

Marital Status of Husband or Wife Who Leaves Islam from the Perspective of Law No. 16 of 2019, Compilation of Islamic Law, and Fiqh

Status Perkawinan Suami atau Istri yang Keluar dari Agama Islam dalam Perspektif UU No. 16 Tahun 2019, Kompilasi Hukum Islam, dan Fiqih

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Abstract

This research seeks to examine the legal consequences arising from a spouse's apostasy from Islam on their marital status, drawing from Law No. 16 of 2019, the Compilation of Islamic Law, and Fiqh principles. Employing a qualitative normative-juridical methodology, it scrutinizes Religious Court judges' rulings to assess jurisprudential consistency and adaptability toward substantive justice amid tensions between personal religious freedom and Sharia-governed family law obligations. The approach incorporates comparative evaluation of statutory positive law against classical Fiqh doctrines, alongside in-depth analysis of pertinent case studies from Religious Courts. Findings reveal that apostasy profoundly affects marriage validity, child custody arrangements, and joint property division, necessitating judges' innovative and progressive interpretations to uphold substantive justice. Notably, discrepancies persist between Law No. 1 of 1974 and KHI interpretations versus traditional Fiqh, particularly on whether apostasy automatically dissolves marriage, compelling judges to craft equitable, context-sensitive verdicts responsive to contemporary socio-religious dynamics. In conclusion, the study advocates for Religious Courts to embrace contextual legal exegesis, especially in joint property splits and custody matters, while fostering a robust framework for religion-based divorces inspired by the Supreme Court's progressive precedents. Additionally, it urges harmonization of civil procedure in Religious Courts with Islamic values emphasizing *maslahah* (public welfare), ensuring procedural formalities do not undermine core substantive justice principles.

Keywords:

Benefit;
Apostasy;
Divorce;
Substantive Justice;
Marital Status;

Abstrak	Kata Kunci
Penelitian ini bertujuan untuk menganalisis implikasi hukum status perkawinan suami atau istri yang keluar dari agama Islam berdasarkan UU No. 16 Tahun 2019, Kompilasi Hukum Islam, dan perspektif Fiqih. Penelitian ini menggunakan metode kualitatif dengan pendekatan normatif-yuridis, yang mengkaji putusan-putusan hakim Pengadilan Agama untuk mengevaluasi konsistensi dan adaptasi yurisprudensi terhadap prinsip keadilan substantif dalam menghadapi konflik antara otonomi beragama individu dan implikasi hukum keluarga yang diatur syariah. Metodologi penelitian ini melibatkan analisis komparatif antara kerangka hukum positif dan doktrin fiqih, serta tinjauan terhadap studi kasus putusan Pengadilan Agama yang relevan. Hasil penelitian menunjukkan bahwa kemurtadan memicu implikasi signifikan terhadap status perkawinan, hak asuh anak, dan pembagian harta bersama, yang memerlukan interpretasi progresif dari hakim untuk mencapai keadilan substantif. Studi ini mengidentifikasi bahwa terdapat perbedaan interpretasi antara UU No. 1 Tahun 1974 dan Kompilasi Hukum Islam dengan pandangan fiqih klasik, terutama terkait penentuan putusnya perkawinan akibat murtad, yang mengharuskan hakim untuk merumuskan putusan yang tidak hanya adil tetapi juga adaptif terhadap realitas sosial-keagamaan. Penelitian ini menyarankan agar lembaga peradilan agama mengadopsi pendekatan kontekstual dalam menafsirkan hukum, khususnya dalam isu pembagian harta bersama dan hak asuh anak, serta mendorong pengembangan kerangka hukum yang lebih komprehensif untuk menangani perceraian akibat perbedaan agama, dengan mengacu pada yurisprudensi progresif Mahkamah Agung. Selain itu, diperlukan penyelarasan antara hukum acara perdata yang diterapkan di pengadilan agama dengan nilai-nilai hukum Islam yang mengedepankan aspek kemaslahatan, agar prosedur formal tidak mengesampingkan keadilan substansial.	<i>Mashlahat;</i> <i>Murtad;</i> <i>Perceraian;</i> <i>Keadilan Substantif;</i> <i>Status Perkawinan;</i>
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INTRODUCTION

Background of the Study

Marriage is a legal and spiritual union between a man and a woman as husband and wife, established with the objective of forming a happy and enduring family based on the belief in the One Almighty God, as stipulated in Law Number 1 of 1974 on Marriage, subsequently amended by Law Number 16 of 2019. Article 2 provides that a marriage is considered legally valid when it is performed in accordance with the laws of the parties' respective religions and beliefs and is officially registered under the applicable statutory regulations ([Adi et al., 2022, p. 398](#)).

This provision underscores that the legitimacy of marriage in Indonesia is founded not only upon religious rites but also upon state administrative requirements designed to safeguard the legal rights of the parties involved, particularly women and children ([Winarni et al., 2023, p. 246](#)). Nevertheless, legal complexities arise when one spouse in an otherwise valid Islamic marriage subsequently renounces Islam. Such circumstances may have significant legal consequences for the validity and continuity of the marriage, particularly when examined through the perspectives of Indonesian positive law, the Compilation of Islamic Law (*Kompilasi Hukum Islam* [KHI]), and Islamic jurisprudence (*fiqh*). This phenomenon has generated extensive legal debate regarding the validity of interfaith marriages, especially in cases involving apostasy, given that the KHI explicitly prohibits marriages between Muslim women and non-Muslim men ([Hermanto, 2019; Rangkuti et al., 2023](#)).

In this regard, Article 2 of the KHI likewise defines marriage as a solemn covenant (*mitsaqan ghalidzan*) entered into in obedience to Allah's command and performed as an act of worship ([Harlina, 2020, p. 224; Ilham, 2020, p. 5](#)). Similarly, classical *fiqh* conceptualizes marriage as a *mitsaqan ghalizhan*—a sacred and binding covenant between husband and wife that encompasses both physical and spiritual dimensions, with the ultimate objective of establishing a family characterized by *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion) ([Adawiyah, 2022, p. 257; Fitri, 2017, p. 30; Mariani, 2020, p. 89](#)). Consequently, marriage in Islam transcends the sphere of civil law and assumes a profound spiritual significance as an act of worship ([Marwa, 2021, p. 782; Warjiyati, 2019, p. 50](#)). Accordingly, Islamic law regards marriage as a solemn covenant intended to fulfill divine commandments while fostering a harmonious household founded upon *sakinah*, *mawaddah*, and *rahmah* ([Hanum, 2017, p. 263; Susanti, 2018, p. 9](#)).

The fundamental objective of marriage is therefore to establish a family life characterized by *sakinah*, *mawaddah*, and *rahmah* ([Amri, 2020, p. 93](#)), while ensuring happiness and permanence within the marital relationship ([H. Hasyim & Susfita, 2023, p. 56; Nahar Surur, 2022, p. 118](#)). In practice, however, marital relationships are not immune to conflict. One of the most significant legal issues arises when one spouse chooses to renounce Islam, potentially affecting the legal status of the marriage itself. Such circumstances raise complex legal questions concerning the validity of the marital bond, the rights and obligations of the spouses, and other legal consequences that require comprehensive examination under the applicable legal framework ([Annas, 2017, p. 1; Irnanda Lucky Ajisaputri, 2021, p. 785; Rahman et al., 2020, p. 104](#)).

Religious conversion, including apostasy within the context of marriage, has become an increasingly observable phenomenon in contemporary society, generating legal discourse concerning marital status due to differing perspectives between Indonesian positive law and Islamic law (Pangestu, 2020). These differences have significant implications for the rights and obligations of spouses, as well as for the legal status of children born within the marriage. Despite these implications, the Indonesian legal framework—particularly Law Number 16 of 2019 and the KHI—does not comprehensively regulate the legal consequences of apostasy by one spouse.

Consequently, a more thorough examination from the perspective of Islamic jurisprudence is required to address this normative gap.

The legal implications arising from apostasy within marriage become increasingly complex in Indonesia's dual legal system, where religious law and national law coexist ([Manik et al., 2025](#)). This study specifically examines how Law Number 16 of 2019, the KHI, and Islamic jurisprudence determine the legal status of marriages in which either the husband or the wife renounces Islam. This issue is particularly significant because a legally valid marriage constitutes the foundation of the social order and carries far-reaching legal consequences, including those relating to inheritance rights ([Riyanto & Arifin, 2024](#)). Furthermore, the issue is crucial because the Islamic objective of marriage—to establish a family characterized by *sakinah*, *mawaddah*, and *rahmah*—is difficult to achieve where fundamental religious differences undermine the spiritual and social foundations of family life ([Abdillah, 2018, p. 165](#); [Mutakin, 2021, p. 19](#); [Rizki et al., 2022, p. 512](#)).

The issue is further complicated by the fact that Law Number 1 of 1974 on Marriage does not explicitly regulate the legal status of a marriage when one spouse becomes an apostate. The KHI merely recognizes apostasy as one of the grounds for divorce where it results in persistent disputes or conflicts within the household ([Azizah, 2018, p. 20](#)). Nevertheless, under Indonesian Islamic family law, apostasy may lead to the dissolution of marriage, the loss of inheritance rights, and restrictions on guardianship rights, all of which fall within the jurisdiction of the Religious Courts ([Antonio & Wardhani, 2025](#); [Badrian, 2026](#)).

This position differs substantially from the view of classical *fiqh*, which generally regards apostasy by either spouse as automatically terminating the marriage ([Fitriani & Aziz, 2019, p. 368](#)). This position is derived from Allah's command in Qur'an Surah *Al-Baqarah* (2):221, which prohibits marriage between believing women and polytheist men and is generally interpreted as implicitly prohibiting the converse situation as well ([Yudowibowo, 2012](#)). Classical Muslim jurists further maintain that interfaith marriages, particularly those involving non-Muslims, are inconsistent with the objectives of Islamic marriage, namely the establishment of a harmonious family based upon shared faith, affection, and compassion (Z. Arifin, 2018).

A comprehensive examination of the divergent interpretations between Indonesian positive law, the KHI, and Islamic jurisprudence concerning the legal status of marriage following apostasy is therefore essential for developing a coherent and equitable legal framework. Article 116 of the KHI recognizes apostasy as a ground for divorce, particularly where it is associated with an interfaith marriage ([Islamiyati, 2016, p. 247](#)). The drafters of the KHI prioritized the protection of religion (*hifz al-din*) as a fundamental objective of Islamic law and regarded the preservation of religious integrity as a non-derogable interest. Consequently, interfaith marriage is prohibited to preserve religious unity within the family ([Islamiyati, 2016, p. 247](#)). Nevertheless, Article 75 of the KHI specifically provides that the annulment of a marriage due to apostasy does not occur automatically upon the declaration of apostasy but requires a prospective judicial decision issued by the Religious Court rather than operating retroactively ([Rizqon, 2022, p. 18](#)).

Accordingly, this study aims to comprehensively examine the legal status of marriages in which either the husband or the wife renounces Islam from the perspectives of Law Number 16 of 2019, the Compilation of Islamic Law, and Islamic jurisprudence, while simultaneously analyzing the legal implications arising from the differences among these legal frameworks.

Furthermore, this research explores the interaction between positive legal norms and Islamic jurisprudential principles to identify areas of harmonization and divergence in determining the validity of marriage following apostasy. It also evaluates the sociological implications of differing judicial interpretations ([Gadjong, 2023, p. 143](#); [Susantin et al., 2022, p. 262](#)). In doing so, the study investigates how the absence of explicit statutory provisions in Law Number 16 of 2019 contributes to legal uncertainty and complicates the adjudication of apostasy-related marital disputes before the Religious Courts (Muhazir, 2021; Siregar et al., 2024).

Finally, this study analyzes decisions rendered by the Religious Courts concerning divorce petitions based on apostasy, identifies the legal reasoning employed by judges, and evaluates the consistency of those decisions with the principles of Islamic law and the prevailing statutory framework.

Problem Identification

Based on the foregoing background, this study identifies several critical issues that require comprehensive legal analysis concerning the status of marriage following apostasy:

1. To examine the legal implications of apostasy by one spouse on the validity of marriage under Law Number 16 of 2019 and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI).
2. To compare the perspectives of classical *fiqh* regarding the dissolution of marriage due to apostasy with the provisions of Indonesian positive law.
3. To analyze decisions of the Indonesian Religious Courts concerning divorce cases arising from apostasy in order to understand how judges interpret and apply the relevant legal norms in resolving such marital disputes.
4. To evaluate potential normative conflicts and possible harmonization between Islamic law and Indonesian positive law in resolving divorce cases resulting from apostasy.
5. To examine the legal consequences of apostasy on the parties' post-divorce rights and obligations, particularly with respect to marital property and child custody, within the framework of Indonesian law.

Research Questions

Based on the issues identified above, this study addresses the following research questions:

1. How is the legal status of a marriage affected when either the husband or the wife renounces Islam from the perspectives of Law Number 16 of 2019, the Compilation of Islamic Law (KHI), and Islamic jurisprudence (*fiqh*), and what are the legal implications for the parties' post-divorce rights and obligations?
2. How have the Indonesian Religious Courts interpreted and applied the relevant legal provisions in divorce cases arising from apostasy, particularly concerning child custody and the division of marital property?
3. How can normative conflicts between Indonesian positive law and Islamic law be effectively reconciled in resolving divorce cases involving apostasy, given their fundamental differences in determining the legal validity of marriage following religious conversion?

Research Objectives and Significance

Research Objectives

This study aims to:

1. Conduct a comparative analysis of the legal status of marriage following apostasy from the perspectives of Law Number 16 of 2019, the Compilation of Islamic Law (KHI), and Islamic jurisprudence (*fiqh*), including the legal implications for post-divorce rights and obligations, particularly child custody and the division of marital property.
2. Identify and critically evaluate disparities in the interpretation of Religious Court decisions concerning divorce resulting from apostasy, with particular attention to the extent to which such decisions accommodate both Islamic jurisprudential principles and Indonesian positive law.
3. Develop an effective model of normative harmonization to address potential conflicts between Islamic law and Indonesian positive law in divorce cases involving apostasy while maintaining an appropriate balance between legal certainty and substantive justice.
4. Examine the legal implications of default judgments (*verstek*) in divorce cases arising from apostasy, particularly with respect to the legal consequences for defendants who fail to appear before the court.

Research Significance

Theoretical Significance

This study is expected to enrich the body of scholarship in Islamic family law, particularly concerning the legal status of marriage following apostasy, while contributing to the further development of contemporary Islamic legal theory within the context of Indonesia's pluralistic legal system.

Practical Significance

Practically, the findings of this study are expected to serve as a valuable reference for judges of the Religious Courts in adjudicating marital disputes involving apostasy. In addition, the study is intended to provide guidance for legal practitioners, policymakers, and the wider community regarding the legal rights and obligations arising after divorce, particularly in cases involving religious conversion.

THEORETICAL AND CONCEPTUAL FRAMEWORK

Theoretical Framework

1. Progressive Legal Theory

Progressive Legal Theory provides an analytical framework for examining how judges may move beyond the literal interpretation of statutory provisions in order to achieve substantive justice. This approach is particularly relevant in sensitive family law cases, such as divorce resulting from apostasy, where judicial decisions frequently involve complex considerations regarding child custody ([Rofiq, 2021, p. 98](#)) and the judicial legalization (*isbat nikah*) of marriages involving converts to Islam (*muallaf*) ([Putra & Fithry, 2024](#)).

2. *Maqāṣid al-sharī'ah* Theory

The theory of *Maqāṣid al-sharī'ah* is employed to evaluate whether decisions rendered by the Religious Courts in divorce cases arising from apostasy are consistent with the fundamental objectives of Islamic law, particularly the protection of public welfare (*maṣlaḥah*) and the preservation of essential human interests ([Huda et al., 2024](#)).

3. Comparative Law Theory

Comparative Law Theory serves as the principal analytical approach for comparing Indonesia's marriage law framework—particularly Law Number 16 of 2019 and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI)—with both classical and contemporary *fiqh* doctrines concerning apostasy and its legal implications for the validity and continuity of marriage ([Ainiyah & Muslih, 2020, p. 74](#)).

Conceptual Framework

1. Apostasy

Apostasy refers to the conscious renunciation of Islam by a Muslim. Within the context of marriage, apostasy carries significant legal consequences concerning the validity of the marriage contract (*akad nikah*) and the legal status of the marital relationship under both Islamic law and Indonesian positive law ([Tobroni, 2022, p. 317](#)).

2. Divorce

Divorce refers to the legal dissolution of a valid marriage through a decision of the Religious Court or on other grounds recognized by Islamic law and Indonesian positive law, including circumstances in which one spouse renounces Islam (Siregar et al., 2024).

3. Child Custody

Child custody (*ḥaḍānah*) denotes the legal right and responsibility to care for and raise minor children as regulated under the Compilation of Islamic Law (KHI) and Law Number 16 of 2019. In determining custody following divorce, the paramount consideration is the best interests of the child, even where the dissolution of marriage results from the apostasy of one parent ([Salsabillah Nilam Zahra et al., 2023](#); [Syukrawati et al., 2024, p. 126](#)).

4. Marital Property

Marital property refers to assets acquired jointly by the spouses during the course of the marriage. Such property constitutes the object of distribution following divorce, with due consideration given to the respective contributions of each spouse in accordance with the applicable legal framework ([Misran et al., 2024, p. 139](#)).

5. *Ultra Petita* and *Ex Aequo et Bono*

The doctrines of *ultra petita* and *ex aequo et bono* are relevant to the analysis of judicial reasoning in divorce cases involving apostasy. *Ultra petita* refers to a judicial decision that grants relief beyond the claims formally sought by the parties, whereas *ex aequo et bono* denotes adjudication based on principles of equity and fairness rather than the strict application of legal rules. These doctrines are particularly significant where humanitarian considerations and substantive justice play a decisive role in judicial decision-making ([Nasution, 2021](#)).

RESEARCH METHODOLOGY

This study employs a qualitative research design using a normative legal research approach, which focuses on the analysis of legal doctrines, principles, and norms relevant to the legal status of marriage following apostasy ([Suadi, 2018, p. 357](#)). The research further examines the Indonesian positive legal framework by using the doctrines and principles of Islamic law as the conceptual foundation for the development and evaluation of Islamic legal norms ([Lutfiyah et al., 2015, p. 4](#)). To achieve this objective, the study relies primarily on library research to collect and analyze secondary legal materials derived from statutory legislation, judicial decisions, and scholarly works on Islamic jurisprudence (*fiqh*) ([Heniyatun et al., 2020, p. 41](#)). In addition, the normative juridical approach is complemented by a sociological perspective to examine the practical implications of legal norms and societal responses to divorce cases arising from differences in religious belief ([Salsabillah Nilam Zahra et al., 2023](#)).

The research adopts three complementary analytical approaches: the statutory approach, the conceptual approach, and the case study approach ([Ediningsih Dwi Utami & Yahya,](#)

2022, p. 234; Muhlas, 2017, p. 114; Oktaviani et al., 2022, p. 448). The statutory approach involves a comprehensive examination of Law Number 16 of 2019 and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). The conceptual approach is employed to analyze relevant legal theories and *fiqh* doctrines concerning apostasy and its legal implications for the validity and continuity of marriage (Hafis et al., 2023, p. 5). Meanwhile, the case study approach focuses on the analysis of decisions rendered by the Indonesian Religious Courts in divorce cases involving apostasy in order to understand how the applicable legal norms have been interpreted and applied in judicial practice (Willya et al., 2022, p. 1).

Methodologically, this research constitutes a descriptive-analytical normative legal study. It systematically examines the applicable legal framework by treating law as a normative system governing social relations while conducting an in-depth analysis of statutory provisions, legal doctrines, and judicial precedents. Through this approach, the study evaluates the consistency of existing legal rules and judicial decisions with the principles of justice and the broader objectives of both Indonesian positive law and Islamic law.

RESULTS AND DISCUSSION

Results

Classical *fiqh* generally regards a marriage involving an apostate as legally dissolved (*fasakh*), although the schools of Islamic jurisprudence differ regarding the legal consequences and procedures for such dissolution (Amir, 2019, p. 101). Contemporary Islamic legal scholars likewise tend to prohibit interfaith marriages, a position that is consistent with the principle that apostasy constitutes a valid ground for terminating a marriage (Tohari & Hazyimara, 2023, p. 79).

In classical Islamic family law literature, the dissolution of marriage following apostasy is commonly associated with *fasakh*, namely the judicial or religious annulment of a marriage contract without requiring the pronouncement of *ṭalāq* (Nasution, 2021). This doctrine is primarily derived from Qur'anic provisions and the traditions (*ḥadīth*) of the Prophet Muhammad, which explicitly prohibit marriages between Muslim women and non-Muslim men and implicitly support the dissolution of a marriage when one spouse renounces Islam. According to Imam al-Shāfi'ī, apostasy committed by either spouse automatically results in the dissolution of the marriage if it occurs before the consummation of the marriage (*dukhūl*), even in the absence of a judicial decision (Nizar, 2021, p. 409). However, where apostasy occurs after consummation, jurists differ as to whether the dissolution takes effect automatically or requires judicial intervention (Islamiyati, 2017, p. 169).

The Shāfi'ī school specifically maintains that apostasy by either spouse automatically terminates the marriage (Farid et al., 2023, p. 10). This position is founded upon the view that apostasy nullifies one of the essential conditions for the validity of an Islamic marriage contract (Rizal, 2021, p. 176). Similarly, Imam Abū Ḥanīfah held that apostasy by either spouse immediately results in *fasakh* without requiring a decision from a *qāḍī* (Muhajarah, 2018, p. 344). These opinions demonstrate that classical Islamic

jurisprudence considers apostasy to have profound legal consequences for the continuity of marriage, treating it as an automatic ground for dissolution unless exceptional circumstances justify judicial intervention ([Fitriani & Aziz, 2019, p. 373](#)).

Nevertheless, contemporary *fiqh* also reflects more nuanced interpretations concerning interfaith marriage, particularly marriages involving members of the *Ahl al-Kitāb* (People of the Book). Although the prohibition against marriage between Muslim women and non-Muslim men remains unequivocal, contemporary scholars have expressed differing views regarding other forms of interfaith marriage ([Fauzi et al., 2023, p. 76](#)). Many contemporary jurists further argue that divorce has significant adverse consequences for the rights of children and former spouses. Accordingly, even where apostasy constitutes the underlying reason for marital dissolution, the process should remain subject to judicial supervision in order to ensure adequate legal protection for the affected parties ([Karim Faiz et al., 2022, p. 177](#)).

The discourse on interfaith marriage in Islamic law also distinguishes between polytheists (*mushrikūn*) and the *People of the Book*. Islamic jurists generally agree that a Muslim man may not marry a polytheist woman ([Mustafid, 2011, p. 233](#); [Shodiq et al., 2019, p. 18](#)). However, they differ regarding the permissibility of marriages between Muslim men and women from the *People of the Book*, with some schools permitting such marriages under specific conditions while others regard them as reprehensible (*makrūh*) or entirely prohibited ([Cahaya, 2019, p. 151](#); [Fadal, 2023, p. 10](#)). A number of contemporary scholars increasingly equate women from the *People of the Book* with polytheist women in light of contemporary social and theological developments ([T. Arifin, 2014, p. 282](#)). This interpretation is reinforced by the fatwa of the Indonesian Council of Ulama (*Majelis Ulama Indonesia*—MUI), which unequivocally prohibits interfaith marriage involving either polytheists or the *People of the Book* based upon a contemporary reinterpretation of Islamic legal sources ([Rosyid, 2019, p. 101](#)). The Ḥanafī and Shāfiʿī schools, as well as several other schools, explicitly classify apostate women as falling within the category of polytheist women, thereby prohibiting marriage with either Muslims or non-Muslims ([Mariani, 2020, p. 94](#)). Consequently, where a Muslim woman renounces Islam, her marriage is considered dissolved, and she may not subsequently marry either a Muslim or a non-Muslim because she is legally regarded as a polytheist (*mushrikah*) ([Khoridah, 2015, p. 104](#)). Similar reasoning is found within the Mālikī and Ḥanafī traditions, which emphasize the prohibition of such marriages where the potential harm outweighs the anticipated benefit ([Agustin, 2018, p. 50](#); [Ilham, 2020, p. 11](#)).

From the perspective of Law Number 16 of 2019, apostasy by one spouse may constitute grounds for terminating an existing marriage, particularly where the apostasy leads to a petition for divorce initiated by the other spouse ([Kosim et al., 2018, p. 246](#)). Nevertheless, the interpretation of apostasy as either a ground for annulment or divorce under Indonesian positive law frequently differs from the more categorical position adopted in classical *fiqh* concerning its legal consequences for the marriage contract ([Andayani & Hariyati, 2020, p. 160](#)). By contrast, the Compilation of Islamic Law (KHI) expressly recognizes apostasy as one of the legally accepted grounds for divorce under Article 116(h). This provision reflects an effort to reconcile religious doctrine with social realities within the framework of Indonesian national law. Consequently, judges frequently

engage in extensive legal interpretation to balance religious principles, public welfare, and substantive justice when resolving such disputes ([Kharisudin, 2021, p. 50](#); [Syaiqhu, 2019, p. 4](#)).

An examination of Religious Court decisions demonstrates that judges frequently adopt a discretionary approach in divorce cases involving apostasy by incorporating judicial precedents and *fiqh* doctrines to achieve equitable outcomes, particularly with respect to child custody ([Rofiq, 2021, p. 98](#)). Case studies reveal that although apostasy is recognized as a legitimate ground for divorce, judges often rely upon broader grounds such as persistent marital conflict or irreconcilable differences rather than apostasy alone. This pattern is evident in several decisions of the Indonesian Religious Courts ([Yusmita et al., 2022](#)). For example, the Religious Court of Situbondo emphasized legal certainty in deciding a divorce validation (*isbat cerai*) case, even though concerns were raised regarding substantive justice and legal utility ([Jufri et al., 2024](#)). Likewise, decisions of the Religious Court of Kraksaan have generally been based on Article 19 of Government Regulation No. 9 of 1975, emphasizing continuous disputes and marital discord as the principal grounds for divorce ([Ainul, 2022](#); [Bilalu et al., 2022, p. 528](#)). Similarly, the Religious Court of Jember granted a divorce petition primarily because of ongoing marital conflict rather than apostasy itself ([Lukman, 2025](#)). In another case decided by the Religious Court of Tangerang, the judgment considered both the provisions of the KHI and the legal consequences of apostasy for the marital relationship ([Septiandi & Setyaningsih, 2019](#)).

These judicial practices indicate that apostasy alone is not invariably regarded as a sufficient legal basis for divorce unless accompanied by evidence demonstrating the breakdown of the marital relationship ([Saputra et al., 2024](#)). They further illustrate the dynamic nature of judicial interpretation, whereby judges do not rigidly adhere to the literal wording of statutory provisions but instead integrate substantive justice with the factual realities of each case ([Nurlaelawati, 2016](#); [Rajafi et al., 2024, p. 29](#)).

Divorce resulting from apostasy affects not only the legal status of marriage but also issues relating to child custody and the division of marital property, thereby requiring careful and adaptive judicial interpretation ([Lumintang et al., 2022](#)). Child custody disputes become particularly complex where one parent has renounced Islam, as judges must reconcile religious considerations with the internationally recognized principle of the best interests of the child, particularly in safeguarding the child's psychological, moral, and spiritual well-being amid parental religious differences ([Irfan Aziz, 2025](#)). In this context, judges generally prioritize *maṣlahah* (public welfare) and seek to prevent greater harm (*mafsadah*), especially in cases involving children ([Devy & Muliadi, 2020, p. 164](#); [Nurdin et al., 2022, p. 52](#)). Consequently, custody is not automatically awarded to either the Muslim parent or the apostate parent. Rather, courts adopt a progressive and child-centered approach, emphasizing the continuity of religious education and the child's overall welfare ([Masrukhin & Damayanti, 2020, p. 34](#)).

In reaching custody decisions, judges evaluate the evidence presented during trial, including each party's ability to provide financial support, education, healthcare, and emotional well-being for the child ([Tan, 2015, p. 225](#)). In exceptional circumstances, custody may even be entrusted to a third-party guardian where neither parent is

considered capable of ensuring the child's optimal development following divorce ([Mera et al., 2024](#)). Judicial assessment also extends to the suitability of the child's living environment, particularly regarding moral development and the preservation of the child's religious beliefs (*'aqidah*) ([Zainurrohman et al., 2023](#)). These considerations demonstrate judicial efforts to balance parents' constitutional rights to freedom of religion with the State's obligation to protect children's fundamental rights, especially in relation to religious and moral education ([Darna, 2021, p. 101](#); [Ibrahim et al., 2023](#)).

In certain cases, custody may be awarded to the father despite the general preference for maternal custody where the mother is deemed unable to fulfill her social, economic, or parental responsibilities or to provide adequate religious and educational guidance ([Mansari, 2016](#)). Judicial consideration likewise extends to each parent's capacity to ensure appropriate religious education while consistently prioritizing the child's best interests ([Noor, 2010, p. 72](#)). In determining child support following divorce, judges consider several factors, including the child's basic needs, the father's financial capacity, the child's age, living expenses, and the standard of living enjoyed during the marriage. Throughout this process, courts seek to ensure fairness and transparency by carefully evaluating the evidence and arguments submitted by both parties ([Lira, 2023, p. 281](#)).

The division of marital property likewise constitutes a significant legal issue requiring a comprehensive assessment of each spouse's contributions during the marriage as well as the application of distributive justice under the applicable legal framework ([Prahara, 2020, p. 9](#)). In divorce cases resulting from apostasy, courts increasingly recognize that substantive justice encompasses not only measurable financial contributions but also non-economic contributions and broader considerations of public welfare. Accordingly, judges frequently employ progressive legal interpretation to ensure that the distribution of marital assets reflects both the formal requirements of the law and broader principles of social and economic justice for both parties ([Anwar, 2021, p. 9](#)).

This judicial approach is consistent with the principles of procedural justice, which require judges to base their decisions upon relevant legal norms applied consistently to the facts of each individual case, while recognizing that different factual circumstances may legitimately produce different judicial outcomes.

Discussion

The relationship between the theories of *maqāṣid al-sharī'ah*, progressive law, and comparative law in cases of divorce resulting from apostasy requires a comprehensive examination of the legal implications arising from one spouse's renunciation of Islam, particularly with respect to safeguarding family welfare, protecting children's rights, and ensuring distributive justice in the division of marital property ([Hidayat et al., 2022, p. 221](#)).

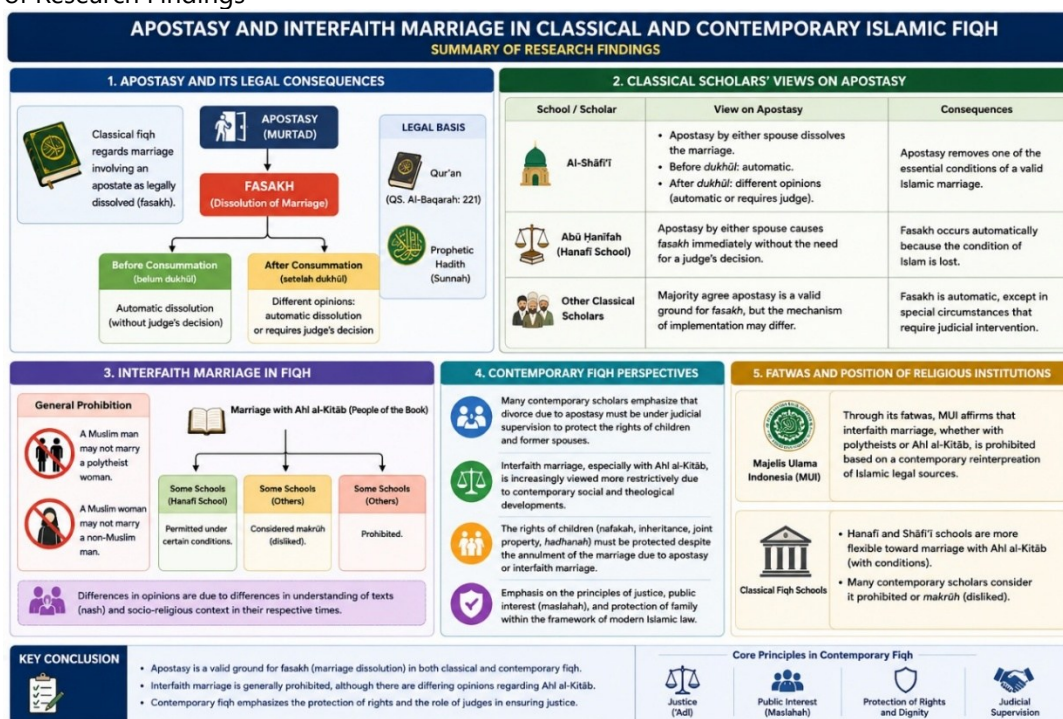
The application of *maqāṣid al-sharī'ah* in this context seeks to preserve the five fundamental objectives of Islamic law—*ḥifẓ al-dīn* (protection of religion), *ḥifẓ al-naḥs* (protection of life), *ḥifẓ al-'aql* (protection of intellect), *ḥifẓ al-nasl* (protection of lineage), and *ḥifẓ al-māl* (protection of property)—to achieve universal public welfare (*maṣlahah*) for families affected by divorce due to apostasy ([Khoiri & Nasution, 2022, p. 187](#)). These

objectives collectively emphasize the preservation of religion, life, intellect, lineage, and property as the essential foundations of Islamic legal philosophy (Karmawan et al., 2025).

Within the context of apostasy-related divorce, *maqāṣid al-sharī'ah* primarily aims to mitigate the adverse consequences of marital dissolution on both family and societal welfare (Firdaus et al., 2023, p. 56). This objective encompasses safeguarding the fundamental rights of spouses and children while preventing broader social harms that may arise from the dissolution of marriage (Holden & Nurlaelawati, 2029, p. 25-26; (Nurnazli, 2018, p. 191). From the perspective of progressive legal theory, judicial interpretation should address normative gaps and adopt more adaptive approaches to existing legal provisions in order to achieve substantive justice. This approach is particularly relevant to the distribution of marital property, where equal division may not necessarily constitute a just outcome, as courts should also consider non-material contributions and the socio-economic vulnerability of the parties involved (Jayusman, 2021, p. 99; Muslimin & Fatma, 2020; Ramadhan et al., 2025). Furthermore, this perspective recognizes *maqāṣid al-sharī'ah* as the overarching objective of Islamic law, guiding both legal interpretation and legal development toward the realization of public welfare (*maṣlaḥah*) (Mulia, 2020, p. 401; Taufiqurohman & Fauziah, 2023, p. 89).

From a comparative law perspective, examining how other jurisdictions address similar legal disputes provides valuable insights into best practices and contributes to the development of a more comprehensive and socially responsive legal framework (Pangestu, 2020). Such an interdisciplinary approach is essential for formulating judicial decisions and public policies that are grounded not only in statutory provisions but also in broader principles of social justice and the protection of human rights within Indonesia's pluralistic society (Jafar et al., 2024).

Figure 1. Apostasy and Interfaith Marriage in Classical and Contemporary Islamic Fiqh: Summary of Research Findings



The figure illustrates the principal findings of the study concerning apostasy (*riddah*), the dissolution of marriage (*fasakh*), and interfaith marriage from the perspectives of classical and contemporary Islamic jurisprudence. The findings are organized into five interconnected dimensions: the legal consequences of apostasy, classical juristic opinions, interfaith marriage in *fiqh*, contemporary legal perspectives, and the position of religious institutions.

First, apostasy and its legal consequences. Classical Islamic jurisprudence generally considers apostasy by either spouse to constitute a valid basis for *fasakh*, or dissolution of the marriage. The figure demonstrates that the legal consequences may vary according to the timing of apostasy in relation to marital consummation. When apostasy occurs before consummation (*dukhūl*), the dissolution is generally regarded as automatic. After consummation, however, differences emerge among jurists concerning whether dissolution occurs automatically or requires judicial intervention. This distinction demonstrates that although apostasy is broadly recognized as having fundamental consequences for the validity of the marital relationship, the procedural mechanisms for terminating the marriage are not entirely uniform.

Second, the figure compares the views of classical Islamic scholars. The Shāfi'ī school maintains that apostasy by either spouse terminates the marriage, particularly because apostasy is considered to invalidate an essential condition underlying the Islamic marriage contract. A similar position is attributed to Imam Abū Ḥanīfah, who considers apostasy to result in *fasakh* without necessarily requiring a judicial decision. Nevertheless, the broader classical tradition recognizes differences concerning the precise legal mechanism and circumstances under which judicial intervention may become necessary. Thus, the figure emphasizes both the substantial agreement regarding the seriousness of apostasy and the procedural diversity within classical *fiqh*.

Third, the figure presents the jurisprudential debate on interfaith marriage. Islamic jurisprudence distinguishes between marriage involving polytheists (*mushrikūn*) and marriage involving the *Ahl al-Kitāb* (People of the Book). The prohibition of marriage between Muslim men and polytheist women is generally accepted. By contrast, classical jurists have expressed different positions regarding marriage between Muslim men and women from the People of the Book. Some schools permit such marriages subject to particular conditions, whereas others consider them *makrūh* or prohibited. Contemporary interpretations have tended to adopt more restrictive approaches, particularly in response to changing social and theological circumstances.

Fourth, contemporary Islamic jurisprudence introduces a stronger emphasis on judicial supervision and the protection of affected parties. Although apostasy may constitute the underlying reason for marital dissolution, contemporary legal reasoning increasingly recognizes that divorce may have substantial consequences for children and former spouses. Consequently, judicial supervision becomes important to ensure that the dissolution process does not undermine the rights and welfare of the parties involved. The figure therefore highlights a shift from a purely doctrinal determination of marital status toward a more contextual approach that considers justice, public welfare (*maṣlaḥah*), and the prevention of greater harm (*mafsadah*).

Fifth, the figure highlights the role of religious institutions and Indonesian legal institutions. In Indonesia, the Compilation of Islamic Law (KHI), particularly Article 116(h), expressly recognizes apostasy as one of the grounds for divorce. Nevertheless, judicial practice indicates that courts do not always rely exclusively on apostasy as the operative ground for divorce. Judges may instead consider continuing marital conflict, irreconcilable differences, and other factual circumstances demonstrating the breakdown of the marriage. This indicates that Indonesian Religious Courts employ a discretionary and contextual approach by integrating statutory provisions, *fiqh* principles, judicial precedent, and the factual circumstances of individual cases.

The figure also emphasizes the protection of children and marital property as important consequences of divorce resulting from apostasy. Child custody is not automatically determined solely by the religious status of either parent. Instead, courts consider the child's best interests, including psychological, moral, educational, spiritual, and material welfare. Judicial assessment may include the parents' capacity to provide financial support, education, healthcare, emotional stability, and an appropriate living environment. In exceptional circumstances, custody may even be entrusted to a third party when neither parent is considered capable of ensuring the child's optimal development.

Similarly, the distribution of marital property requires consideration of both economic and non-economic contributions made during the marriage. The research indicates that substantive justice in such cases cannot be reduced to the calculation of financial contributions alone. Courts may employ progressive legal interpretation to ensure that the distribution of marital assets reflects distributive justice and broader principles of social and economic welfare.

Overall, the figure demonstrates a transition from a predominantly doctrinal approach toward a more contextual, judicial, and rights-oriented approach to marital dissolution arising from apostasy and interfaith marriage. While classical *fiqh* provides the foundational doctrine that apostasy may invalidate the marital relationship, contemporary Islamic legal thought and Indonesian judicial practice increasingly emphasize justice, public interest (*maṣlaḥah*), protection of rights, child welfare, and judicial supervision. The central implication is that the legal consequences of apostasy should not be examined solely through the formal status of the marriage, but also through their broader effects on children, former spouses, property rights, and social welfare.

In practical terms, the principles of *maqāṣid al-sharī'ah*, particularly the protection of life, intellect, and lineage, serve as fundamental benchmarks in evaluating legal policies governing divorce, especially where tensions arise between positive law and the protective objectives of Islamic law ([Fitri Maulida et al., 2025](#)). The application of *maqāṣid al-sharī'ah* also underscores the preservation of religion as one of its primary objectives, thereby highlighting the importance of safeguarding a child's religious identity and faith in cases of divorce resulting from apostasy. This objective is consistent with the broader aims of Islamic law in promoting comprehensive public welfare (*maṣlaḥah*) ([Muhamad Zaenal Muttaqin et al., 2026](#); [Nurcholis, 2022, p. 9](#)).

Accordingly, protecting the fundamental values of Islam—including faith, life, intellect, property, and lineage—constitutes an essential consideration in the legal interpretation of divorce arising from apostasy in order to prevent greater harm to both individuals and society ([Anshor, 2023, p. 32](#)). Moreover, the *maqāṣid al-sharī'ah* framework provides a well-established methodological foundation for bridging Islamic legal scholarship with contemporary legal values, including human rights and gender justice. Consequently, it facilitates a contextual and progressive approach to legal reform while maintaining fidelity to the fundamental objectives of Islamic law.

Limitations

This study is limited to the legal interpretation of the marital status of a husband or wife who has renounced Islam from the perspective of Indonesian positive law, particularly Law No. 16 of 2019 concerning Marriage and the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), as well as classical and contemporary fiqh perspectives. Specifically, the research examines the legal implications and fiqh considerations relating to marital status, child custody, and the distribution of jointly acquired marital property (*harta bersama*) in cases of apostasy through an analysis of relevant decisions rendered by the Religious Courts.

The study argues that normative conflicts between Indonesian positive law and Islamic law in resolving divorce cases arising from apostasy can be addressed through a progressive legal approach that integrates the principles of *maqāṣid al-sharī'ah*. Such an approach seeks to reconcile the fundamental differences regarding the legal validity of marriage following apostasy while promoting public welfare (*maṣlaḥah*) and substantive justice for all parties involved ([Rikza & Djazimah, 2017, p. 41](#); [Roslaili et al., 2021, p. 185](#)).

This approach aims to adapt legal norms to contemporary social developments without compromising the essential values of Islam, particularly those intended to safeguard the rights of individuals and families ([Awaliya Safithri & Ash Shiddiqi, 2024](#)). Accordingly, the application of progressive legal theory grounded in *maqāṣid al-sharī'ah* provides a flexible yet principled framework for addressing the complexities of apostasy-related divorce while offering equitable and sustainable legal solutions for all affected parties ([Siregar et al., 2024](#)).

Furthermore, the case studies examined in this research demonstrate that Religious Courts in Indonesia continue to encounter significant challenges in reconciling the principles of classical Islamic jurisprudence with the existing framework of Indonesian positive law when adjudicating child custody disputes arising from apostasy ([Antonio & Wardhani, 2025](#)). These challenges frequently give rise to differing judicial interpretations of Article 2(1) of the Marriage Law, particularly the phrase "*according to the laws of their respective religions and beliefs*," which has been interpreted inconsistently across judicial decisions ([Putri & Nur, 2024](#)).

This legal dualism reflects the complexity of Indonesia's legal system, which integrates religious law with national law, thereby creating ambiguity regarding the legal status of marriage following the apostasy of one spouse ([Manik et al., 2025](#); [Sarah Sarah et al., 2025](#)). Although apostasy is not criminalized under Indonesian national law, its civil legal

consequences are governed by the Compilation of Islamic Law and adjudicated by the Religious Courts, resulting in legal consequences relating to the dissolution of marriage, disqualification from inheritance, and restrictions on guardianship rights ([Badrian, 2026](#)). This situation illustrates the inherent tension between an individual's constitutional freedom of religion and the regulation of family relationships under religious legal norms ([Riyanto & Arifin, 2024](#)).

Consequently, these normative conflicts require Religious Court judges to adopt a more dynamic interpretative framework capable of balancing the principles of *maṣlaḥah* (public welfare) and *mafsadah* (harm prevention) within the context of contemporary family law in order to achieve a fair and proportionate administration of justice ([Hadi et al., 2023, p. 190](#)). Such a progressive approach enables judges not only to reinterpret existing statutory provisions and religious doctrines in light of evolving social realities but also, where necessary, to bridge normative gaps in the law, thereby ensuring both legal certainty and substantive justice in addressing the complexities of modern family disputes.

Novelty and Research Contribution

This study contributes to the advancement of Islamic family law jurisprudence by identifying patterns of judicial interpretation in addressing the legal complexities of divorce resulting from apostasy, particularly with respect to the division of jointly acquired marital property and the determination of child custody. By examining judicial reasoning in Religious Court decisions, the study provides valuable insights into how judges navigate the interaction between statutory law and Islamic legal principles in resolving disputes arising from changes in religious affiliation.

Furthermore, this research offers a comparative analysis of the relationship between Indonesian positive law and *fiqh* perspectives, thereby providing a more comprehensive understanding of the legal implications of apostasy within the institution of marriage. Through this comparative approach, the study elucidates the convergences and divergences between statutory legal provisions and classical Islamic jurisprudence, contributing to the broader discourse on the harmonization of religious and national legal systems.

More importantly, this study highlights the dynamic interaction between normative legal texts and judicial discretion in producing decisions that are responsive to contemporary socio-religious realities. It demonstrates that judicial interpretation extends beyond a literal application of statutory provisions by incorporating contextual considerations aimed at achieving substantive justice. At the same time, the study critically evaluates the extent to which such judicial practices remain consistent with the principles of distributive justice in Islamic law, thereby contributing both theoretically and practically to the development of a more contextual, equitable, and progressive framework for adjudicating apostasy-related family law disputes.

CONCLUSION AND RECOMMENDATIONS

Conclusion

Based on the findings of this study, it can be concluded that the apostasy of one spouse gives rise to significant legal consequences affecting the marital relationship, child custody, and the distribution of jointly acquired marital property. These legal implications require Religious Court judges to adopt a progressive and contextual approach to legal interpretation in order to achieve substantive justice consistent with the principles of Shari'ah and the objective of promoting public welfare (*maṣlahah*). The findings demonstrate that judicial decisions frequently integrate both textual and contextual interpretations of the law, enabling judges to uphold justice while simultaneously preserving legal certainty and ensuring equitable outcomes for the parties concerned.

The study further reveals that judges are expected to continue developing innovative and progressive legal interpretations to address normative gaps within the existing legal framework. This is exemplified by the recognition of mandatory bequests (*wasiat wajibah*) for non-Muslim heirs in Indonesian jurisprudence, reflecting the judiciary's willingness to pursue substantive justice in Indonesia's pluralistic society. Nevertheless, a fundamental divergence remains between Law No. 1 of 1974 concerning Marriage, which requires the dissolution of marriage to be determined through judicial proceedings, and the classical fiqh doctrine, which generally regards marriage as automatically dissolved upon the apostasy of one spouse. This divergence presents a significant jurisprudential challenge, highlighting the need to harmonize the positive legal system with Islamic legal doctrine in order to establish a coherent, consistent, and equitable legal framework for resolving apostasy-related marital disputes.

Recommendations

Based on the findings of this research, it is recommended that Religious Courts, particularly Religious Court judges, adopt a more contextual and purposive approach in interpreting legal provisions governing family law. Such an approach should extend beyond disputes concerning the distribution of jointly acquired marital property to encompass all aspects of family law adjudication. Contextual interpretation is essential to ensure that judicial decisions remain responsive to evolving social realities while consistently upholding the principles of substantive justice and the higher objectives of Shari'ah (*maqāṣid al-shari'ah*).

Furthermore, there is a pressing need to develop a more comprehensive legal framework capable of accommodating the complexities of divorce cases arising from religious conversion or apostasy. Such a framework should strike an appropriate balance between the protection of individual rights, the best interests of the child, and the preservation of religious values recognized within the Indonesian legal system. In this regard, the progressive jurisprudence of the Supreme Court of Indonesia, particularly decisions recognizing the principle of mandatory bequests (*wasiat wajibah*) for non-Muslim heirs based on considerations of *maṣlahah* and religious pluralism, may serve as an important jurisprudential reference for resolving future apostasy-related family law disputes.

Finally, greater recognition should be accorded to the role of jurisprudence as a dynamic source of law, given that progressive judicial decisions have the potential to establish new legal standards for resolving analogous cases in the future. To minimize inconsistencies in judicial practice and enhance legal certainty, policymakers should consider amending the existing statutory framework or formulating explicit interpretative guidelines for Religious Court judges in adjudicating divorce cases involving apostasy. Particular attention should be directed toward issues concerning child custody, joint marital property, and other post-divorce legal consequences, thereby ensuring greater consistency, predictability, and fairness in the administration of justice.

AUTHOR CONTRIBUTIONS

Hanam Atmadja served as the principal authors, initiating the research concept, formulating the research background and research questions, developing the conceptual framework, conducting the study, and overseeing the overall manuscript preparation and revision process and contributed to the discussion of the research findings, the refinement of the analytical framework, and the interpretation and integration of the study's findings. All authors participated in the final review of the manuscript, approved the final version for publication, and accept full responsibility for the integrity and accuracy of the published work. The other hand, he contributed also to the research methodology, including the design of the research instruments and questionnaire, the sampling strategy, and the field data collection process, as well as the processing and qualitative analysis of the research data.

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