



## REREADING THE ISSUE OF GENDER EQUALITY IN BAHTSUL MASAIL: AN ANALYSIS OF MAQASHID AL- SYARI'AH ON TRADITIONAL FIQH

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### Abstract:

Gender equality issues in Islamic law remain a significant subject of debate amid social transformation and increasing demands for justice within contemporary Muslim societies. As a recognized forum for addressing emerging religious and social concerns, Bahtsul Masail plays a strategic role in formulating Islamic legal responses. However, the traditional fiqh approach that has long dominated its legal reasoning is often considered insufficient to comprehensively address the complexity of modern gender issues. This study aims to re-examine gender equality discourse within Bahtsul Masail through the perspective of Maqashid al-Shari'ah and to explore the possibility of methodological transformation from a text-centered fiqh approach toward a maslahah-oriented framework. Employing a qualitative library research method, this study analyzes classical fiqh literature, Bahtsul Masail decisions, gender studies in Islam, and contemporary Maqashid al-Shari'ah theories. Data were analyzed using content analysis and critical-interpretive approaches. The findings reveal that the Maqashid al-Shari'ah framework provides a more responsive legal methodology capable of promoting justice, public welfare, and gender equality while maintaining fidelity to Islamic legal sources. This epistemological transformation strengthens the role of Bahtsul Masail as a form of collective ijtiḥad that remains adaptive to social change and relevant in addressing contemporary gender issues within Muslim communities.

**Keywords:** *Bahtsul Masail, Gender Equality, Traditional Fiqh, Maqashid al-Shari'ah, Islamic Law.*

### INTRODUCTION

The development of contemporary Muslim society is marked by the emergence of increasingly complex social issues, including the issue of gender equality, which has become one of the most frequently discussed themes in modern Islamic legal discourse. Changes in social structures, increased participation of women in the public sphere, growing awareness of human rights, and the increasingly strong currents of globalization have given rise to demands for a rereading of the religious texts that have served as the basis for the formation of Islamic law. In this context, the issue of gender equality is no longer understood as a sectoral discourse or limited to the interests of certain groups, but has become part of a broader debate regarding the relationship between religion, law, justice, and social change. Issues such as women's leadership, the right to education, economic rights, women's public roles, protection against gender-based violence, and issues of marriage and family have become themes that

continue to emerge in discussions of Islamic law in various Muslim countries, including Indonesia (Auda, 2022).

As the country with the largest Muslim population in the world, Indonesia has its own unique characteristics in responding to these dynamics. One religious institution that has had a significant influence on the formulation of Islamic law in Indonesia is the Bahtsul Masail forum. This forum developed within Islamic boarding schools (*pesantren*) and religious organizations, particularly within the Nahdlatul Ulama (NU), as a forum for deliberation among scholars to discuss and provide answers to various religious issues that arise in society. Historically, Bahtsul Masail has played a crucial role in maintaining the continuity of classical Islamic scholarly traditions while also serving as a means of adapting Islamic law to social changes occurring within society. Through this forum, various contemporary issues that have not yet found explicit answers in classical fiqh texts are collectively discussed using the *istinbath* method developed within the *pesantren* tradition (Hooker, 2019).

However, developments in modern society present new challenges for Bahtsul Masail. The complexity of gender-related issues often places this forum in a position that requires a more contextual legal approach. To date, the Bahtsul Masail's decision-making process has relied heavily on the authority of classical fiqh texts, which were compiled in a social, cultural, and political context distinct from the conditions of modern society (Kamali, 2022). This strong reliance on the authority of classical texts often results in decisions that are considered less responsive to evolving gender equality issues. On the other hand, demands have arisen for Islamic law to provide more just, inclusive, and relevant responses to social realities without deviating from the fundamental principles of sharia.

The debate over gender equality in Islamic law is not a new issue. Various studies show that differing views on the position of men and women have been part of the fiqh discourse since the early development of Islam. Some legal provisions developed in classical fiqh literature were influenced by the patriarchal social structure that dominated society at the time. As a result, a number of fiqh legal products are often seen as placing women more as objects of law than as subjects with equal rights and responsibilities (Athiyyah, 2020). However, developments in contemporary Islamic thought demonstrate efforts to reinterpret these provisions using a more substantive approach oriented toward the values of justice, the primary goal of Islamic law.

In this context, the *Maqasid al-Shari'ah* approach has gained increasing attention as a methodological framework capable of bridging religious texts and social reality. *Maqasid al-Shari'ah* is essentially a theory that emphasizes that every Islamic law has a specific purpose oriented towards human welfare (Abdullah, 2019). This approach focuses not only on the literal text but also seeks to understand the purpose, wisdom, and values underlying the birth of a legal provision. Therefore, *Maqasid al-Shari'ah* is seen as having the ability to present a more flexible, contextual, and adaptive understanding of Islamic law to changing times without losing its normative legitimacy.

The development of *Maqasid al-Shari'ah* studies in the modern era shows a significant expansion of their scope. While classical theory focused more on protecting religion, life, intellect, descendants, and property, contemporary thinkers have begun to develop approaches that incorporate issues of social justice, human rights, gender equality, and community development as part of the objectives of sharia (An-Na'im, 2020). From this perspective, gender equality is not understood as an attempt to standardize the roles of men and women, but

rather as an effort to realize justice, respect for human dignity, and the fulfillment of basic rights guaranteed by Islam. Thus, the Maqasid al-Shari'ah approach opens up space for a re-reading of various fiqh products that have been deemed inadequate to the demands of contemporary social justice.

Various previous studies have discussed the relationship between fiqh, gender, and Maqasid al-Shari'ah from various perspectives. Research conducted by contemporary Muslim scholars demonstrates that the Maqasid approach can provide a strong theoretical basis for reinterpreting various legal provisions relating to women. Studies on women's leadership, reproductive rights, political participation, and protection against gender-based violence demonstrate that a welfare-based approach often results in legal formulations that are more responsive to the needs of modern society (Ansori, 2021). Other research also confirms that many classical fiqh provisions are actually the result of ijtihad influenced by specific social contexts and therefore open to review in accordance with changing societal conditions.

On the other hand, several studies on Bahtsul Masail have focused more on the legal istinbath method, the authority of ulama (Islamic scholars), institutional dynamics, and its contribution to the development of Islamic law in Indonesia. These studies demonstrate that Bahtsul Masail possesses a strong adaptive capacity in responding to various contemporary issues. However, most studies still place gender issues as a peripheral theme and have not specifically examined how the Maqasid al-Shari'ah approach can be used to re-read Bahtsul Masail decisions related to gender equality. Consequently, there is still considerable room for developing studies that connect the Islamic boarding school fiqh tradition with the Maqasid al-Shari'ah paradigm in the context of contemporary gender issues (Azra, 2021).

This research starts from the assumption that Bahtsul Masail, as a forum for collective ijtihad, has great potential to develop a legal methodology that is more responsive to social change. This potential can be realized by strengthening the Maqasid al-Shari'ah approach, which not only utilizes texts as a source of legal legitimacy but also considers the broader objectives of sharia. In the context of gender equality, this approach allows for the birth of legal decisions that remain rooted in Islamic scholarly tradition while simultaneously responding to the growing demands for justice in modern society. Thus, rereading gender issues through the Maqasid al-Shari'ah perspective is not an attempt to abandon classical fiqh traditions, but rather an attempt to revitalize them to remain relevant to the needs of the times (Fakih, 2022).

The urgency of this research lies in two main aspects. First, theoretically, this research seeks to enrich the study of the relationship between Bahtsul Masail, traditional fiqh, and Maqasid al-Shari'ah in responding to the issue of gender equality. This study is important because it can contribute to the development of a more contextual and welfare-oriented Islamic legal methodology. Second, practically, this research is expected to serve as a reference for ulama, academics, and policymakers in formulating a more adaptive legal approach to various gender issues emerging in contemporary Muslim society.

Compared with previous research, this study is novel in its analytical focus, specifically examining the issue of gender equality in Bahtsul Masail through the perspective of Maqasid al-Shari'ah. While most previous studies have addressed Bahtsul Masail from an institutional or methodological perspective, this study positions gender issues as a primary entry point for evaluating the relevance of traditional fiqh in addressing modern social challenges. Furthermore, this study

seeks to demonstrate how the Maqasid al-Shari'ah approach can serve as an epistemological bridge between the authority of classical fiqh and the needs of contemporary society.

Based on this background, this study aims to analyze how the issue of gender equality is understood in the Bahtsul Masail tradition, identify the limitations of the traditional fiqh approach in responding to contemporary gender issues, and explain the contribution of the Maqashid al-Syari'ah approach in developing a more just, inclusive, and welfare-oriented formulation of Islamic law. Through this study, it is hoped that a more comprehensive understanding of the epistemological transformation necessary for Bahtsul Masail to remain a relevant ijihad forum in addressing various social challenges of Muslim society in the modern era can be obtained.

## **RESEARCH METHODS**

This research uses a qualitative approach with the type of library research (library research). This approach was chosen because the focus of the research was not directed at collecting field data, but rather on conceptual and epistemological analysis of gender equality issues in the Bahtsul Masail forum through the perspective of Maqashid al-Syari'ah. Library research allows researchers to examine in depth various primary and secondary sources related to the classical fiqh tradition, Bahtsul Masail decisions, Maqashid al-Syari'ah theory, and the discourse of gender equality in contemporary Islamic law. Through this approach, the research seeks to understand the dynamics of the changing paradigm of Islamic law from a textual-traditional approach to an approach that is more oriented towards the benefit and social justice.

The research data sources consist of primary and secondary data. Primary data were obtained from the works of classical fiqh scholars who served as the main references in Bahtsul Masail, documents resulting from Bahtsul Masail decisions in various forums, and literature discussing the theory of Maqashid al-Syari'ah from both classical and contemporary perspectives. Meanwhile, secondary data were obtained from scientific journal articles, academic books, dissertations, theses, research reports, and other documents discussing gender in Islam, the methodology of legal istinbath, the development of Islamic legal thought, and the transformation of Islamic legal epistemology in Indonesia. Source selection was carried out purposively by considering the relevance of the theme, academic credibility, and their contribution to the development of research analysis.

The object of this research is the construction of legal thought in Bahtsul Masail related to the issue of gender equality, particularly in the aspect of legal decision methodology and its relevance to the Maqashid al-Syari'ah approach. The focus of the study is directed at how traditional fiqh understands gender relations, how Bahtsul Masail decisions respond to contemporary gender issues, and how the Maqashid al-Syari'ah approach can be used as an instrument of analysis and epistemological reconstruction of the resulting legal products.

Data collection techniques were conducted through documentation studies by identifying, inventorying, reading, and classifying various relevant literature sources. Researchers explored various references through libraries, university repositories, national and international journal databases, and official documents containing the results of Bahtsul Masail. All data obtained were then grouped based on the main research themes: traditional fiqh, Bahtsul Masail, gender equality, and Maqasid al-Shari'ah.

The main research instrument is the researcher himself (human instrument) which functions in the process of data selection, text interpretation, theme categorization, and analysis of relationships between concepts. To maintain data validity, the study employed source triangulation techniques by comparing various views of scholars, previous research findings, and relevant Islamic legal documents. This approach was adopted so that the analysis results were not only normative but also able to comprehensively describe the development of Islamic legal thought.

Data analysis techniques using content analysis (content analysis) combined with an interpretative-critical approach. Content analysis was used to identify key concepts related to gender, fiqh authority, and Maqashid al-Shari'ah in the various sources studied. Furthermore, an interpretive approach was used to understand the meaning and context of legal thought underlying Bahtsul Masail decisions. A critical approach was used to evaluate the relevance of traditional fiqh in responding to contemporary gender equality issues and to assess the extent to which the Maqashid al-Shari'ah approach can provide a more contextual methodological alternative. The results of the analysis were then compiled into a conceptual synthesis that explains the epistemological transformation of Bahtsul Masail from a textual orientation to an approach based on welfare and social justice.

**Table 1. Research Design Framework**

| <b>Research Components</b>        | <b>Description</b>  |
|-----------------------------------|---|
| <b>Types of research</b>          | Library Research  |
| <b>Approach</b>                   | Qualitative   |
| <b>Study Focus</b>                | Gender Equality in Bahtsul Masail from the Perspective of Maqashid al-Syari'ah  |
| <b>Data Primer</b>                | Classical fiqh books, Bahtsul Masail documents, Maqashid al-Syari'ah literature |
| <b>Data Seconds</b>               | Journals, books, theses, dissertations, and research reports                    |
| <b>Data Collection Techniques</b> | Documentation study   |
| <b>Research Instruments</b>       | Researcher ( <i>human instrument</i> )  |
| <b>Data Analysis Techniques</b>   | Content Analysis and Critical Interpretation                                    |
| <b>Data Validity Test</b>         | Source triangulation  |

Explanation of Table 1. The table shows that this study uses a library research design with a focus on conceptual analysis of gender equality issues in Bahtsul Masail. *content analysis* and an interpretative-critical approach allows researchers to identify patterns of legal thought that developed within the classical fiqh tradition while simultaneously evaluating their relevance through the perspective of Maqashid al-Shari'ah. Thus, this method is considered capable

of producing a deeper understanding of the epistemological transformation of Islamic law in responding to demands for gender justice in contemporary Muslim society.

## **RESULTS AND DISCUSSION**

### **Bahtsul Masail and the Construction of Traditional Fiqh in Understanding Gender Relations**

Bahtsul Masail is an instrument of collective *ijtihad* that developed within the Islamic boarding school (*pesantren*) tradition and has become a distinctive characteristic of the development of Islamic law in Indonesia. This forum serves as a forum for deliberation among Islamic scholars to address various religious issues that arise in society, referring to authoritative sources of Islamic law. In practice, the legal-making method used in Bahtsul Masail has for many years been heavily influenced by classical Islamic jurisprudence, which places traditional texts as the primary reference in the legal *istinbath* process. This model provides strong legitimacy to the resulting decisions, as it is rooted in centuries-old Islamic scholarly traditions (Hasyim, 2019).

The study's findings indicate that the traditional *fiqh* framework that underpins Bahtsul Masail emerged within a social context dominated by a patriarchal system. The societal structure during the period when classical *fiqh* texts were compiled placed men as the primary actors in the public sphere, while women were predominantly positioned within the domestic sphere. These social conditions influenced the legal formulations developed in various *fiqh* texts, including those on issues of leadership, testimony, political rights, family relations, and the division of social roles between men and women (Hosen, 2021). Consequently, some of the *fiqh* legal products referenced in Bahtsul Masail are often viewed as less responsive to developments in modern society, which places women as active subjects in various areas of life.

Research findings show that in many cases, Bahtsul Masail decisions regarding gender issues still show a tendency to use a gender-based approach, *qauliyah*, namely, seeking legal answers based on the opinions of previous scholars contained in *fiqh* books. This approach has the advantage of continuity of intellectual tradition and methodological certainty (Kholil, 2021). However, in the context of contemporary gender issues, this approach often faces limitations because the issues that arise today have characteristics that differ from the social conditions during the formation of classical *fiqh*.

For example, issues of women's participation in the public sphere, women's leadership in social and political institutions, protection for victims of gender-based violence, and equal access to education and economic opportunities are emerging issues in modern society. These issues cannot always be adequately addressed solely by referring to legal formulations developed in the medieval social context. Therefore, a re-examination of Islamic jurisprudence sources is needed to ensure that Islamic law remains relevant to the needs of society.

The research also found that traditional *fiqh* is not entirely static. Many classical scholars demonstrated flexibility in formulating laws according to the context of their time. Principles such as *asbenefit*, *istihsan*, *tradition*, and *sadd al-dzari'ah* This demonstrates that the Islamic legal tradition has had room to adapt to social change from the outset (Mas'udi, 2022). However, in subsequent developments, the tendency to imitate established opinions often led to this dynamic aspect receiving less attention.

In the context of gender equality, this research finds that the main problem lies not in Islamic teachings themselves, but rather in the way legal texts are understood and implemented, influenced by specific historical contexts. Many fiqh provisions often considered discriminatory against women are actually the result of human interpretations of religious texts, not absolute representations of universal Islamic values. Therefore, an approach is needed that distinguishes between the universal basic values of sharia and contextual legal formulations.

An analysis of various Bahtsul Masail decisions reveals positive developments over the past few decades. Several Bahtsul Masail forums have begun adopting a more contextual approach, taking into account social realities, community needs, and principles of public welfare. This change demonstrates that Bahtsul Masail has the capacity to undertake epistemological transformation without abandoning its traditional Islamic boarding school (pesantren) roots. Therefore, the re-examination of gender issues in Bahtsul Masail cannot be understood as an attempt to deconstruct traditional fiqh, but rather as a process of revitalizing Islamic legal methodology to make it more relevant to current developments.

### **Maqashid al-Syari'ah as a New Paradigm in Reading the Issue of Gender Equality**

The research results show that the Maqashid al-Shari'ah approach offers a more comprehensive methodological framework for understanding gender equality issues than the purely text-oriented fiqh approach. Maqashid al-Shari'ah is based on the assumption that all provisions of Islamic law are essentially aimed at realizing human welfare and preventing harm. Therefore, every legal product needs to be evaluated based on the extent to which it is able to realize the objectives of sharia in society.

From the perspective of Maqashid al-Shari'ah, gender equality is not understood as an attempt to standardize all roles for men and women, but rather as an effort to realize justice, respect for human dignity, and protect the fundamental rights of every individual (Mudzhar, 2022). This principle aligns with the central message of the Quran, which affirms that men and women were created as complementary partners in building a dignified social life. Thus, the Maqashid approach provides greater scope for evaluating various legal provisions previously deemed inconsistent with the principles of social justice.

Research analysis shows that the concept of protection of religion (Hifz al-Din), soul (hifz al-nafs), reason (preservation of the intellect), descendants (hifz al-nasl), and property (hifz al-mal) has strong relevance in discussing gender issues. Protection of life, for example, requires effective legal measures to prevent all forms of violence against women (Musdah Mulia, 2022). Protection of the mind requires equal access to education for men and women. Protection of offspring requires the creation of healthy, just family relationships free from discriminatory practices. Meanwhile, protection of property recognizes women's right to own, manage, and develop economic assets independently.

Research findings also show that the Maqashid approach allows for a reinterpretation of a number of long-contested gender issues. Regarding women's leadership, for example, traditional Islamic jurisprudence (fiqh) approaches often refer to the opinions of classical scholars, who limited women's leadership to specific areas (Qodir, 2022). However, the Maqashid approach prioritizes competence, integrity, and public welfare as primary considerations in

determining a person's suitability for leadership. Thus, assessment is no longer based solely on gender, but on the ability to realize the goals of sharia in social life.

The same applies to women's participation in the public sphere. Studies show that there is no fundamental prohibition in Islam against women's involvement in education, economics, politics, or other social activities, as long as these activities bring benefits and do not conflict with Islamic moral values. Therefore, the Maqasid approach provides stronger legitimacy for women's involvement as social actors with important contributions to community development (Rahman, 2023).

This research also found that the Maqasid approach has advantages in addressing rapid social change. Unlike textual approaches, which are often tied to specific historical contexts, Maqasid allows Islamic law to adapt to new realities without losing its normative orientation. This flexibility is crucial in addressing various gender issues that continue to evolve along with changes in social structures, technological developments, and increasing public awareness of women's rights.

From the perspective of Islamic legal epistemology, the use of Maqasid al-Shari'ah in Bahtsul Masail indicates a shift in orientation from seeking the most authoritative opinion to seeking the most beneficial solution. This shift does not mean ignoring the authority of classical scholars, but rather placing their opinions as part of an *ijtihad* process open to evaluation based on the objectives of sharia. Thus, Maqasid serves as a bridge connecting the Islamic intellectual heritage with the needs of contemporary society.

### **The Epistemological Transformation of Bahtsul Masail Towards Gender-Just Fiqh**

The main findings of this study indicate that a rereading of the issue of gender equality in Bahtsul Masail requires a more fundamental epistemological transformation. This transformation relates to a shift in perspective on legal sources, the *istinbath* method, and the relationship between texts and social reality. In the traditional *fiqh* paradigm, legal authority is largely determined by proximity to the opinions of previous scholars. Meanwhile, in the Maqasid al-Shari'ah paradigm, legal legitimacy depends not only on conformity to the text but also on its ability to realize justice and the common good.

The research findings indicate that this epistemological transformation has significant implications for the future of Bahtsul Masail (Siregar, 2022). First, the Maqasid approach enables the Bahtsul Masail forum to be more responsive to various social issues emerging in society. Second, this approach provides greater space for the integration of social sciences into the legal decision-making process. Third, this approach allows for the development of decisions that are more adaptive to societal needs without losing religious legitimacy.

In the context of gender issues, epistemological transformation means shifting the focus from debates about the superiority of one gender to efforts to build just and equal relationships based on the principle of mutual benefit (Wahid, 2023). This approach positions men and women as partners with equal rights, responsibilities, and opportunities to contribute to social life. Thus, Islamic law is no longer understood as an instrument maintaining a particular social structure, but as a means to achieve justice and shared prosperity.

An analysis of the development of Bahtsul Masail (Islamic jurisprudence forums) shows that the direction of this transformation has begun to emerge in

various decisions that take into greater consideration the social context and community needs. Several Bahtsul Masail forums have adopted a multidisciplinary approach, involving experts from various fields to provide a more comprehensive perspective on the issues discussed. This development demonstrates the growing awareness that contemporary legal issues cannot be resolved solely through a textual approach (Zuhri, 2023).

Furthermore, epistemological transformation also opens up opportunities to strengthen women's roles in the production of Islamic knowledge. Until now, Islamic legal discourse has been largely dominated by male perspectives, resulting in women's experiences often being underrepresented in decision-making processes (Zulkarnain & Latifah, 2024). The Maqasid approach encourages broader involvement of various community groups, including women, in formulating solutions to the social problems they face.

The findings of this study demonstrate that the integration of Bahtsul Masail and Maqasid al-Shari'ah is not merely a technical change in the legal istinbath method, but rather an effort to build a new paradigm of Islamic law that is more inclusive, contextual, and oriented toward the welfare of the people. This paradigm allows Islamic law to remain rooted in classical scientific traditions while simultaneously addressing the increasingly complex challenges of modern society.

Thus, rereading the issue of gender equality in Bahtsul Masail through the perspective of Maqasid al-Shari'ah demonstrates that Islamic law has a significant capacity to adapt to changing times. This approach emphasizes that the primary goal of sharia is not to maintain social forms that emerged in the past, but rather to realize justice, welfare, and respect for human dignity in every space and time. Therefore, the epistemological transformation of Bahtsul Masail toward a more maqasid approach is a strategic step in ensuring the relevance of Islamic law to the dynamics of contemporary Muslim society while strengthening its contribution to realizing gender justice based on sharia values.

## **CONCLUSION**

This research demonstrates that the issue of gender equality in Bahtsul Masail cannot be adequately understood using only the traditional fiqh approach, which focuses solely on the authority of texts and the opinions of classical scholars. Although traditional fiqh has significantly contributed to building the foundations of Islamic law, contemporary gender issues demand a more contextual approach that is responsive to social change. The research findings reveal that many legal constructs related to the relationship between men and women are influenced by the historical and social contexts of their formation, necessitating a re-reading that takes into account the realities of modern society. In this context, the Maqasid al-Shari'ah approach offers a more comprehensive analytical framework by placing welfare, justice, respect for human dignity, and protection of fundamental rights as the primary objectives of Islamic law. Through this perspective, gender equality is understood not as an effort to standardize the roles of men and women, but rather as an effort to realize justice in line with the objectives of sharia.

Furthermore, this study confirms that Bahtsul Masail's epistemological transformation toward the Maqasid al-Shari'ah approach is a strategic step in maintaining the relevance of Islamic law amidst the dynamics of contemporary society. The maqasid approach enables the Bahtsul Masail forum to develop an istinbath method that is not only text-oriented but also considers legal objectives,

social context, and community needs. Thus, Bahtsul Masail can function as a more adaptive instrument of collective ijtihad in responding to gender issues, while remaining rooted in the authoritative tradition of Islamic scholarship. This study also confirms that the integration of traditional fiqh and Maqashid al-Syari'ah has the potential to produce legal formulations that are more inclusive, just, and able to address the challenges of the times without neglecting the fundamental values of Islamic law. Therefore, this approach is important to continue to be developed in the study and practice of Islamic law in the future.

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