

ANALYSIS OF MAQASHID AL-SYARI'AH ON THE PRACTICE OF WOMEN AS SUPREME COURT JUSTICES

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Abstract : *This study aims to analyze the maqashid al-shari'ah (the principles of Islamic jurisprudence) in relation to the practice of women as supreme court judges in Muslim countries by comparing the judicial systems of Indonesia, Egypt, and Morocco. The methodology used in this study is library research, with data collection conducted by reviewing and examining several journals and articles related to the issues raised in the study. The collected data were then analyzed descriptively. The results of the study indicate that the learning process has a significant influence in improving (1) the maqashid al-shari'ah as the basis for women's permissibility to act as judges with an orientation towards justice and welfare (2) the practices of female judges in Indonesia, Egypt, and Morocco differ according to the legal and social context of each country (3) a comparative assessment from the perspective of maqashid al-shari'ah confirms that these differences in practice remain in line with the objectives of Islamic jurisprudence as long as they are based on competence, integrity, and a real contribution to improving the quality of justice. Based on the research results, it can be concluded that the role of women as supreme court judges in Indonesia, Egypt, and Morocco aligns with the Maqasid al-Shari'ah (Islamic principles) because it emphasizes justice and public welfare based on competence and integrity.*

Keywords : *Maqasid al-Shari'ah, Female Supreme Court Justices, Islamic Judiciary, Gender Equality*

Abstrak : Penelitian ini bertujuan menganalisis maqashid al-syari'ah terhadap praktik perempuan sebagai hakim agung di negara muslim dengan membandingkan sistem peradilan di Indonesia, Mesir, dan Maroko. Metodologi yang digunakan dalam penelitian ini adalah metode studi kepustakaan (library research) dengan pengumpulan data dilakukan dengan menelaah dan mengkaji beberapa jurnal dan artikel yang terkait dengan permasalahan yang diangkat dalam penelitian. Data yang dikumpulkan kemudian dianalisis secara deskriptif. Hasil penelitian menunjukkan bahwa proses pembelajaran memiliki pengaruh signifikan dalam meningkatkan (1) maqashid al-syari'ah menjadi dasar kebolehan perempuan berperan sebagai hakim dengan orientasi keadilan dan kemaslahatan (2) praktik hakim perempuan di Indonesia, Mesir, dan Maroko berbeda sesuai konteks hukum dan sosial masing-masing negara (3) penilaian komparatif dalam perspektif maqashid syariah menegaskan bahwa perbedaan praktik tersebut tetap selaras dengan tujuan syariah selama didasarkan pada kompetensi, integritas, dan kontribusi nyata terhadap peningkatan kualitas peradilan. Berdasarkan hasil penelitian dapat disimpulkan bahwa peran perempuan sebagai hakim agung di Indonesia Mesir dan Maroko sejalan dengan maqashid al-syari'ah karena menekankan keadilan dan kemaslahatan berdasarkan kemampuan dan integritas.

Kata Kunci: *Maqashid al-Syari'ah, Hakim Agung Perempuan, Peradilan Islam, Kesetaraan Gender.*

INTRODUCTION

Constitutionally, Indonesia affirms itself as a country based on the rule of law, where everything must be based on legal provisions. Two of the most important elements in the principle of a country based on the rule of law are the "separation of powers" and the "independence/autonomy of the judiciary" (judicial body) as a

symbol of fair and impartial law enforcement (Annisa, 2017). As stipulated in Article 24 paragraph 1 of the 1945 Constitution, "Judicial power is an independent power to administer justice in order to uphold law and justice." In addition, Article 19 of Law Number 48 of 2009 concerning judicial power also explains who has the authority to carry out judicial power, namely a judge, and this implies that the position of judge is central to efforts to uphold law and justice for the community (Andi Arifin, 2023), The existence of judges is a key pillar in upholding the principle of the rule of law.

A judge may not withdraw from handling a case that has no legal basis. When there is a legal vacuum, a judge must engage in legal renewal, namely through legal discovery or an effort to harmonize the provisions of the law with the facts on the ground. Therefore, there is no case that cannot be resolved and no issue for which there is no law (-, 2014). The independence of judges is not merely a normative principle as stated in the law, but also a form of moral foundation and professionalism for judges in upholding justice in society. A judge acts not only as an executor of the law, but is also required to be an active interpreter in exploring the values of justice that exist in society.

The Supreme Court, as the highest judicial institution on par with the Constitutional Court, has the role of realizing the true purpose of independent and autonomous judicial power, namely people's sovereignty. The Supreme Court has the authority to review regulations under the law against the law, as well as to supervise and provide guidance at all levels and in all areas of the judiciary (Borman & Mh, 1945). From this position and authority, the Supreme Court not only functions as a court of cassation but also as the guardian of consistency and supremacy of national law. The authority to review legislation under the law shows that the Supreme Court acts as the guardian of the hierarchy of legal norms (guardian of the constitutionality of laws) within the legislative sphere under the law. The presence of women in high judicial positions is an important indicator in the development of a fair and gender-sensitive legal system. In the framework of a modern constitutional state, judicial institutions not only function as instruments for enforcing legal norms, but also as reflections of the values of social justice and equality of citizens before the law. Therefore, the involvement of women in strategic positions such as supreme court justices is not merely symbolic representation, but a concrete manifestation of the implementation of the principle of equality before the law as affirmed in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that all citizens are equal before the law and government. In the Indonesian constitutional system, judicial power is exercised by the Supreme Court and the Constitutional Court (Article 24 paragraph (2) of the 1945 Constitution). The Supreme Court oversees four judicial environments, namely the general court, the religious court, the administrative court, and the military court. These four branches are the main pillars of the judicial function in Indonesia. Among the four, the religious courts often play an important role in strengthening the position of women, as they directly address sensitive issues such as marriage, divorce, and women's economic rights (Nurlaelawati, Euis & Salim, 2013).

In the context of general justice and state administration, women's involvement in high-level positions, including in the Supreme Court, is still relatively limited. Although there has been significant progress in the recruitment of female

judges at the first instance and appellate levels, long hierarchical structures and institutional bias often hinder women from reaching these positions. A similar phenomenon occurs in various Asia-Pacific countries, where "the number of women in the judiciary is increasing, but their representation in top positions remains stagnant due to vertical segregation and patriarchal legal culture." (Karwa, 2023) The presence of women in the high court brings a broader dimension of substantive justice. Women's social perspectives enrich judges' interpretations of cases involving moral, social, and humanitarian issues such as gender-based violence, discrimination, and human rights. It reminds us that the law should not stop at normative texts alone, but must side with the human values that live in society. This view reinforces the idea that the presence of female judges has the potential to bring about a more empathetic judicial sensitivity towards victims of social injustice.

Studies on female judges in Islam and positive law have been conducted extensively, but most still focus on classical fiqh aspects and theological arguments regarding the permissibility of women becoming judges. Meanwhile, comparative studies among Muslim countries that place this issue in the context of maqashid al-syari'ah and modern constitutional law are still very limited. This study fills this gap with an interdisciplinary approach that combines an analysis of maqashid al-syari'ah, gender justice theory, and the concept of the modern constitutional state. It compares practices in Indonesia, Egypt, and Morocco, three countries with different Islamic legal and political traditions. This study is expected to contribute theoretically and practically to the formulation of a model for integrating maqashid al-syari'ah with the principles of constitutionalism and gender justice in contemporary Muslim judicial systems. Specifically, this study aims to analyze the legitimacy of women as supreme court justices in three Muslim countries, Indonesia, Egypt, and Morocco, by reviewing fiqh and positive law perspectives on the position of women in the highest judicial office. This study also examines the extent to which the principles of maqashid al-syari'ah, particularly *hifz al-'adl* (maintenance of justice) and *hifz al-'ird* (maintenance of human dignity and honor), support the role of women in the high court structure. In addition, this study outlines the social and juridical implications of accepting or rejecting female judges as part of efforts to create a fair and gender-sensitive legal system in Muslim countries.

Thus, this study not only attempts to answer the normative question of whether women can become supreme court judges, but also analyzes how maqashid al-syari'ah can serve as a paradigm for legal transformation that supports women's involvement in high courts without violating the basic principles of sharia or the modern constitution.

RESEARCH METHOD

The research methodology used in this study is library research, which is a research method that focuses on understanding a concept by studying theories from various references or literature. The library research method collects data by searching through various sources and sorting these sources, such as journals or research that has already been studied (Granikov et al., 2020). Various theories and literature were then analyzed in depth and critically so as to encourage and

strengthen the ideas to be researched. Ideas based on literature discussing research reviewed in previous studies will help prove the ideas to be researched in a study. Research using literature studies obtains research data from search results, which are then analyzed and critically reviewed to produce conclusions that can be useful for various groups, especially in their implementation in life (Heyns & Nixon, 2020).

FINDINGS AND DISCUSSION

Sharia Objectives and the Policy on the Competence of Female Judges

Maqashid al-Syari'ah is an approach in Islamic law that focuses on the substantive objectives of Sharia decisions to achieve justice, benefit, and protection of human rights. The law is not understood and decided textually, but rather considers reality and the common good. This approach allows for the development of Islamic law that is adaptive to modern legal issues and challenges while remaining based on Islamic norms. In the perspective of modern law, maqashid al-Syari'ah has a role as an instrument used to evaluate all public policies and institutional practices in strategic positions in judicial institutions (Ja'far et al., 2024).

The debate over women becoming judges arose due to differences in opinion among scholars influenced by social and cultural conditions. Most scholars reject and do not allow women to become judges, referring to various textual interpretations of certain arguments. Meanwhile, other scholars allow women to become judges as long as they have good scientific capacity and ability. Based on this, the difference in views on women's freedom to become judges has become an issue that is subject to ijihad and open to repeated review and interpretation.

In addition, the absolute prohibition of women from holding judicial positions has the potential to conflict with maqashid al-syariah because it causes injustice and gender discrimination. In this regard, the principle of protection of reason (*hifz al-'aq*) is very important to apply because it relates to the demand that every individual, both men and women, be given equal opportunities and rights to participate in law enforcement. Therefore, allowing women to become judges is a form of applying justice, which is the main objective of sharia.

Thus, maqashid al-Shari'ah is a concept that forms the vital normative basis for the permissibility of women becoming judges in the Islamic judicial system. The maqashid al-Shari'ah approach places justice, public interest, and human rights as the main foundations in law enforcement. The debate regarding female supreme court judges stems from the legitimacy of women's authority in the judicial sphere, and some classical scholars limit the role of women as judges based on socio-historical factors. Therefore, the existence of female judges is considered normatively valid and also relevant in responding to various legal challenges and issues in modern Muslim countries.

The Practice of Female Judges in Indonesia, Egypt, and Morocco

The involvement of female judges in the judicial system in Indonesia has gained strong legal and social legitimacy. Women have equal rights and

opportunities to hold judicial positions in various fields of the judiciary (Serrano, 2019). Women are also legally entitled to hold the highest position of Supreme Court Justice. The existence of female Supreme Court Justices in Indonesia illustrates the integration of the principles of gender equality, the need for professionalism in judicial institutions, and the application of Islamic law in a modern constitutional state (Kania et al., 2025). Regulations allowing women to become judges in judicial institutions illustrate that the capacity of judges in Indonesia focuses solely on competence, integrity, and scientific experience, while remaining in line with the objectives of maqashid al-syari'ah in upholding justice and public interest.

Meanwhile, the practice of female judges in Egypt is developing dynamically (Lemmon et al., 2021). The strong background of classical Islamic law traditions resulted in women's involvement in the judiciary facing normative and institutional resistance. However, in recent years, women have been allowed to hold judicial positions in the courts. This change signifies a shift in Islamic legal thinking from a textual approach to a contextual one that focuses on the common good (Elsaman, 2020). This is in line with the maqashid al-Shari'ah, which bases legal decisions on justice, benefit, and the common good.

In line with this, the practice of female judges in Morocco illustrates a highly progressive model of Islamic legal reform (Shiddieqy et al., 2025). Family law and judicial reforms in Morocco allow women to participate in law enforcement in the judiciary based on constitutional equality and the implementation of Islamic law. Morocco applies strong maqashidi judicial practices by positioning justice, social sustainability, and human rights as crucial legal foundations (Laadam & Hasnaoui, 2025). The involvement of women in the Moroccan judiciary can be interpreted as part of the state's efforts to achieve substantive justice and gender equality in the judiciary.

Comparatively, the practice of female judges in Indonesia, Egypt, and Morocco illustrates that the application of gender equality and the granting of equal rights to women are highly respected. The acceptance of women in judicial positions is greatly influenced by legal, social, and political factors in each country. Although the level of implementation and acceptance of women in these countries varies, the three countries show open efforts to reform and review the role of women in the judiciary through an Islamic sharia approach. Within the framework of maqashid al-syari'ah, legal practices that allow women to participate in the judicial system are understood as a collective effort by Muslim countries to achieve substantive justice and public interest.

Comparison and Assessment from the Perspective of Maqashid Sharia

A comparative approach with a maqashid syariah perspective facilitates the assessment of regulations allowing women to serve as Supreme Court justices in Indonesia, Egypt, and Morocco by considering the substantive objectives of Islamic law. The acceptance of women in judicial positions in these three countries shows different patterns of acceptance and is influenced by the national legal system, the enforcement of religious law, and social dynamics (Riyadi et al., 2025). These differences indicate that the application of Islamic law in various

countries is not uniform. The differences in the application of Islamic law in various countries are caused by diverse interpretations of Islamic arguments and sharia law (Karimullah, 2023).

Legal practices in Indonesia and Morocco demonstrate more inclusive laws compared to Egypt. Differences in the level of implementation of Islamic law are assessed based on competence, integrity, and professionalism as the main criteria for selecting judicial positions in each country. Egypt tends to apply a stricter approach by taking into account the sensitivity of fiqh traditions (Fauzi, 2024). When viewed through the lens of maqashid syariah, these differences in acceptance levels can be assessed based on the extent to which the policy supports the realization of substantive justice, protection of reason, and public interest, rather than merely based on literal conformity with a particular fiqh view. When analyzed from the perspective of maqasid syariah, variations in the level of acceptance of women serving in judicial institutions can be evaluated based on the extent to which existing policies are able to realize substantive justice, protect reason, and bring about public benefit (Dahash, 2024).

By applying maqashid syariah as a benchmark for legal assessment, judicial practices that allow women to hold the position of supreme judge can be interpreted as being in line with the objectives of Islamic law. This is because the selection of individuals to hold a position based on their contribution to the enforcement of justice, improvement of the quality of legal decisions, and actions that respect human dignity is very much in line with the maqashid syariah approach. The differences in policy in Indonesia, Egypt, and Morocco show that the role of women in judicial institutions is more potentially measured by the impact of the benefits they bring and affirms the open and adaptive nature of Islamic law in responding to the demands for justice of today's Muslim society.

CONCLUSION

Based on the description in this article, it can be concluded that the role of women as supreme judges in Indonesia, Egypt, and Morocco is essentially in line with the perspective of maqashid al-syari'ah. The differences in policy that arise in these three countries do not eliminate the main objectives of Islamic law, namely to realize justice and target public interest. Maqashid al-sharia places competence and integrity as the main benchmarks in legal policy, not gender differences. Thus, the diversity of existing practices reflects the dynamics of ijtihad and demonstrates the flexibility of Islamic law in responding to the judicial needs and demands for justice of today's Muslim society.

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