QS An-Nisa: 7, 11), although the proportions differ from those of men.
2	Right to Financial Support (<i>nafkah</i>)	There is no formal obligation for men to provide financial support to their wives or daughters.	Islam stipulates that men are obligated to provide financial support to their wives and children (QS At-Talaq: 7).
3	Status in Polygamy	Polygamy is not limited. Men can have as many wives as they want without moral responsibility.	Islam limits the number of wives to a maximum of four (QS An-Nisa: 3), with the condition of fairness.
4	Women's Testimony	Women's testimony is not considered valid in many matters.	Women are not trusted as witnesses. Islam recognizes women's testimony, although in certain cases two women are required for one man (Q.S. Al-Baqarah: 282).
5	Self-worth and dignity	Women are considered property and can be inherited like goods. Female babies are often buried alive.	Islam abolishes the practice of killing female babies (QS At-Takwir: 8–9) and honors women as human beings who are equal before Allah.

⁴⁹ Endah Mustika Pertiwi, “Reformasi Pemikiran Muhammad Rasyid Ridha Dalam Hukum Keluarga Islam Kontemporer,” *EL-AHLI: Jurnal Hukum Keluarga Islam* 5, no. 2 (2024): 130, <https://doi.org/10.56874/el-ahli.v5i2.1975>.

This phenomenon of classical Islamic legal reform then became an important reference in the movement to reform Islamic family law in the contemporary era. Many Muslim-majority countries have reinterpreted classical texts using the *maqāṣid al-sharī'ah* (objectives of Islamic law) approach and the principle of substantive justice to respond to modern challenges, particularly in order to fulfill women's rights more fully.⁵⁰ The relevance of Islamic reform in elevating the status of women at that time included the following:

1. Polygamy: From Pre-Islamic Times to Qur'anic Restrictions

Islam emerged as a reconstructive force against the unrestricted practice of polygamy during the pre-Islamic Arabian period. Before Islam, polygamy was practiced arbitrarily without regard for women's rights. In this context, Islam did not simply abolish polygamy but imposed strict restrictions and regulations to prevent it from causing injustice. The Qur'an, particularly in Surah An-Nisa: 3, limits the number of wives to a maximum of four and establishes justice as an absolute requirement. Even in Surah An-Nisa: 129, the Qur'an emphasizes that true justice is difficult to achieve, so it is more advisable to marry only one wife.⁵¹ This reform is accompanied by the strengthening of women's rights, such as the provision of dowry, the recognition of women as legal subjects in marriage contracts, and the prohibition of forced inheritance of women. Thus, Islam overhauls the patriarchal structure of the pre-Islamic era and places women in a more equitable position within marital relationships.

In the contemporary era, Muslim countries have implemented various policies to regulate polygamy in order to protect women's rights. Countries such as Tunisia and Turkey strictly prohibit the practice of polygamy because it is considered contrary to the principle of gender equality.⁵² Meanwhile, countries like Morocco, Indonesia, and Malaysia permit polygamy under strict conditions, including the consent of the first wife, court approval, and proof of economic capability and fairness. Morocco, through the revision of the Mudawana, even allows women to include a clause prohibiting polygamy in their marriage contracts.⁵³

⁵⁰ Zaini Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 9, <https://doi.org/10.22373/sjhk.v8i1.16553>.

⁵¹ Zainab Batul Naqvi, "Introduction: Polygamy, Law and Women's Lives," in *Polygamy, Policy and Postcolonialism in English Marriage Law A Critical Feminist Analysis* (Bristol University Press, 2023), <https://doi.org/10.51952/9781529210804.ch001>.

⁵² Jufrizal et al., "Abolition Of Polygamy in Turkiye: Juridical Study of Kemalist Reform," *An-Natiq: Jurnal Kajian Islam Interdisipliner* 5, no. 1 (2025): 7, <https://doi.org/10.33474/an-natiq.v5i1.22022>.

⁵³ M. Samson Fajar and Abdul Qadir Jaelani, "Efficiency of Implementing Sanctions in Case of Polygamy in the Modern Islamic World," *Policy, Law, Notary, and Regulatory Issues (POLRI)* 1, no. 1 (2022): 2.

However, studies show that in many cases, the implementation of these policies has not fully protected women due to weak enforcement of the law, lack of legal literacy, and the dominance of conservative interpretations that tend to overlook ethical and social justice dimensions.

A critical analysis of polygamy practices in the modern era reveals an imbalance between Islamic normative texts that promote justice and social practices that remain gender biased. A meta-analysis study conducted by Pamula et al. (2024) found that women in polygamous families often experience significant psychological pressure, anxiety, and dissatisfaction with life, as well as negative impacts on child development. This indicates that policies permitting polygamy without strict oversight may violate the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly in terms of protecting life and lineage (*ḥifẓ al-naḥs* and *ḥifẓ al-nasl*).⁵⁴ Therefore, a reformulation of Islamic family law is needed that is more responsive to women's experiences, such as strengthening the prohibition of polygamy in marriage contracts, making polygamy without the wife's consent a valid ground for divorce, and increasing the role of the state and civil society in overseeing the implementation of the law.

Appropriate legal reform must be based on the principle of substantive justice, not merely procedural justice. This includes a holistic approach that not only assesses men's economic capacity but also considers the psychological, social, and moral impact on the family. As proposed by the *musāwāh* concept and the contemporary maqashid approach, polygamy should only be practiced in certain social emergencies—such as protecting vulnerable women—not as an absolute right of men. Thus, Islamic family law can continue to evolve within a framework of ethical values, justice, and equality that aligns with the spirit of sharia and the demands of the times.

2. Inheritance: From Object to Subject of Law

According to pre-Islamic society, the heirs entitled to inherit property from their deceased family members were men who were physically strong and had defeated enemies in every battle. Tribal interests were prioritized. It was through the achievements and existence of the tribe that a person's dignity as a member of the tribe was at stake. As a result, neither sons nor daughters were granted the right to inherit their family's estate. The

⁵⁴ Fauzi Rahmat Pamula et al., "Polygamy in Islamic Law: A Meta-Analysis and Systematic Review," *Jurnal Hukum Keluarga* 2, no. 1 (2025): 20, <https://doi.org/10.63731/jhk.v2i01.21>.

principles of inheritance used in pre-Islamic times were: Kinship ties (*al-qarābah*), Oaths of allegiance (*al-ḥilf wa al-mu'āqadab*), and Adoption (*al-tabanni*).⁵⁵

The Qur'an sought to balance this by granting women the right to demand compensation from their fiancés, and unlike in pre-Islamic times, women also had the right to retain the amount or property of the dowry, not their fathers. No marriage was valid without the dowry being paid to her, and the Qur'an stated that she could even demand a pile of gold. The Qur'an grants women full property rights, equal to men, and clarifies that what she earns is her own, and neither her father nor her husband can claim it.⁵⁶

In pre-Islamic times, a woman could be inherited. However, when Islam arrived, this was prohibited, as stated in Q.S.: An-Nisa verse 19. According to Asghar Ali, this verse refers to two practices in pre-Islamic times. The first practice was that a man could inherit his father's wife, except his mother, upon his father's death. The Qur'an prohibits this in the verse mentioned above. The second practice involved Arab men making life difficult for wives they did not like and forcing them to divorce. This divorce would allow them to take the dowry.⁵⁷

From the above discussion, it can be concluded that when Islamic reform came, women regained their rights in inheritance matters. Now, with time, a woman is no longer inherited like property. In the past, women were often treated as objects of inheritance to be passed on to anyone.

Various countries are competing to promote reforms to improve the status of women, which has been weak since pre-Islamic times. One example is Turkey, which has undergone several changes. The 1917 Ottoman Law of Family Rights was updated with the Turkish Civil Code of 1926, followed by two amendments in 1933-1956 and 1988-1992. The prominent provisions in the Turkish Civil Code of 1926 include regulations on engagement (particularly issues related to divorce), the minimum age for marriage, prohibitions on marriage, polygamy, marriage registration, annulment of marriage, and divorce.⁵⁸

Historically, family law reform in Egypt began around 1920. In this year, the first series of official family law drafts was enacted. In 1929, the second amendment was made to several

⁵⁵ Mohd Anuar Ramli et al., "Womens Right of Inheritance in Islam: Between the Sharia Provision and Demand of Socio-Cultural Changes," *Khazanah Hukum* 5, no. 2 (2023), <https://doi.org/10.15575/kh.v5i2.29181>.

⁵⁶ Endang Sriani, "Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender," *Tawazun: Journal of Sharia Economic Law* 1, no. 2 (2018): 113.

⁵⁷ Sriani, "Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender," 230.

⁵⁸ Jufrizal et al., "Abolition Of Polygamy in Turkiye: Juridical Study of Kemalist Reform."

articles of the previous law. After that, there were two amendments to Egyptian family law, in 1979 and 1985. Reforms to Egyptian family law included issues related to polygamy, compulsory inheritance, and child custody.

Islamic law in the form of legislation in Egypt can be seen, among others, in: (1) Legislation on Maintenance and Personal Status, which changed between 1920 and 1929, (2) Laws on Maintenance, Wills, and Endowments (The Laws on Inheritance, Wills, and Endowment) between 1943 and 1952, (3) Civil Codes and Laws on Courts between 1931 and 1955, (4) The Establishment of the Supervisory Body for Personal Law (Executory Legislation Relating to Personal Law) from 1955 to 1976, (5) The Amendment to the Personal Status Law (Personal Status (Amendment Law) in 1985.⁵⁹

Indonesia has also been involved in promoting women's rights, with the enactment of Law No. 1 of 1974 on Marriage. Women's rights in marriage are protected, drawing lessons from the pre-Islamic era when women's status was degraded. With this legal framework in place, all issues can be addressed and resolved effectively. Most importantly, there is no discrimination between women and men.⁶⁰

Entering the modern era, social and economic structures have changed significantly, with women no longer merely protected parties, but also active breadwinners and heads of households. Therefore, inheritance law reform in Muslim countries must consider the principle of dynamic contextual justice. Some countries, as mentioned earlier, have promoted the discourse of equality in inheritance by considering the principle of substantive justice and changes in gender roles in society.

Contemporary studies by Wahid emphasize that *maqāṣid* should not be understood literally, but should be used as an ethical framework in formulating inclusive and responsive laws to social realities. The appropriate paradigm for inheritance reform allows flexibility through family contracts (*ṣulḥ*), voluntary division (*tamḥiṣ*), or through a national legal system that combines Islamic values with constitutional equality principles.⁶¹ Thus, the spirit of Islam

⁵⁹ Talal Asad, "Thinking About Tradition, Religion, and Politics in Egypt Today," *Critical Inquiry* 42, no. 1 (2015), <https://doi.org/10.1086/683002>.

⁶⁰ Muhammad Arya Syandika et al., "Perlindungan Anak Dan Perempuan Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia," *Istīḍāl: Jurnal Studi Hukum Islam* 12, no. 1 (2025), <https://doi.org/10.34001/ijshi.v12i1.8116>.

⁶¹ Ziadul Ulum Wahid et al., "Ibn Asyur's Concept of Maqashid Al-Shariah and Its Urgency as a Basis for Contemporary Ijtihad," *Fonologi: Jurnal Ilmuan Bahasa Dan Sastra Inggris* 3, no. 2 (2025): 20, <https://doi.org/10.61132/fonologi.v3i2.1674>.

in elevating the dignity of women through inheritance rights can be sustained, not only in symbolic form but also within a contextual, fair, and participatory legal structure.

Conclusion

Based on the results of the study, it can be concluded that the condition of women in pre-Islamic Arabia was very marginalized, and they did not have proper legal status, both in terms of inheritance, marriage, and social participation. The arrival of Islam brought significant transformations that elevated the status of women by granting them basic rights, such as the right to life, inheritance rights, limited divorce rights, and the right to testify. This emancipatory spirit of Islam then became an important foundation for contemporary Islamic family law reform.

The reform efforts undertaken by Muslim countries, such as restrictions on polygamy, recognition of child custody rights, and fairer inheritance regulations, are manifestations of the Qur'anic spirit in creating substantive justice and protecting women's rights. Therefore, studying the history of pre-Islamic Arab women is crucial to affirm that Islam is a religion that progressively strives to eliminate oppressive patriarchal structures. As a recommendation, Islamic family law reform needs to continue to be directed towards contextualizing Sharia values by taking into account the social realities of women today. Muslim countries must encourage the formation of gender-responsive legislation through a *maqāṣid al-shari'ah* and substantive justice approach, rather than merely a normative textual one.

Declarations

Author contribution statement

H.B. conceived the idea, developed the concept, and wrote the research paper. M.H. systematically conceptualized the research theme and wrote the paper. M. wrote and revised the data sources and conducted the analysis. R.K.F.R. corrected the data, conducted the analysis, and revised the language. T.R.B. Sanjaya completed the concept and ideas, wrote the paper, and revised the language.

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Additional information

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