

Rethinking Maintenance and *Tamkin* in Islamic Family Law: Towards Justice and Family Resilience

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Abstract

Maintenance (*nafkah*) in Islamic family law fundamentally represents a form of responsibility and protection aimed at ensuring the continuity and harmony of family life. However, within the tradition of classical *fiqh*, the obligation of maintenance is often closely tied to the concept of *tamkīn*, which positions a wife's obedience as a prerequisite for the fulfillment of this right. Such a perspective may generate unequal power relations between husband and wife and transform maintenance from a moral responsibility into an instrument of control within the family. This condition frequently contributes to the weakening of family resilience, particularly in societies undergoing continuous social change. This study critically examines the relationship between maintenance and *tamkīn* in traditional *fiqh* and reassesses its relevance in light of the principles of justice and family resilience in contemporary Islamic family law. Employing a normative legal research method, drawing on conceptual, philosophical, and *maqāṣid al-sharī'ah* approaches, the study analyzes classical *fiqh* literature alongside modern Islamic legal thought. The findings indicate that the linkage between maintenance and *tamkīn* reflects specific socio-historical contexts rather than universal principles of justice. This study offers a critical framework for rethinking Islamic maintenance obligations, promoting gender justice in modern muslim societies.

Keywords: *Equitable Financial Support, Tamkīn, Maqāṣid al-Sharī'ah, Ibn Qudāmah, Khaled Abou El Fadl*

Abstrak

Nafkah dalam hukum keluarga Islam sebenarnya adalah wujud tanggung jawab dan perlindungan yang memastikan kelangsungan serta keharmonisan kehidupan keluarga. Namun, dalam tradisi fikih klasik, kewajiban nafkah sering kali terikat pada konsep *tamkīn*, yang menempatkan kepatuhan istri sebagai syarat untuk pemenuhan hak tersebut. Pandangan ini dapat memunculkan hubungan yang tidak seimbang antara suami dan istri, serta mengubah nafkah dari tanggung jawab moral menjadi sarana kontrol di dalam keluarga. Keadaan seperti ini sering kali berperan dalam lemahnya ketahanan keluarga, terutama dalam konteks masyarakat yang terus-menerus menghadapi perubahan sosial. Studi ini bertujuan untuk menganalisis secara mendalam hubungan antara nafkah dan *tamkīn* dalam fikih tradisional, serta mempertimbangkan

kembali relevansinya terhadap prinsip keadilan dan ketahanan keluarga dalam hukum keluarga Islam masa kini. Penelitian ini mengadopsi metode hukum normatif dengan pendekatan konseptual, filosofis, dan *maqāṣid al-sharī'ah*, melalui analisis terhadap literatur fikih klasik dan pemikiran hukum Islam modern. Temuan penelitian mengindikasikan bahwa hubungan antara nafkah dan *tamkīn* lebih mencerminkan konteks sosial-historis tertentu dibandingkan prinsip keadilan yang bersifat umum. Studi ini menawarkan kerangka kerja kritis untuk memikirkan kembali kewajiban nafkah dalam Islam, mempromosikan keadilan gender dan ketahanan keluarga dalam masyarakat muslim modern.

Kata Kunci: *Nafkah Berkeadilan, Tamkīn, Maqāṣid Sharī'ah, Ibn Qudāmah, Khaled Abou El Fadl*

INTRODUCTION

Maintenance is a fundamental aspect of Islamic family law because it is directly related to the fulfillment of basic needs, the relationship between husband and wife, and the social structure of Muslim households. In classical *fiqh*, the obligation of maintenance is generally regarded as the husband's responsibility to his wife under the marriage contract, so that the wife receives this maintenance as her right during the marriage (Al Maqdisi, 1997). This is also articulated in the *Compilation of Islamic Law (KHI)*, Article 80 paragraph (5), concerning the husband's obligation to provide maintenance, which is conditioned upon the wife's attainment of complete *tamkīn*. Although this obligation has long been treated as a normative dogma, contemporary social realities, such as the increasing participation of women in the workforce, the practice of economic partnership within families, and shifts in gender roles, pose new challenges for understanding how financial support is implemented in Muslim families today (Farmawati, 2022).

The issue of justice in spousal maintenance (*nafaqah*) within Islamic family law is closely related to the concept of *tamkīn*, which in classical jurisprudence is positioned as a normative prerequisite for a wife's entitlement to maintenance. However, in contemporary international academic discourse, this relationship has been increasingly criticized for its potential to produce gender inequality when interpreted rigidly and without contextual sensitivity. Studies published in *Islamic Law and Society* and the *Journal of Middle East Women's Studies* indicate that the classical construction of obedience (*tamkīn*) often reflects a historically patriarchal context, thereby necessitating reinterpretation in light of

modern socio-economic transformations, including the growing economic participation of women (Hallaq, 2019).

Furthermore, the obligation of maintenance should not be subordinated to the wife's obedience; rather, it must be understood within a broader framework of justice and reciprocity as fundamental principles of Islamic family law (Esposito, 2001). Accordingly, a *maqāṣid al-sharī'ah* based approach becomes essential in reconstructing the relationship between *nafaqah* and *tamkīn* in a more equitable and contextual manner, emphasizing the protection of human dignity and the balance of roles within contemporary muslim families (Subhani, 2023).

The issue of *tamkin* raised by classical imams has also attracted the attention of researchers. Abdul Halim's research shows that a wife's right to financial support is only fulfilled if she has demonstrated perfect *tamkin*. Based on the example of the marriage of the Prophet Muhammad SAW to Aisha R.A (Halim, 2024). This article still focuses on classical concepts and has not yet been applied to contemporary thought. Previous research highlights the gap between the classical construction of alimony and real social conditions, prompting a rethinking of *nafkah's* structure in muslim families, where women's role as breadwinners has emerged. This confirms that the concept of *nafkah* needs to be reinterpreted to reflect the principles of gender justice and the *maqashid al-shari'ah*, rather than merely normative *fiqh* that reinforces the hierarchy of husband wife relations. Accordingly, a critical and in-depth examination of the concept of *tamkīn* within classical Islamic jurisprudential thought is necessary, along with an analysis of its contemporary social philosophy implications that may contribute to inequities in the provision of maintenance (*nafaqah*). (Yani, 2024).

Additionally, another study highlights the phenomenon of wives who work and contribute significantly to family income, yet remain within the framework of the husband's responsibility to provide for the family according to classical Islamic law, and points to ambiguities in its implementation in contemporary family law practice. The research gap of this study lies in examining how the concept of *tamkīn* is understood and applied within contemporary contexts, as well as analyzing its implications for family resilience (Ardo & Adamu, 2025). Another line of inquiry concerns how the concept of *tamkīn* has been interpreted by contemporary scholars through reconstructive efforts within the framework of the *Kompilasi Hukum Islam* (KHI). However, there remains a lack of in-depth and explicit analysis linking the meaning of *tamkīn* to

the concept of family resilience within the KHI. (Fashihuddin dkk., 2023) Several previous studies have indicated that there are gaps in the existing literature; therefore, this study is urgently needed to explore the concept of *tamkin* and its implications for the resilience of contemporary muslim families.

In classical Islamic thought, Ibn Qudamah emphasized the husband's obligation to provide financial support, a consequence of the patriarchal social structure as understood in *fiqh* texts such as *al-Mughni*, and stressed obedience as one of the essential qualities a wife must possess perfect *tamkin* (Al Maqdisi, 1997). This thinking represents a normative paradigm that has been the primary reference in family jurisprudence for centuries. In contrast, contemporary thinkers such as Khaled Abou El Fadl offer a hermeneutic approach that grounds legal interpretation in moral principles, substantive justice, and the reciprocal relationship between husband and wife, including the obligation of financial support, developed in the context of an increasingly dynamic and egalitarian modern society (Panigoro, 2020).

The paradigm differences between classical and contemporary approaches reflect the diversity of interpretations within Islamic law and underscore the importance of conducting comparative studies. Such analyses not only open avenues for more contextualized legal reasoning regarding a wife's right to maintenance (*nafaqah*), but also serve to bridge the gap between normative legal traditions and the demands of gender justice in contemporary muslim societies (Ferdiansyah et al., 2025). This study specifically focuses on interpreting the concept of maintenance (*nafaqah*) in relation to *tamkin* within the context of modern muslim families, employing a *maqāṣid al-sharī'ah* approach and juxtaposing it with feminist legal theory. The analysis is conducted through a comparative lens, examining the perspective of Ibn Qudamah as a representative of classical scholarship and that of Khaled Abou El Fadl within the framework of contemporary Islamic thought.

RESEARCH METHOD

This study employs a normative legal research method with a comparative approach, and relies on library research as the primary technique for data collection (Sugiyono, 2014). The stages of library research involve collecting bibliographic data from various scholarly sources relevant to the research topic. This study specifically analyzes the thoughts of Ibn Qudamah

and Khaled Abou El Fadl concerning the concept of *tamkīn* and the obligation of maintenance (*nafaqah*), as well as their implications for spousal relations and family resilience. The analysis is conducted through the lenses of Maqasid al-Shariah and Feminist Legal Theory as analytical frameworks for assessing the concept of justice.

The research employs a descriptive-comparative method, enabling the identification of similarities and differences between the two perspectives, while also facilitating the reconstruction of the concept of *tamkīn* within both classical and contemporary contexts based on principles of gender justice. The data obtained from the literature review are presented as research findings, which are then systematically described and interpreted to formulate a more equitable understanding of *tamkīn* in the context of modern muslim families, along with its implications for family resilience (Sopyan, 2010).

RESEARCH FINDING AND DISCUSSION

Biographies of Ibn Qudamah and Khaled Abou El Fadl (Classical and Modern Scholars)

Ibn Qudamah

Ibn Qudāmah's full name is Muwaffiq al-Din Abu Muhammad Abdullah Ibn Ahmad Ibn Muhammad Ibn Qudamah Ibn Miqdam Ibn Naṣṣ al-Maqdisi al-Hambali. He was born in the village of Jumma'il, one of the districts of the city of Nablus, Palestine, in 541 AH, specifically in the month of Sha'ban, and he passed away in 620 AH/1223 CE in Damascus. (*Biografi Al-Imam Ibnu Qudamah Al-Maqdisi - STID di Al-Hikmah Jakarta*, 2011) He was a thinker from the Hanbali school of thought and a great scholar in fiqh, and his books are often used as references by Hanbalis. (Ambari, 1966) At the age of 10, Ibn Qudāmah began studying and memorizing the Qur'an under his father, Ibn Abbas Ahmad Ibn Muhammad Ibn Qudāmah, a great scholar known for his asceticism (Qudamah, 1987).

Imam Ibnu Qudāmah is a follower of the Hanbali school of thought. He has a distinctive methodology in his thinking, which is to compare the thoughts of other Imams with his own, characterized by the distinctive thinking of Imam Hanbali. He also analyzes the differences among schools of thought that have developed and explains the differences in their accounts. With his broad and evolving style of thinking, he can change others and elevate them from blind

imitation to *ijtihad*, using the method of *al-tarjīh al-ṣāhiḥ*, which is to assess and determine the strength of an opinion through the correct method, and to choose the view that is considered the strongest, accompanied by valid arguments that can be used as a basis for valid reasoning regarding that opinion (Al Maqdisi, 1997).

Khaled Abou El Fadl

Khaled Abou El Fadl is one of the leading contemporary Islamic thinkers and legal scholars. Born in 1963 in Kuwait to a devout Muslim family that was open to modern ideas. As the eldest of three siblings, Abou El Fadl grew up in a harmonious family environment. His father's name was Medhat Abou El Fadl, and his mother's name was Afaf El Nimr, both of whom were Egyptian nationals. The family was known for its strong intellectual traditions, critical thinking, and progressive understanding of Islamic and human values. As a result, Abou El Fadl's thinking was greatly influenced by his critical and open-minded family (Apriyanti, 2020).

Abou El Fadl's way of thinking is greatly influenced by his past life, including his parents' open-mindedness and their past suffering, as well as the backwardness of Muslims, especially Arabs, which made him realize that Muslims have lost much of their critical thinking skills. As a result of strong beliefs and doctrines, Muslims do not dare to voice their opinions regarding the law (Zainal Muttaqin, 2016).

The dynamic interpretive approach is a framework developed by Abou El Fadl that examines the relevance and actual context of the text's original meaning. This approach is not limited to understanding the textual meaning of the Qur'an in its socio-historical context, but also seeks to relate it to social realities and the needs of the modern era. This approach also emphasizes the importance of examining its implications. Therefore, an exegete not only seeks meaning in history but also relates it to the social conditions and issues of the present day (Nur Ichwan, 2003).

Concept and Fundamental Understanding of Rights

The rights and obligations of husband and wife are consequences that arise from the marriage bond, as stipulated in Articles 30-36 of Law Number 1 of 1974. Namely: "Husband and wife have the noble responsibility to build and

maintain a household as the main foundation in the social order. In accordance with Article 31, paragraph (1), of Law Number 1 of 1974, it is emphasized that the rights and positions of husbands and wives are equal, both in household life and in social interactions. Paragraph (2) states that each party has the right to take legal action, while paragraph (3) emphasizes the role of the husband as the head of the family and the wife as the manager of the household. The obligations of husbands and wives are regulated in Article 34 of Law Number 1 of 1974, which states that: in paragraph (1), the husband is obliged to protect his wife and fulfill the needs of the household in accordance with his abilities; paragraph (2) stipulates that the wife is responsible for managing the household to the best of her ability; and paragraph (3) provides that if one of the parties neglects their obligations, then both the husband and wife have the right to file a lawsuit in court. (*Undang-Undang Republik Indonesia No.1 Tahun 1974 Tentang Perkawinan*, 1974)

Legal Basis for Maintenance

Conceptually, the obligation to provide financial support (*nafkah*, maintenance) is rooted in the existence of a burden of responsibility (*dimmah*), so that, in certain respects, it is similar to the provisions of *kafarat*, which also arise as a consequence of an act. Although there are similarities in terms of responsibility, the mechanism for determining maintenance is based on the economic capacity of the party responsible for paying it (Rajafi, 2018). *Nafkah* is derived from the word نفق – نفقة, نفق – نفقة, نفق – نفقة that is, spending or expending. (Ali & Mudhlor, 1999) *Nafkah* means to spend, to use, or to finance. In terms of terminology, *nafkah* is sufficient for those under his responsibility, covering the family's clothing, food, and housing needs (Al-Khatib, 2005). Additionally, providing for the family is the husband's responsibility to his wife and family, so that their needs are met, and they find happiness in the household, provided that it is given according to their needs, neither excessively nor insufficiently (Hamid, 2006).

In the Quran al-Talāq [65]: 7 the obligation of providing financial support is as follows:

“Let the wealthy man spend from his wealth, and he whose provision is restricted – let him spend from what Allah has given him. Allah does not burden any soul beyond what He has given it. Allah will bring about ease after hardship.”

According to Ibn Kathir, a wife's right to receive financial support is a consequence of the fulfillment of her obligations to her husband, so that both parties are required to fulfill their respective obligations reasonably, that is, in accordance with propriety and prevailing customs, without excess or neglect. This view is in line with Yusuf al-Qaraḍāwī, who emphasizes that financial support is part of the relationship of rights and obligations between husband and wife, which is covered by the principle of *al-mu'āsharah bi al-ma'rūf*, namely building family life through communication, social interaction, and the fulfillment of needs in a good and fair manner (Sa'dawi, 2009). In another statement, reinforced by a hadith narrated by Muslim, the Prophet PBUH once preached to his followers, "Fear Allah in your treatment of your wives, for they are a trust that Allah has entrusted to you through the bond of marriage. With Allah's permission and words, the relationship between husband and wife becomes lawful, and wives are entitled to receive sustenance and clothing in a proper manner and with full responsibility (Ibn Al Hajjaj, 2003).

Understanding the Concept of *Tamkīn*

The concept of *tamkīn* is one of the central notions in Islamic family law, particularly in relation to the marital relationship between husband and wife, including the framework of rights and obligations such as maintenance (*nafaqah*). Etymologically, *tamkīn* means "to enable" or "to grant access," while terminologically in Islamic jurisprudence, it refers to the wife's willingness to cohabit with her husband within a valid marital bond.

In the classical tradition, Ibn Qudāmah, in *al-Mughnī*, explains that *tamkīn* constitutes a primary condition for a wife's entitlement to maintenance. He asserts that when a wife fulfills *tamkīn tāmm* (complete compliance), the husband is fully obligated to provide maintenance. Conversely, if the wife refuses *tamkīn* without a legally valid (*shar'ī*) reason, her right to maintenance may be forfeited (Ibn Qudāmah, 1997). This demonstrates that, in classical jurisprudence, *tamkīn* is understood within a hierarchical and conditional relational framework, in which a wife's economic rights are contingent upon her obedience to her husband.

This concept is also articulated in other legal schools. For instance, al-Kāsānī in *Badā'i' al-Ṣanā'i'* maintains that maintenance becomes obligatory once the wife "submits herself" to the husband in the form of *tamkīn*. Thus, there is a general consensus (*ijmā'*) among classical jurists that the relationship between

tamkīn and *naḥqah* is both causal and normative. (al-Kasani, 2003) However, contemporary scholarship has begun to critically reassess the concept of *tamkīn*. Khaled Abou El Fadl, for example, critiques rigid juristic approaches that lack sensitivity to moral and ethical dimensions of justice. He argues that marital relations in Islam should be grounded in justice compassion, and reciprocity, rather than merely structured as a system of rights and obligations (Abou El Fadl, 2001). From this perspective, *tamkīn* is no longer interpreted as absolute obedience, but rather as an ethically negotiated relationship within the framework of mutual welfare.

In line with this, the *maqāṣid al-sharī'ah* approach offers a renewed perspective on *tamkīn*. Scholars such as Muḥammad al-Ṭāhir Ibn 'Āshūr emphasize that the ultimate objective of Islamic law is the realization of welfare (*maṣlaḥah*) and justice. Accordingly, the interpretation of *tamkīn* should be directed toward safeguarding human dignity and fostering balance within marital relations, rather than merely legitimizing male authority (Ibn 'Āshūr, 2006). In conclusion, the concept of *tamkīn* has evolved from: *Classical paradigm*: normative, hierarchical, and conditional upon maintenance; *Contemporary paradigm*: contextual, emphasizing justice, *maqāṣid*, and reciprocal relations. This transformation indicates that *tamkīn* can no longer be understood purely in a textual or literal sense, but must be reconstructed within a broader ethical and contextual framework.

Maintenance in Islamic Law and Feminist Studies

The Islamic legal principle of property separation between spouses dictates that each has distinct financial responsibilities. Under this framework, husbands are traditionally responsible for earning income, while wives are entitled to receive it. Even when a wife is employed and has her own income, this right remains hers. Consequently, a wife's earnings do not absolve the husband of his obligation to provide for her basic needs, as the right to financial support is an independent duty that does not depend on the wife's financial contributions (Solikhudin, 2022).

According to Wahbah al-Zuhaili, "Maintenance is a fundamental right of a wife and is the responsibility of her husband. The husband's obligation to provide maintenance arises from the marriage bond, regardless of his religion. The husband is obligated to provide financial support as long as the wife fulfills

her duties and responsibilities perfectly. However, if the wife commits *nushūz* or there is a breach of the marriage contract, then the marriage becomes *fasid*, and the husband is entitled to take back the provided financial support (Al-Zuhaili, 1989). In addition to the obligation to provide financial support, husbands are also responsible for providing adequate housing for their wives and children, in accordance with their abilities and economic conditions. This is explained in Article 81 of the Compilation of Islamic Law. This means that the obligations of husbands towards their wives are complex, extending beyond material support to encompass religion, economics, education, health, security, and more (Rizem, 2018).

In al-Miṣbāh's interpretation, it is explained that financial support is given not only to the wife but also to the children (Quraish Shihab, 2002). As explained in the Qur'an Al-Baqarah [2]: 233.

"Mothers shall breastfeed their children for two whole years, for those who wish to complete the nursing. The father of the child must provide for them and clothe them in a fair manner."

This verse emphasizes that husbands and fathers are obligated to provide for their wives and children according to their means, with the stipulation that wives and children should not impose burdens or losses on their husbands or fathers. If the husband dies or is no longer able to fulfill his obligation to provide, the responsibility for supporting the family transfers to the children. However, this obligation to provide financial support is dynamic and can be adjusted in light of the parties' economic circumstances. There is no compulsion for a husband who does not have the ability to do something beyond his means. Similarly, if the husband's circumstances render him unable to earn a living, his obligation to provide financial support is suspended until his difficulties are resolved (Al-Zuhaili, 1989).

When the concept of spousal maintenance (*nafaqah*) is linked to the notion of *tamkīn* of the wife, it conceptually tends to reproduce a pattern of relations imbued with patriarchal values, which are frequently critiqued within feminist discourse. This is because feminism centers on issues of gender justice, the distribution of roles within the family, and the dynamics of authority between husband and wife as a consequence of the husband's obligation to provide maintenance. Therefore, the debate surrounding the relationship between *nafaqah* and *tamkīn* is not merely concerned with economic obligations, but also

encompasses broader dimensions, including social structures, religious authority, and the construction of gender roles within society. In this context, the issue is also closely related to the concept of leadership within the family, which constitutes a crucial element in shaping the pattern of marital relations in Islamic family law (M. Finley, 1993).

Maintenance in feminism is steeped in patriarchal culture. According to Max Weber, patriarchy is rooted in personal authority that operates arbitrarily through the bureaucratic structure of the royal household. This pattern places men at the center of dominant power, while women tend to be marginalized from access to political authority and decision-making. This model of domination in the family reflects a traditional structure in which the male head of the family serves as the primary authority. At the same time, women's roles are confined to the domestic sphere (Weber, 2019).

If in Islam, providing for one's family is the absolute obligation of the husband towards his wife, which has social consequences, namely that the husband has a more active role than the wife and holds a leadership role in the family, this has drawn criticism from feminists, who argue that leadership based on the obligation to provide for the family is part of a patriarchal structure that places women in a subordinate position, dependent on their husbands. In addition, it leads to a static gender role construction, in which women are positioned as passive, while husbands play an active role as breadwinners and decision-makers in the family, with a lack of recognition of women's domestic contributions (Warman & dkk, 2023).

The husband's responsibility to provide for his wife and children is a fundamental aspect of family dynamics. However, the process of drafting and implementing legal provisions related to this obligation is often influenced by social constructs and dominant patriarchal culture, which can undermine the essence of justice and the principle of equality that is highly valued in Islamic teachings. From perspective of a feminist, the right to financial support is considered an important tool for upholding gender justice in the Islamic family law system. According to the feminist movement, financial support is a fundamental right of women that must be protected and guaranteed by law. Unfortunately, many legal norms that apply in society still reflect a patriarchal structure of domination that systematically demeans women. Therefore, the

feminist approach argues that legal norms must be rebuilt to create more just and equal relationships (Mubarok & Hermanto, 2023).

Societies that are still influenced by patriarchal culture generally place husbands as the ones responsible for earning the primary income, while wives play a role in taking care of the domestic sphere. This pattern of role division is deeply rooted in the social order and is considered an institutionalized norm (Cholil, 2014). According to Husein Muhammad, in Islamic tradition, the obligation to provide for one's husband is based on the historical belief that men are in the public sphere, while women are usually in the domestic sphere. For centuries, this division of roles has been the norm. It is based on the idea that men typically have a greater capacity to provide for their families. However, in the current context, where women often have greater abilities, intelligence, and productivity than their husbands, this rigid division of responsibilities can lead to injustice. In his opinion, justice, as a basic principle in Islam, should be the primary reference for dividing financial responsibilities, rather than simply following traditional roles that no longer reflect current socio-economic conditions (Nuroniyah dkk., 2019: 107).

Maintenance According to the Thoughts of Ibn Qudamah and Khaled Abou El Fadl

Ibn Qudamah

According to Imam Ibn Qudamah, financial support is an obligation that must be fulfilled by a husband towards his wife in accordance with a decent standard of living, which includes food (*ma'kūl*), drink (*masyrūb*), clothing (*malbūs*), and shelter (*maskan*). Ibnu Qudāmah states that a husband who has reached puberty is obligated to provide for his wife. However, if the wife commits *nushūz*, then the husband's obligation to provide for his wife is waived. A wife is under her husband's responsibility, so the husband has the right to restrict his wife's activities in seeking a livelihood. Therefore, it is the husband's obligation to bear and fulfill his wife's livelihood needs in their entirety (Al Maqdisi, t.t). After the *ijab kabul* (marriage contract), the husband has the right to request that his wife live in his home, and the husband is obliged to provide her with financial support as compensation for his right to maintain and manage family life in accordance with the principles of Islamic law. This opinion is supported by the Hanafi scholars, who hold that the husband's obligation to

provide for his wife arises from the wife's reduced freedom after the marriage contract is concluded. The wife is obliged to obey and cannot engage in activities or travel without her husband's permission (Basha, 2006).

Ibn Qudāmah. The requirements for a wife to be entitled to maintenance are as follows: 1) The wife is of legal age and can be asked to have sexual relations. If this condition is not met, then the provision of financial support for her is void; 2) Wives must behave perfect *tamkīn* (serve her husband perfectly). If this condition is not met, then there is no obligation to provide financial support, except in circumstances permitted by Islamic law. Such as when the wife is menstruating, postpartum, or ill, which makes it impossible for her to be intimate with her husband.

The amount of financial support a husband provides to his wife should be based on the wife's eligibility and needs, not on the husband's circumstances. This is because financial support is the wife's right. However, another view holds that it should be adjusted to the circumstances of both the husband and the wife. If one of them is poor, the financial support provided must be adjusted to the basic needs of the middle class. If both the husband and wife are poor, the amount of financial support should be based on the basic needs of the lower class. However, according to Imam Abu Hanifah and Imam Malik, what should be considered is the wife's circumstances, meaning it should be adjusted according to the wife's needs. Because usually the wife knows better what the needs are within her family (Al Maqdisi, 1997). The amount and conditions of maintenance that a husband must provide to his wife are relative and should not be excessive, but must be adjusted to the husband's economic conditions and carried out in a good manner and in accordance with the principles (*mu'āsharah bi al-ma'rūf*) (Fadillah & Masrun, 2020). Indonesian laws and regulations also stipulate the standard obligations of husbands to provide for their wives, as stated in Law No. 1 of 1974 on Marriage, Article 34, paragraph (1), which obligates husbands to protect their wives and fulfill all household needs in accordance with their abilities and capabilities. (*Undang-Undang Republik Indonesia No.1 Tahun 1974 Tentang Perkawinan*, 1974)

If the husband experiences financial difficulties, there will be legal consequences, including: first, if the husband has wealth and is considered upper class, but provides little or insufficient financial support, then the wife does not have the right to *fasakh* (annulment of marriage), but she can take the remaining

amount without the husband's knowledge in an amount that is sufficient or in accordance with her needs, or it can become the husband's debt (Wahbah, 2021). There are several conditions that may exempt a husband from his obligation to provide for his wife: 1) If the wife is reluctant to have sexual relations with her husband because she is still a child and unable to do so, the husband may suspend the provision of financial support until his wife is in the state of *tamkin*; 2) If a wife commits a criminal offense and is imprisoned as a result, the obligation to provide for her is waived; 3) A wife who renounces her faith, which is a condition that releases the husband from his obligation to provide for his wife. This is because the marriage is automatically dissolved when the wife renounces her faith; 4) A wife who travels without her husband's permission, even for the purpose of performing the Hajj pilgrimage; 5) A wife who works and pursues a career without her husband's permission. This is associated with *nushūz* (Ayu & Pangestu, 2021).

Khaled Abou El Fadl

The discourse on women's rights continues to be a never-ending topic in academic studies and social debates. History records that since ancient times, women have often been a group that experiences injustice, where their dignity and worth are often ignored and abused in various aspects of life. Gender based discrimination also frequently occurs in social, cultural, and legal environments, placing women in a weaker position than men. Ironically, Islamic teachings are often used to justify and legitimize discrimination against women in the name of the ultimate truth.

According to Islamic teachings, men are the leaders of their families, based on Q.S. al-Nisa [4]: 34, although there are differences in interpretation between classical and modern exegetes. The classical interpretation of the *qawwām* concept tends to show male dominance over women. However, from these various interpretations, it can be concluded that the term *qawwām* has multiple, but interrelated, meanings, such as leader, protector, guardian, guide, and ruler within the household. Abou El Fadl expresses a similar view, stating that there are two main ways of understanding the *qawwām* word in this verse, Abou El Fadl's thinking is more progressive, namely: first, men act as protectors for women, in accordance with the superiority that Allah has bestowed upon some individuals over others. Second, the leadership role of men in the

household is based on their financial responsibilities, namely the obligation to provide for their wives and families. According to Abou El Fadl, men can also be understood as supporters of women, in line with the advantages that Allah has bestowed upon some individuals over others. He emphasizes that the meaning of *qawwām* is flexible and can be interpreted in various ways, so it does not absolutely determine the hierarchical relationship between men and women. The status of *qawwām* in a relationship depends on the actions and responsibilities carried out by each individual. The authority given to men is not based on sexism but rather on the duties assigned to them, especially in financial support. However, if women also share financial obligations in the household, this authority should be shared fairly between men and women, in accordance with the principle of justice in Islam (Abou El Fadl, 2006).

Masdar F. Mas'udi interprets *qawwām* as a supporter or strengthener of the wife. This interpretation aligns closely with Abou Fadl's thinking. In this context, men are not understood as the powerful or dominant party over women, but rather as partners who provide support in domestic life. (Mas'udi, 1997) In this case, men are considered *qawwām* over women only if they can fulfill their role as family leaders according to their capacity and ability (Barlas, 2022). However, true Islamic teachings state that a person's duties and responsibilities are not based on gender, but rather on the quality of their worship and piety towards Allah. Therefore, the concept of *qawwām* should not be used to legitimize gender inequality but rather to guide the creation of justice and equality within the family and society at large (Mustaqim, 2008).

In Abou Fadl's view, maintenance must be based on justice for women, and not because it is linked to obedience or because the wife has not yet shown perfect *tamkin*. Abou Fadl also criticizes the factor of *nusyuz*, as something that is directed solely at wives, because husbands also have the opportunity to behave *nusyuz*. Thus, Abou Fadl defines *nusyuz* as those who commit *fākhishah mubayyinah*, which is a clear, vile act, especially in the context of sexual transgressions. In his interpretation, Abou El Fadl uses the approaches of *tafsīr bi al-ma'thūr* (interpretation with narration) and *tafsīr bi al-ra'yi* (interpretation with reason). This approach shows that the understanding of *nushūz* is rational and in line with current social conditions. In addition, this interpretation emphasizes justice, especially in providing fair protection for women within the Islamic legal system. (Fadl, 2003)

In the context of women's involvement in the public domain, this is closely related to the issue of maintenance. Abou El Fadl rejects traditional views that limit women's mobility and roles. He asserts that women have the right and freedom to actively participate in various aspects of social, political, and economic life, including working outside the home. Through a feminist hermeneutic approach, Abou El Fadl interprets Islamic texts rationally and contextually, emphasizing the principles of gender equality and balanced partnership between men and women, both in social life and in the institution of marriage (Fadl, 2003).

The methodological approaches of Ibn Qudamah and Abou El Fadl differ. Ibn Qudamah applies the approach of *muqāranah al-madhāhib* (comparison of schools of thought). He presents various opinions with textual arguments, then proceeds to *tarjīh* towards the strongest opinion based on evidence and reason. In addition, Ibn Qudamah also uses *ta'līl al-ahkām* (legal justification), *qiyās*, and *ra'yi* (context analysis) (Al Maqdisi, 1997). Abou Fadl adopts an authoritative hermeneutic approach and seeks to reject authoritarianism in the interpretation of Islamic law. He emphasized the dialectical relationship between the texts (the Qur'an and Hadith) and the authors (*authority*), and readers (*reader*). All three must interact dynamically so that interpretations do not become repressive or discriminatory, especially towards women (Fadl, 2003).

Tabel 1, Comparative analysis of thought.

Aspect	Ibn Qudamah	Khaled Abou Fadl
Textual Basis	Classical Fiqh	Negotiative Feminist Hermeneutic
Level of Maintenance	Assessed Based on Contextual Conditions Of Both Justice Spouses	Economic
Gender Relations and Authority	Maintenance is Forfeited in Cases of Nushuz	Rejects Authoritarianis
Relevance in the Modern Era	In Accordance with One's Capacity	Reformist

The implications of Ibn Qudamah's thinking on the right to financial support when the wife surrenders completely (perfect *tamkīn*) to the husband, Therefore, the obligation to provide financial support is the legal responsibility of the husband towards his wife, and *ifTransla* the wife commits *nusyuz*, the husband's obligation to provide financial support to his wife is nullified.

Maintenance in the context of *Maqāṣid Shari'ah* must prioritize the public interest and follow the principle of benefit, focusing on preserving life (*ḥifz al-naḥs*), wealth (*ḥifz al-māl*), offspring (*ḥifz al-nasl*), and religion (*ḥifz al-dīn*) (Fuaddi, 2019). On the contrary, Abou Fadl Abou El Fadl asserts that linking maintenance to the concept of *tamkīn* in a subordinate manner contradicts the principles of Islamic justice. Maintenance is a legal and moral obligation of the husband that does not lapse even in the event of domestic conflict, while the wife retains her right to maintenance and has full independence over her income. A maintenance (*naḥkah*) framework grounded in feminist legal theory asserts that: Therefore, maintenance should not be used as a tool of control or coercion in marital relations. He shifts the husband-wife relationship from a hierarchical pattern to one of mutuality and deliberation, placing marriage as an institution that upholds justice, compassion, and human dignity, in line with Islam's emancipatory message to women (Fadl, 2003).

Thus, maintenance (*naḥkah*), in addition to being the husband's obligation toward the wife as a consequence arising from the *ijab kabul* (marital contract), cannot be narrowly understood as a unidirectional causal relationship in which the obligation of maintenance is solely contingent upon the wife's level of obedience. Within the framework of Islamic family law oriented toward *maqasid al-shariah*, maintenance remains a normative obligation of the husband toward the wife; however, its implementation must be grounded in the principles of justice (*al-'adl*), public welfare (*al-maslahah*), and respect for human dignity (*karāmah al-insān*). Therefore, the concept of *tamkīn* should not be employed as an instrument of legitimization to negate the wife's right to maintenance; rather, it must be reconstructed as a reciprocal relationship founded upon partnership and mutuality within the household.

Furthermore, a justice-oriented approach requires that the fulfillment of maintenance not be positioned merely as a formal-legal obligation, but also as the outcome of a process of deliberation (*shūrā*) between husband and wife, taking into account their actual conditions, respective contributions, and the socio-economic dynamics of the family. In this regard, the integration of maintenance and *tamkīn* within the perspective of *maqasid al-shariah* underscores that the primary objective of Islamic family law is not merely to preserve structures of authority, but to realize justice, harmony, and welfare, ultimately contributing to sustainable family resilience.

CONCLUSION

This study concludes that the relationship between *nafaqah* (spousal maintenance) and *tamkīn* in classical Islamic jurisprudence, which is normative and conditional in nature, requires reconstruction in order to align with the dynamics of contemporary family law. The findings indicate that interpreting *tamkīn* as absolute obedience of the wife is no longer fully relevant in the context of social transformation, particularly with the increasing economic participation of women and the growing awareness of gender justice. When the concept of *nafaqah* is rigidly tied to such obedience, it risks producing unequal marital relations and potential domestic conflict. Therefore, a paradigm shift is necessary from a unilateral notion of obedience toward a model of marital relations grounded in reciprocity, justice, and mutual deliberation.

Within this framework, *nafaqah* should no longer be understood as a consequence of the wife's subordination, but rather as a responsibility rooted in moral commitment, distributive justice, and the collective welfare of the family. A *maqāṣid al-sharī'ah* approach provides a crucial foundation for this reformulation by emphasizing the protection of human dignity, relational balance, and family resilience as primary objectives. Furthermore, this study recommends that policymakers undertake a reformulation of Islamic family law that is more responsive to contemporary social realities. This may include reinterpreting the concept of *tamkīn*, strengthening justice-oriented principles in maintenance regulations, and developing policies that support a more equitable distribution of roles within the family. It is necessary to provide a comprehensive explanation of the interpretation of *tamkīn* within the framework of state regulatory systems, such as the *Compilation of Islamic Law (KHI)* and Law No. 1 on Marriage. In doing so, family law will not only retain its normative legitimacy but also gain broader social acceptance by reflecting the values of justice, reciprocity, and public welfare in modern family life.

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