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Wives' Career Rights in Islamic Jurisprudence and Indonesian Family Law: A Doctrinal Reappraisal of Marital Partnership

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Abstrak

Penelitian ini mengkaji hak karier istri melalui pembedaan antara syariah, fikih, dan hukum Islam positif Indonesia. Dengan metode hukum normatif, penelitian menganalisis dalil mengenai kepemilikan hasil usaha perempuan, pandangan fikih tentang tamkīn dan nafkah, serta ketentuan UU Perkawinan dan Kompilasi Hukum Islam. Penelitian menemukan bahwa pekerjaan istri tidak secara otomatis memenuhi unsur nusyuz, sedangkan hak atas pekerjaan perlu dinilai bersama kewajiban pengasuhan dan kepentingan keluarga. Tulisan ini menawarkan penilaian proporsional berdasarkan musyawarah, bukti kerugian konkret, dan prinsip keadilan timbal balik. Usulan penafsiran dan reformulasi norma dibedakan dari ketentuan hukum yang saat ini berlaku.

Kata Kunci: hak karier istri; nusyuz; nafkah; maqāṣid al-sharīʿah; hukum keluarga Islam

Abstract

This doctrinal study reassesses wives' career rights by distinguishing divine revelation, juristic interpretation, and Indonesian positive family law. It analyzes scriptural recognition of women's earnings, the classical concepts of maintenance and marital availability, and the relationship between the Marriage Law and the Compilation of Islamic Law. The study finds that employment by a wife does not, without additional findings, establish marital disobedience (nusyuz). It proposes a proportionate, evidence-based approach that protects lawful employment while examining actual effects on care, mutual obligations, and children's interests. Suggested interpretive and statutory reforms are expressly distinguished from existing binding rules.

Keywords: *wives' career rights; nusyuz; maintenance; maqāṣid al-sharīʿah; Islamic family law*

Introduction

Paid employment by married women is an established feature of Indonesian households, including families in which a wife contributes the larger share of income. Family law must therefore address not only whether work is religiously permissible, but also how a spouse's professional choices relate to maintenance,

caregiving, and reciprocal marital obligations. This is a legal inquiry rather than an assumption that paid employment necessarily damages family cohesion.[1]

Three sources of normativity must be distinguished. Sharia refers to religious guidance grounded in revelation; fiqh is the fallible juristic interpretation of that guidance across historical schools; and the Indonesian Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), disseminated through Presidential Instruction No. 1 of 1991, supplies a positive-law reference used by the religious courts. Treating these three categories as a single command would obscure how a contemporary interpretation differs from a statutory rule and from a classical opinion.[2]

The 1945 Constitution protects work and just treatment in employment, while the Marriage Law recognizes the legal capacity of both spouses. In the family-law setting, questions about the husband's maintenance obligation and the wife's role cannot be answered by disregarding either the general rights framework or the KHI. Their interaction requires a structured interpretation rather than an automatic preference for one isolated provision.[3]

Earlier scholarship examines several aspects of wives' paid employment. Nelli addresses the relationship between earnings and maintenance.[4] Qothrunnada and colleagues examine the distribution of paid and domestic work under the KHI.[5] Studies of qiwāmah and reciprocity raise a related question: how should legal analysis distinguish a justified objection to employment from disproportionate interference with a spouse's professional life? This article develops a structured test connecting that question to specific family-law duties.

The study asks how Islamic sources recognize women's economic agency, how Indonesian marriage law regulates the consequences of paid employment, and which interpretive measures could reconcile lawful careers with family responsibilities. Its contribution is doctrinal: it does not estimate divorce rates or establish a causal relationship between the KHI and household outcomes.

Table 1. Selected Prior Studies and the Research Gap

Study	Focus	Contribution	Residual question
Nelli (2023)	Working wives and maintenance	Shows the need to separate wage and marital-support entitlements	Does not fully operationalise employment-related nusyuz proof

[1] Sukiati, Nurcahaya, and Nur Halimah As Sa'diah, "The Dual Role of Career Women in Strengthening Family Resilience: Perspectives of Islamic Law and Indonesian Positive Law among Employees of STAI As-Sunnah Deli Serdang," *Adagium: Jurnal Ilmiah Hukum* 4, no. 2 (2026): 473–505, https://doi.org/10.70308/jsfnhk34.

[2] Indonesia, Presidential Instruction No. 1 of 1991 concerning Dissemination of the Compilation of Islamic Law, accompanying KHI, arts. 79–84.

[3] Indonesia, Constitution of 1945, arts. 27(2) and 28D(2).

[4] Jumni Nelli, "Working Wife's Nafkah Family Law Perspective Indonesian Islam," *Eksekusi* 5, no. 2 (2023): 220–234, https://doi.org/10.24014/je.v5i2.25924.

[5] Qonita Qothrunnada, Asy Syifak Qolbi Maghfur, and Lina Kushidayati, "For Justice! The Double Burden of Women in Indonesia from the Perspective of The Compilation of Islamic Law," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 9, no. 1 (2024): 61–74, https://doi.org/10.22515/alahkam.v9i1.9680.

Study	Focus	Contribution	Residual question
Qothrunnada et al. (2024)	Double burden and KHI	Examines distributive pressures on working women	Does not determine a judicial proof test
Mustofa (2025)	Qiwāmah in the Shāfiʿī tradition	Examines changing interpretations of authority	Requires careful distinction between school doctrine and contemporary reconstruction
Present study	Employment rights across fiqh and positive law	Proposes a proportionate, evidence-based judicial inquiry	Requires primary case-law and empirical testing

Source: Authors' doctrinal analysis of the primary and secondary materials identified in the accompanying text.

Research Method

This doctrinal study employs statutory, conceptual, and limited comparative approaches. The primary materials include the Qurʾanic passages examined, relevant Indonesian constitutional and statutory provisions, and the KHI. Doctrinal works and journal studies address marriage, maintenance, reciprocity, and the purposes of Islamic law. Descriptions of existing law are distinguished from proposals requiring judicial guidance, administrative action, or legislative amendment.[6]

For comparison, the unit of analysis is not an entire school of law treated as homogeneous. Instead, the paper compares specified juristic propositions concerning marital availability (tamkīn), a spouse's mobility, the correlation between maintenance and marital duties, and the consequences attributed to disobedience. Interpretations by contemporary writers, including reciprocal reading and maqāṣid-based evaluation, are identified as analytical extensions rather than presented as unanimous classical doctrine.[7]

Materials are evaluated according to authority and relevance. Enacted legislation governs the positive-law analysis, while classical opinions require attention to the school, text, and circumstances in which they were formulated. Contemporary empirical studies provide context within their reported samples. The comparison is limited to propositions supported by the cited literature and does not claim to establish consensus across classical schools.[8]

[6] Amir Syarifuddin, Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat and Undang-Undang Perkawinan (Jakarta: Kencana Prenada Media Group, 2009).

[7] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008).

[8] Faqihuddin Abdul Kodir, *Qirā'ah Mubādalah: Tafsir Progresif untuk Keadilan Gender dalam Islam* (Yogyakarta: IRCiSoD, 2019).

Results and Discussion

1. Religious Sources, Juristic Distinctions, and Wives' Economic Agency

Qur'an 4:32 recognizes an interest in what men and women acquire through their efforts. This provision supports recognition of women as economic agents and the personal significance of their earnings; by itself, however, it does not resolve every question about employment outside the home, scheduling, or competing marital duties. A conclusion regarding freedom to pursue a career requires further reasoning from lawful occupation, reciprocal obligations, and the absence of a categorical prohibition in the examined materials.[9]

Historical accounts of women's commercial activity are relevant to debates about economic agency, but historical participation alone does not establish the scope of a modern legal entitlement. The legal argument must distinguish recognition of women's capacity to earn and own property from the separate rules governing maintenance and marital obligations.[10]

Classical discussions of maintenance and marital availability must be read with attention to differences among schools and circumstances. Some formulations connect maintenance with tamkīn and address permission to leave the marital home, including exceptions for legitimate need. These discussions do not establish a universal rule that every instance of paid employment permits unilateral withdrawal of permission or automatic suspension of maintenance. A contemporary application must identify the particular doctrine and the facts to which it is addressed.[11]

Likewise, qiwāmah in Qur'an 4:34 has been read through differentiated accounts of responsibility, provision, authority, and household organization. Contemporary comparisons of Shaltut and Shahrur do not establish that their interpretive positions represent a particular school's settled law. The analytical question is which aspects of responsibility can be applied reciprocally when both spouses earn and care for the family, without assuming that economic contribution alone determines the legal relationship.[12]

Reciprocal interpretation (qirāʾah mubādalah) foregrounds the Qur'anic language of kindness and mutuality in marital life. It offers a normative principle for deliberation about employment, shared care, and the allocation of household responsibilities. This is an interpretive proposal grounded in the cited contemporary scholarship; it is not a replacement statutory provision or a claim that every household disagreement is legally resolved through equal earnings.[13]

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[9] Eva Fadhilah, Pitrotussaadah, and Angga Pusaka Hidayat, "Tinjauan Islam Terhadap Perempuan Bekerja," *Syaksia : Jurnal Hukum Perdata Islam* 23, no. 2 (2023): 224–234, https://doi.org/10.37035/syaksia.v23i2.7113.

[10] Amir Syarifuddin, Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat and Undang-Undang Perkawinan (Jakarta: Kencana Prenada Media Group, 2009).

[11] Jumni Nelli, "Working Wife's Nafkah Family Law Perspective Indonesian Islam," *Eksekusi* 5, no. 2 (2023): 220–234, https://doi.org/10.24014/je.v5i2.25924.

[12] Bisri Ali Mustofa, "Reconstructing Qiwāmah and Wilāyah in the Shāfiʿī Legal Tradition: Toward a Reform of Islamic Family Law in Indonesia," *Jurnal Mahkamah : Kajian Ilmu Hukum dan Hukum Islam* 10, no. 2 (2025): 345–358, https://doi.org/10.25217/jm.v10i2.6846.

[13] Faqihuddin Abdul Kodir, *Qirā'ah Mubādalah: Tafsir Progresif untuk Keadilan Gender dalam Islam* (Yogyakarta: IRCiSoD, 2019).

A maqāṣid-based inquiry must ask what practical interests a restriction actually protects. Lawful work may serve financial security, the development of capabilities, children's education, and health. It can also present schedule conflicts or physical strain in individual households. The appropriate test is therefore fact-specific: what concrete harm is alleged, what evidence supports it, whose interests are affected, and whether adjustments less restrictive than forbidding employment are feasible. Mere discomfort with a spouse's public work is not proof of harm.[14]

2. Positive Indonesian Law: Employment, Maintenance, Nusyuz, and Marital Property

Article 31 of the Marriage Law recognizes equality of rights and position within marriage while assigning family roles in wording that is still contested. Constitutional protections of employment and Article 49 of Law No. 39 of 1999 are relevant to the wife's legal capacity to choose work. The analysis must acknowledge, rather than erase, that general employment rights coexist with family-law provisions addressed to reciprocal marital conduct.[15]

The KHI separates several legal questions often conflated in discussion. Article 80 addresses the husband's duties including family maintenance; Article 83 concerns obligations of a wife; and Article 84 establishes conditions relating to nusyuz and the effects for specified maintenance obligations. A wife's paid employment is not expressly identified in those provisions as an automatic statutory finding of nusyuz. A claim must examine the conduct alleged, the applicable exception or justified reason, and legally sufficient evidence; a reviewing court's findings cannot be replaced by a spouse's unilateral declaration.[16]

Withdrawal of a spouse's earlier agreement to employment does not itself establish the legal consequences of nusyuz. Those consequences depend on the applicable KHI provisions, the specific duty allegedly breached, any justified reason, and sufficient evidence. The interests of children must be assessed separately from an allegation directed at a spouse. This article offers an interpretive framework rather than a claim of uniform judicial practice.[17]

Work and maternity protections are a distinct legal layer. Law No. 4 of 2024, particularly Articles 4 and 5, provides working mothers with a minimum first three months of maternity leave, a conditional extension subject to medical evidence, and protection against dismissal for exercising specified statutory rights. These employment guarantees should not be cited as though they directly repeal the KHI or decide marital disputes: the legislation addresses maternal and child welfare and working conditions.[18]

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[14] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008).

[15] Indonesia, Law No. 1 of 1974 concerning Marriage, art. 31.

[16] Indonesia, Presidential Instruction No. 1 of 1991 concerning Dissemination of the Compilation of Islamic Law, accompanying KHI, arts. 79–84.

[17] Qonita Qothrunnada, Asy Syifak Qolbi Maghfur, and Lina Kushidayati, "For Justice! The Double Burden of Women in Indonesia from the Perspective of The Compilation of Islamic Law," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 9, no. 1 (2024): 61–74, https://doi.org/10.22515/alahkam.v9i1.9680.

[18] Indonesia, Law No. 4 of 2024 concerning Maternal and Child Welfare during the First Thousand Days of Life, arts. 4–5.

Marital property questions likewise require separate treatment. Articles 35 and 36 of the Marriage Law and the KHI provisions on joint property govern ownership and disposition according to their respective conditions. Whether a wife's salary is used for family maintenance, how property acquired during marriage is classified, and how assets are divided on divorce are distinct inquiries. Pre-marital assets and a valid marital agreement may affect the analysis; it is misleading to suggest that personal earning automatically settles each of these issues.[19]

Studies of working wives' household burdens and joint property provide useful illustrations but cannot establish the frequency of unfair outcomes nationwide. The present article uses them to identify legal risks and interpretive questions, not as original observations or proof that an administrative or family-law norm causes a specific divorce.[20]

Table 2. Distinct Legal Questions in Wives' Career Disputes

Question	Existing relevant norm	Proper legal inquiry
Work and equality	1945 Constitution; Marriage Law Article 31	Lawful work, capacity, and family-specific context
Maintenance and nusyuz	KHI Articles 80, 83, and 84	Specified duty, justified reason, evidence, judicial findings
Income and joint property	Marriage Law Articles 35–36; KHI property provisions	Source of asset, marital agreement, ownership, use of earnings
Maternity rights	Law No. 4/2024 Articles 4–5	Leave, medical evidence, employment protections; not a KHI repeal

Source: Authors' doctrinal analysis of the primary and secondary materials identified in the accompanying text.

3. A Proportionate, Evidence-Based Partnership Model

The proposed approach begins with a rebuttable recognition of an adult spouse's lawful professional activity. Employment restrictions should be evaluated only when a legally cognizable family interest is identified and the objection is supported by particular facts, such as demonstrable neglect of agreed childcare or serious, evidenced risks to health. The same evaluative scrutiny applies to duties undertaken by the husband. This is a proposed interpretive orientation, not an assertion that current positive law already contains an express statutory presumption.[21]

[19] Indonesia, Law No. 1 of 1974 concerning Marriage, arts. 35–36.

[20] Qonita Qothrunnada, Asy Syifak Qolbi Maghfur, and Lina Kushidayati, "For Justice! The Double Burden of Women in Indonesia from the Perspective of The Compilation of Islamic Law," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 9, no. 1 (2024): 61–74, https://doi.org/10.22515/alahkam.v9i1.9680.

[21] Abd. Hannan et al., "Reconstructing Spousal Rights And Obligations In Indonesian Marriage Law: A Qirā'Ah Mubādalah Perspective On Wives As Primary Breadwinners," *Hakam : Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam* 10, no. 3 (2026), https://doi.org/10.33650/jhi.v10i3.16210.

For adjudication, the first step is to identify the applicable legal norm and the concrete behavior alleged; the second is to hear both spouses and identify evidence of actual effects on household responsibilities or children; the third is to consider whether scheduling changes, shared care, or another less restrictive arrangement would resolve the conflict. Only after this assessment should the court consider the legally available consequences under the KHI. Economic dependence should not be used as a substitute for proof of wrongful conduct.

A marital agreement may record mutual expectations concerning careers, financial contributions, and childcare. Article 29 of the Marriage Law, as interpreted by the Constitutional Court, provides the relevant starting point for assessing its timing and validity.[22] The enforceability of a non-property covenant, the required form, public-order limitations, and effects on third parties require separate analysis. A promise to respect lawful employment may evidence agreed expectations; its enforceability cannot be assumed from agreement alone.

Legal reform should be located at the correct institutional level. Statutory wording in the Marriage Law may be altered through legislation, while KHI wording and its legal status require action through an appropriate government instrument; a judicial guideline can assist consistent fact-finding without purporting to rewrite statutes. A possible guidance formula would require judges considering alleged nusyuz based on employment to specify the legal duty, evidence of violation, any justified reason, the child's interests, and the proportionality of any maintenance consequence.[23]

The model offers an analytical contribution by distinguishing personal autonomy, reciprocal duties, property ownership, and proof of marital misconduct. It cannot be validated as a successful intervention without empirical assessment. Future studies should examine identifiable religious-court judgments and interviews conducted under a transparent sampling design, including experiences in families with different employment and care arrangements.

Conclusion

The available sources support recognition of wives' economic agency, but they do not support treating each historical juristic interpretation as an unchanging rule of revelation. Indonesian family law combines general employment rights with specific provisions concerning maintenance and marital obligations. Paid work alone should not be presented as an automatic finding of nusyuz; the relevant legal elements, evidence, and legitimate reasons must be examined.[24]

The proposed approach evaluates family interests through evidence of actual circumstances, reciprocal responsibilities, and less restrictive alternatives. Marital agreements, reasoned judicial guidance, and legislative reform offer different means of addressing employment disputes, each within its own legal limits.

[22] Constitutional Court of Indonesia, Decision No. 69/PUU-XIII/2015.

[23] Muhammad Danil et al., "From Provider to Partner: Reconstructing the Legal Concept of Livelihood Obligation in Indonesian Islamic Family Law through the Lens of Gender Justice and Maqāṣid al-Sharīʿah," *Sakina: Journal of Family Studies* 10, no. 2 (2026): 160–173, https://doi.org/10.18860/jfs.v10i2.29511.

[24] Indonesia, Presidential Instruction No. 1 of 1991 concerning Dissemination of the Compilation of Islamic Law, accompanying KHI, arts. 79–84.

Further research should examine primary classical passages and identifiable career-related judgments to test the framework against doctrinal diversity and adjudicative practice.[25]

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