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Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam

- Fairness In Sharia Business Contracts: A Consumer Protection Perspective
- Decolonization of Islamic Family Law In Indonesia: Tracing Transformation And Continuity
- Reconstruction of Disability-Friendly National Fiqh: A Paradigm Transformation From Rukhshah to Ázimah
- The Legal Implications of Qardh Financing For Stakeholder Welfare In Islamic Economic Law
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FAIRNESS IN SHARIA BUSINESS CONTRACTS: A CONSUMER PROTECTION PERSPECTIVE

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ABSTRACT

The development of Islamic business in Indonesia has made significant progress along with the increasing public awareness of the application of Islamic principles in economic transactions. In this context, consumer protection becomes a crucial element, particularly in sharia-based business contracts. This study aims to analyze the concept of consumer protection in sharia business contracts from the perspective of both positive law and Islamic law. The method used is a literature study with a qualitative approach. The results of the study show that positive law, through Law No. 8 of 1999, provides legal-formal protection for consumers, while Islamic law emphasizes moral and spiritual aspects, including the principles of justice, honesty, and the prohibition of gharar and fraud. Although both aim to safeguard consumer rights, they differ in their approaches and the sanctions applied. The integration of positive law and Islamic law can create a more comprehensive consumer protection system in sharia business contracts. This research is expected to contribute ideas to the development of a just and sustainable legal system.

Keywords : *Consumer Protection, Gharar, Islamic Law, Positive Law, Sharia Business Contracts*

ABSTRAK

Perkembangan bisnis syariah di Indonesia mengalami kemajuan yang signifikan seiring dengan meningkatnya kesadaran masyarakat akan penerapan prinsip-prinsip Islam dalam transaksi ekonomi. Dalam konteks ini, perlindungan konsumen menjadi elemen krusial, terutama dalam kontrak bisnis berbasis syariah. Penelitian ini bertujuan untuk menganalisis konsep perlindungan konsumen dalam kontrak bisnis syariah dari sudut pandang hukum positif dan hukum Islam. Metode yang digunakan adalah studi pustaka dengan pendekatan kualitatif. Hasil penelitian menunjukkan bahwa hukum positif, melalui Undang-Undang No. 8 Tahun 1999, memberikan perlindungan konsumen secara legal-formal, sementara hukum Islam menekankan aspek moral dan spiritual, termasuk prinsip keadilan, kejujuran, serta larangan terhadap gharar dan penipuan. Meskipun keduanya bertujuan untuk menjamin hak konsumen, mereka berbeda dalam pendekatan dan sanksi yang diterapkan. Integrasi antara hukum positif dan hukum Islam dapat menciptakan sistem perlindungan konsumen yang lebih menyeluruh dalam kontrak bisnis syariah. Penelitian ini diharapkan dapat memberikan kontribusi pemikiran dalam pengembangan sistem hukum yang adil dan berkelanjutan.

Kata kunci: *Perlindungan Konsumen; Kontrak Bisnis Syariah; Gharar*

INTRODUCTION

In a global and national context, halal certification is very important, especially for Muslim-majority consumers. This certification not only serves as a guarantee that the products consumed are in accordance with sharia principles, but also increases consumer confidence in the product. Research shows that halal certification can expand market penetration and increase product competitiveness at the international level by affirming commitment to quality and sharia compliance (Gunawan et al. 2020)

In Indonesia, halal certification has a crucial role in the Micro, Small, and Medium Enterprises (MSMEs) sector, which is the main pillar of the national economy. By including halal certificates on their products, MSMEs can increase the trust of Muslim consumers while expanding market access. (Gunawan et al., 2020). In addition, the implementation of the Halal Assurance System in MSMEs has also been proven to be able to improve the quality and quality of products, thereby providing greater added value (Gunawan et al. 2020)

Although there have been many studies that discuss the importance of consumer protection in the sharia business, there are still a number of shortcomings that need to be addressed. Some previous studies tend to focus only on positive legal aspects in a limited way without examining in depth the relevant sharia law perspective (Maharani & Dzakra, 2021). This shows that there is a research gap in integrating the two legal perspectives.

The novelty of this research lies in the effort to introduce a framework of thought that combines positive Indonesian law and Islamic law in the context of consumer protection in sharia business contracts. Thus, this study seeks to make an important contribution in understanding the interaction between the two legal systems for MSME actors engaged in halal-certified products in Indonesia. This integration is expected not only to provide stronger legal guarantees for consumers, but also to encourage sustainable growth of the sharia economy in Indonesia (Trimulyana, 2024).

According to Fitzgerald, as quoted by Satjipto Raharjo, the beginning of the emergence of this legal protection theory originated from natural law theory or natural law schools. This school was pioneered by Plato, Aristotle (a student of Plato), and Zeno (the founder of the Stoic school). According to the natural law school, it is stated that the law comes from God which is universal and eternal, and that law and morality should not be separated. The adherents of this school view that law and morality are internal and external reflections and rules of human life which are manifested through law and morals Consumers are citizens guaranteed by the constitution to obtain legal protection from various problems

arising from buying and selling or other transactions, if they cause losses to consumers due to fraud or manipulation. If the law is enforced, then it will not be possible to act that is detrimental to the interests or rights of consumers and/or if business actors or producers ask for the law and morals are a unit that must be obeyed and carried out in doing business. Fitzgerald explained Salmond's theory of legal protection that law aims to integrate and coordinate various interests in society because in a traffic of interests, the protection of certain interests can only be done by limiting the interests of others. The interest of law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected.

Consumer protection is an effort to protect and ensure the rights of consumers in transacting or using products and services. A consumer is anyone who buys or uses goods, services, or facilities provided by business actors. Consumer protection includes any initiative that guarantees the existence of legal certainty aimed at protecting consumers in accordance with the principles enshrined in consumer protection laws. Article 2 of the UUPK articulates that "consumer protection is based on benefits, justice, and balance, consumer safety and security, and legal certainty" (Sinaga 2014) The role of consumer protection and the function of consumer protection entities in Indonesia highlight the importance of ensuring legal certainty for consumers, as well as an understanding of rights and responsibilities described in Law No. 8 of 1999, which shows that the goal of consumer protection goes beyond just the protection of individual rights to include the establishment of a fair and equitable business environment (Maharani and Dzikra 2021)

Contracts in Islam are called *akad* which come from the Arabic word "al-Aqd" which means engagement, agreement, contract or agreement (*al-ittifaq*), and transaction. The special meaning of the theory of *akad* is the relationship between *ijab* and *qabul* in sharia which has an effect on the object In other words, the connection of the words of one party of the person who has made the contract with the other in sharia' which can have an effect on the agreed object. A sharia contract agreement is a documented agreement that includes *ijab* (offer) and *kabul* (acceptance) between the parties involved, describing the rights and obligations of each party in accordance with Islamic jurisprudence. *Akad* must be without components such as *gharar*, *maysir*, *riba*, *zalim*, *risywah*, *haram* goods, and *makasiatan* (Nur Fitriyah Sari, 2022).

Positive law is defined as a legal system that is sourced from official laws and regulations drafted, determined, and enforced by the state. This system is based on the

principle of legality, where all legal actions must be in accordance with the provisions of the applicable law. Positive law has a formal, rational, and written nature, which makes law enforcement easier and provides certainty for citizens. The positive legal structure in Indonesia is divided into several levels, ranging from the 1945 Constitution as the supreme basic law to regional regulations as part of regional autonomy. The basic principles underlying positive law include the rule of law, equality before the law, and the protection of human rights. In its implementation, positive law aims to maintain public order, justice, and security through clear and measurable legal instruments (Rahmita et al., 2025).

Islamic law or Islamic sharia is a system of rules based on the revelation of Allah SWT and the Sunnah of the Prophet regarding the behavior of mukallaf (a person who can be burdened with obligations) that is recognized and believed, which is binding for all its adherents. And this refers to what the Apostle has done to carry it out in totality. Sharia according to the term means the laws that Allah SWT commands for His people brought by a Prophet, both those related to belief (aqidah) and those related to amaliyah. Islamic sharia according to language means the path that mankind takes to lead to Allah Ta'ala. And it turns out that Islam is not just a religion that teaches about how to worship its Lord. The existence of rules or systems of Allah swt to regulate human relations with Allah Ta'ala and human relations with others. These rules are sourced from all Islamic teachings, especially the Quran and Hadith. The definition of Islamic law is. Shari'ah which means the rules established by Allah for His people brought by a Prophet PBUH, both laws related to belief (aqidah) and laws related to amaliyah (deeds) carried out by all Muslims (Eva 2017)

RESEARCH METHOD

This research uses a literature study approach, namely by collecting, studying, and analyzing various literature sources that are relevant to the topic discussed. The sources used include scientific journals, books, and articles taken from credible websites. The data collected is in the form of theories related to consumer protection in sharia business contracts, the rights and obligations of consumers and business actors, as well as related concepts taken from various reliable sources. The research process begins with a search for literature related to the main topic through database journals and academic websites. Furthermore, a selection of relevant literature was carried out. After that, data from the selected literature is analyzed and interpreted to identify concepts, views, and findings that

can provide a deeper understanding of the problem being studied. This research does not involve interviews or field observations, but only focuses on the analysis of the existing literature.

FINDINGS AND DISCUSSION

Consumer Protection in Sharia Business Contracts

Consumer protection in the framework of sharia-compliant business contracts has significant importance, based on the principles of equality, integrity, and accountability as described by Islamic jurisprudence. In the context of sharia business transactions, consumers have the right to transparent, honest, and non-misleading information about the products or services they obtain. In addition, consumers have the right to product safety and protection against adverse practices, including but not limited to fraud or the sale of unauthorized goods. Business entities bear the obligation to ensure the quality of their offerings and to provide restitution in cases where their products result in losses or losses. It is very important that sharia business contracts are established in the spirit of good faith and without coercion, while simultaneously adhering to the principles of halal and thayyib. In addition, the settlement of disputes in sharia business affairs is carried out in a fair and transparent manner, involving the Sharia Supervisory Board or designated authorities tasked with enforcing compliance with Islamic law. As a result, consumer protection in sharia business not only protects consumers' legal rights but also encourages the formation of fair, balanced, and healthy transactions for all parties involved.

Consumer protection in Indonesia is regulated by Law Number 8 of 1999 which is part of positive law in Indonesia. This law applies to all regions of Indonesia and regulates the rights and obligations of consumers and business actors. The legal purpose of consumer protection includes several important aspects. First, to increase consumer awareness, ability, and independence to be able to protect themselves. Second, to raise the dignity and dignity of consumers by preventing them from negative access to goods and/or services. Third, to increase consumer empowerment by giving them the ability to choose, determine, and demand their rights as consumers. Fourth, to create a consumer protection system based on legal certainty and information disclosure, as well as to provide easy access to obtain such information. Fifth, to increase the awareness of business actors of the importance of consumer protection, so that they will develop an honest and responsible attitude in running

a business. And sixth, to improve the quality of goods and/or services, which in turn will ensure the continuity of the production business, as well as the health, comfort, security, and safety of consumers (Diary, Surbakti, and Natasya 2024)

Consumer Rights and Obligations

According to Amadi and Sutarman in (Diary, Surbakti, and Natasya 2024) the definition of consumers juridically has been placed in various laws and regulations, such as Law No. 8 of 1999 concerning UUPK Article 1 which formulates as follows: “Consumers are every person who uses goods or services available in society, either for the benefit of themselves, family, other people, or other living beings and is not for trade (Diary, Surbakti, and Natasya 2024). To ensure the implementation of the principle of balance in the Consumer Protection Law, rights and obligations need to be regulated. The fundamental rights that consumers generally receive include the right to information, the right to be heard, the right to security, the right to vote. Consumer rights are accepted in Article 4 of the Consumer Protection Law which states:

According to (Rahmaniah 2023) article 4 of the Consumer Protection Law includes:

- 1) The right to comfort, security, and safety in consuming goods and/or services;
- 2) The right to choose goods or services and obtain such goods or services in accordance with the exchange rate and the promised concessions and guarantees;
- 3) The right to true, clear, and honest information about the condition and warranty of goods or services;
- 4) The right to be heard and its complaints about goods or services used;
- 5) The right to obtain advocacy, protection, and efforts to resolve consumer protection disputes appropriately;
- 6) The right to consumer guidance and education;
- 7) The right to be treated or served properly and honestly and non-discriminatory;
- 8) The right to compensation, compensation or reimbursement, if the goods or services received are not in accordance with the agreement or are not as they should be; and
- 9) Rights regulated in the provisions of other laws and regulations.

Meanwhile, in Article 5 of the UUPK, it is stated about consumer obligations, namely:

- 1) read or follow instructions for information and procedures for the use or use of goods or services, for the sake of security and safety;
- 2) in good faith in conducting transactions to purchase goods or services;
- 3) pay according to the agreed exchange rate; and
- 4) Following the efforts to resolve consumer protection disputes legally.

Sharia Contracts and Business

A contract in sharia business law can be interpreted as a process of carrying out transactions between one person and another person who is bound by law because one party presents an offer and the other party accepts and utilizes economic resources as its object in accordance with the rules that have been set by Islamic law. A sharia business contract can also be interpreted as an alliance between *ijab* and *Kabul* in a manner that is justified by Islamic law which stipulates the existence of legal consequences. Talking about a contract about the agreement of both parties to start with, then there will also be steps that make the contract end. This paper aims to understand what must be done in the execution of a contract in the perspective of Islamic law. *Akad* or contract comes from Arabic which means a bond or conclusion, both visible (*hissyy*) and invisible (*ma'nawy*). The *al-Mawrid* dictionary, translates *al-'Aqd* as contract and agreement. Meanwhile, a contract or contract according to the term is a joint agreement or commitment, both oral, sign, and written between two or more parties that have binding legal implications (Yulianti, 2008).

Contracts in human life with the aim of protecting the rights and obligations of the parties in a balanced manner. This bond implies a relationship both sensory and spiritual on one side or both sides. A sharia business contract can also be interpreted as an alliance between *ijab* and *Kabul* in a manner that is justified by Islamic law which stipulates the existence of legal consequences. *Ijab* is the first party's statement regarding the content of the desired engagement, while *qabul* is the second party's statement to accept it. A contract or contract is an act that is deliberately made by two or more parties regarding an object that is lawful to be the object of a transaction (Ramziati et al., 2019).

The Basic Basis of the Contract Agreement

According to Ali in (Yulianti 2008) Mohammad Daud Ali interprets the principle when connected with the word law is the truth that is used as a basis for thinking and reasoning opinions, especially in the enforcement and implementation of the law. From this definition, when associated with agreements in sharia contract law, the truth is used as a basis for thinking and reasoning opinions about agreements, especially in the enforcement and implementation of sharia contract law.

According to (Ardi, 2016), the principles in sharia business contracts include: **The Principle of Freedom of Accord (*Mabda Hurriyah at-Ta'aqud*)**, Islamic law recognizes the freedom of contract, which is a legal principle that states that everyone can make any type of contract without being bound by the names that have been determined in the Sharia

law and include any clause in the contract he makes in accordance with his interests as long as it does not result in eating the property of others in a wrong way. However, in different schools there are differences of opinion about the extent and narrowness of this freedom. The texts of the Quran and the Sunnah of the Prophet (peace be upon him) as well as the rules of Islamic law show that Islamic law adheres to the freedom of contract.

The Basics of Balance (*Mabda at-Tawazun fi al-Mu'awdhah*), Although factually there is rarely a balance between the parties in transactions, however, Islamic treaty law still applies a balance in bearing risks. The basis of balance in a transaction (between what is given and what is received) is reflected in the cancellation of a contract that has a glaring performance imbalance.

The Principle of Justice, Justice is the goal, which is to be realized by all laws. In Islamic law, direct justice is the command of the Qur'an which affirms, "Be just, because justice is closer to piety" (QS. 5: 8). Justice is the joint of every agreement made by the parties. Often in modern times, the contract is closed by another party without having the opportunity to negotiate the contract clause, because the contract clause has been standardized by the other party.

Prohibiyion Riba, Riba, or usury, is forbidden in Islam. This principle teaches that transactions do not involve interests, so that any form of injustice in economic exchange can be avoided.

Types of Contracts and Sharia Business

According to (Mukhlis Kaspul Anwar 2024) Contracts in Islamic banking function as the basis for conducting financial transactions in accordance with sharia principles. Here are some of the akad taught in the socialization:

Murabahah Contract, Murabahah is a sale and purchase contract in which an Islamic bank buys an item needed by the customer and then resells it to the customer at a price that includes the agreed profit margin. Payment is made in installments or cash. For example, when a customer wants to buy a car, the bank will buy the car first, then sell it to the customer at a price that has added the profit margin.

Mudharabah Contract, Mudharabah is a form of cooperation in which one party provides capital (*shahibul maal*) and the other party runs a business (*mudharib*). The profits from the business will be divided according to the initial agreement, while the losses will only be borne by the capital owner unless there is negligence from the business manager. This contract is often used in project financing or business investment.

The Contract of Musyarakah, Musyarakah is a cooperation agreement between two or more parties that combine capital to run a business. Profits and losses are divided based on their respective capital contributions. This contract is often used in joint venture financing where banks and customers share capital and risk.

Ijarah Contract, Ijarah is a lease-lease agreement in which the bank leases assets to the customer for a certain period of time.” In ijarah muntahiyah bittamlik, at the end of the rental period, the asset can be owned by the customer after making payment in accordance with the agreed conditions.

Istisna’ contract, Istisna’ is a contract for ordering goods or projects, where the buyer orders an item to the seller which will then be produced or built. Payment can be made at the beginning, in the middle, or after the finished goods. This contract is often used in construction financing.

Wakalah contract, Wakalah is a representative contract in which the customer authorizes the bank to perform a certain action on behalf of the customer, such as payment or asset management.

Rights and Obligations of Business Actors

According to Article 3 of Law Number 8 of 1999 concerning Consumer Protection, business actors are defined as individuals or business entities, whether in the form of legal entities or not, that carry out business activities in the jurisdiction of the Republic of Indonesia. In his explanation, those included in the category of business actors include companies, cooperatives, state-owned enterprises, local governments, importers, traders, distributors, and others. Article 6 of the Consumer Protection Law No. 8 of 1999 stipulates six rights of entrepreneurs, including: (1) The right to receive payment in accordance with the agreement regarding the terms and exchange rates of goods and/or services traded; (2) The right to legal protection against malicious consumer actions; (3) the right to an adequate defense in connection with the judicial settlement of consumer disputes; (4) the right to restore good name if it is proven through legal acts that the consumer’s losses are not caused by the goods and/or services being traded; (5) Rights based on other laws and regulations (Zaini Miftach, 2018).

According to Zulham in (Habibah et al. 2024) the obligations of business actors as mentioned in Article 7 of Law Number 8 of 1999 concerning Consumer Protection are: 1) In good faith in carrying out their business activities; 2) Provide true, clear and honest

information about the condition and warranty of goods and/or services as well as provide an explanation of use, repair and maintenance; 3) Treat or serve consumers correctly and honestly and not discriminatory; 4) To ensure the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services; 5) Provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or warranties for goods made and/or traded; 6) Provide compensation, compensation and/or reimbursement for losses resulting from the use, use and utilization of traded goods and/or services; 7) Provide compensation, compensation and/or reimbursement if the goods and/or services received or utilized are not in accordance with the agreement.

The obligations of business actors are a consequence of consumer rights. If you look closely, it appears that these obligations are a manifestation of consumer rights on the other hand to create a “culture” of responsibility for business actors.

Sanctions for violating

In terms of business actors' liability, there are things that are charged to business actors if there are hidden defects in the product regulated in the Civil Code, namely business actors must bear the hidden defects whether they know or do not know the hidden defect. In providing liability related to defective products that harm consumers, the Consumer Protection Law provides 3 (three) forms of sanctions, namely in the form of civil, criminal and administrative sanctions. Civil sanctions can be imposed on business actors by providing compensation in the form of refunds or exchanges of goods of the same type, rehabilitation and compensation. The provision of criminal sanctions can be given to business actors for violating the provisions as stipulated in Article 62 paragraph (1) of the Consumer Protection Law with a maximum prison sentence of 5 (five) years and a fine of Rp 2,000,000,000 (two billion rupiah) and there are additional penalties in the form of withdrawal of goods and revocation of business licenses. Administrative sanctions can be given to business actors if business actors fail or do not fulfill their obligations to pay losses that have been suffered by consumers. This sanction can be processed through BPSK with the imposition of administrative sanctions in the form of compensation in the form of money in the amount of IDR 2,000,000 (two million rupiah) (Zhafari, 2024).

Dispute Resolution

Article 23 Number 8 of the UUPK explains “if a business actor refuses or does not provide a response or compensation to a consumer lawsuit as stipulated in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), then the consumer has the right to file a lawsuit through the consumer dispute resolution body or through the courts located in the consumer’s area of residence”. This is in accordance with Article 45 Paragraph 1 of the Consumer Protection Law which states that “consumers can file a lawsuit against business actors through a consumer dispute resolution agency or through a court located in the area where the consumer lives”. This law provides protection and options for consumers to determine the desired means of dispute resolution, in accordance with Article 45 paragraph 2 of Law No. 8 of 1999 concerning Consumer Protection. According to (Habibah et al. 2024) there are two options for resolving consumer disputes in this law, namely:

First, Through courts that are in the public justice environment. Regarding the settlement of consumer disputes in court, there are several options that can be used, one of which is a civil lawsuit for class action or class action. This lawsuit allows aggrieved consumers to file lawsuits.

Second, Mediation and conciliation have the same function, namely resolving disputes peacefully and are carried out on the initiative of one or both parties involved. In mediation, the disputing parties ask for help from a neutral mediator to reach an agreement. The mediator in this case only acts as a facilitator and helps the parties to reach an agreement without actively providing advice or suggestions.

According to Zulham in (Habibah et al. 2024) apart from going through the courts, there are other options for resolving consumer disputes peacefully, namely arbitration. Peaceful settlement can be carried out through deliberation between business actors and consumers, without having to involve the Consumer Dispute Resolution Agency or the courts. However, a peaceful settlement must be in accordance with applicable provisions and may include an agreement on the amount and form of damages to be awarded.

Consumer Protection in Islamic Law

The legal basis of consumer protection in Islamic law is based on four main sources, namely the Qur’an, Sunnah, Ijma’, and Qiyas. These legal sources are a guide in making legal decisions related to consumer protection in Islam. The Qur’an, as the first and primary source of law in Islam, provides basic principles relevant to consumer protection (Choirunnisak 2021)

As mentioned in QS. (Al-Muthaffifin: 1-3):

وَيْلٌ لِّلْمُطَفِّفِينَ الَّذِينَ إِذَا أَكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ وَإِذَا كَالُوا لَهُمْ أَوْ وَزَنُوا لَهُمْ يُخْسِرُونَ (المطففين : ١-٣)

Translation: “Woe to those who cheat, those who, when they receive a measure from someone else, ask it to be fulfilled, and when they measure or weigh for someone else, they subtract.”

Surah Al Muthaffifin Verses 1-3 talks about the humiliation of man on the Day of Judgment. Especially for those who commit fraudulent acts when measuring and weighing in trading. We encounter so many in today’s life reductions that harm others, such as selling gas cylinders whose contents are not up to standard, reducing liters of gasoline sold, fabric sellers who reduce the size of the fabrics they sell. This verse reminds people to stay away from practices that harm others and the threat of punishment is very great in this world and the hereafter.

The Sunnah, or the actions and words of the Prophet Muhammad (PBUH), is the second source of law in Islam. The Sunnah provides concrete examples of how the Prophet Muhammad (PBUH) treated consumers and merchants in various situations. The recorded hadiths provide guidelines on the principles of business ethics, including the protection of consumers from unethical or harmful practices.

Ijma’, or the agreement of the Muslim authorities, is the third source of law in Islam. Ijma’ refers to the agreement of scholars on a legal issue that has not yet been regulated in the Qur’an or Sunnah. In the context of consumer protection, Ijma’ can be used to produce a collective view of consumer protection that is in line with Islamic values.

Qiyas, or analogy, is a method of law-making in Islam that involves comparing situations that have not been regulated in the main sources of law with those that have already been regulated. In the context of consumer protection, Qiyas can be used to adapt the principles contained in the Qur’an, Sunnah, and Ijma’ to new situations that arise in the modern business world.

From these four sources of law, the fuqaha, or Islamic jurists, draw principles and guidelines to establish a consumer protection framework in Islam. Principles such as fairness, honesty, transparency, and equality are the main foundations in determining the rights and obligations of consumers and traders. In practice, consumer protection in Islamic law covers various aspects, from ensuring the quality of products and services to dispute resolution. Traders are required to provide clear and honest information about the products and services

they offer, as well as ensure that they meet the quality standards set forth in Islam. On the other hand, consumers have the right to get the product or service as promised, as well as compensation or a refund if the product does not meet their expectations or is detrimental to them (Elyani 2023)

CONCLUSION

Consumer protection is essential in realizing fairness in business transactions. Both positive law and Islamic law emphasize how crucial it is to protect the rights of consumers and the responsibilities of business actors. In positive law, consumer protection is regulated in detail through laws and regulations, such as Law No. 8 of 1999 concerning Consumer Protection. This law establishes rights and obligations for consumers and business actors, dispute resolution mechanisms, and sanctions for violations that occur. This law is formal and emphasizes legal certainty through legal processes set by the state. Meanwhile, in Islamic law, consumer protection is based on sharia values contained in the Qur'an and Hadith, as well as practices carried out by scholars. Principles such as akad, halalan thayyiban, honesty, and the prohibition of harming others (*la dharara wa la dhirara*) are the main foundations in business interactions. Although this aspect is more moral and spiritual in nature, Islamic law also establishes sanctions for violations (as in *fiqh muamalah*) and encourages the peaceful and fair settlement of disputes. In other words, positive law provides legal and legal protection, while Islamic law offers more comprehensive protection, covering legal, ethical, and spiritual dimensions. These two systems actually support each other in building a fair, transparent, and sustainable consumer protection system. In general, the implementation of sharia business contracts based on the principles of agreements, as well as the fulfillment of rights and obligations for both consumers and business actors, coupled with awareness of the importance of consuming halal thayyiban products, will result in justice and blessings in economic activities. This applies both from the perspective of state law and from a religious point of view.

REFERENCES

- Ardi, Muhammad. 2016. "The Principles of Agreements (Akad), Sharia Contract Law in the Application of Salam and Istisna." *Journal of Dictum Law* 14 (2): 265–79.
- Bayumi, Muhamad Rahman, M. Iqbal, M. Junestrada Diem, and Muhlis. 2022. "Reconstruction of the Thayyiban Halal Business Concept Strengthening the Integration-Interconnection of the Halal Value Chain Ecosystem." *Al-Mashrafiyah: Journal of Islamic Economics, Finance, and Banking* 6 (2): 64–80. <https://doi.org/10.24252/al-mashrafiyah.v6i2.28543>.
- Choirunnisak, Choirunnisak. 2021. "Socialization of Consumer Protection in Islam in Nusa Makmur Village, Air Kumbang District." *AKM: Action to the Community* 1 (2): 71–78. <https://doi.org/10.36908/akm.v1i2.192>.
- Diary, Anton, Steward Surbakti, and Natasya. 2024. "Legal Aspects of Consumer Protection of Arsi Brand Mineral Water in Sibolga." *Unes Law Review* 6 (3): 9217–25.
- Elyani. 2023. "CONSUMER PROTECTION IN THE FRAMEWORK OF SHARIA IN THE DIGITAL AGE." *SHARLA FRAME IN THE ERA OF Syiar-Syiar Journal* 3 (2): 58–68.
- Eva, Iryani. 2017. "Islamic Law, Democracy and Human Rights." *Scientific Journal of Batanghari University Jambi* 17 (2): 24–31.
- Gunawan, Setiyo, Raden D L Darmawan, Juwari Juwari, Lailatul Qadariyah, Hakun Wirawasista, Awaludin R Firmansyah, Mochammad A Hikam, Indriana Purwaningsih, and Mohammad F Ardhillah. 2020. "Assistance of MSME Products in Sukolilo Towards Thayyiban Halal Certification." *Sewagati* 4 (1): 14. <https://doi.org/10.12962/j26139960.v4i1.6446>.
- Habibah, Ulfa, Vaskal Maulana, Zahra Dwi Putri, and Zea Septiani. 2024. "ANALYSIS OF CONSUMER PROTECTION IN E-COMMERCE TRANSACTIONS IN KUNINGAN REGENCY." *LETTERLIJK: CIVIL LAW JOURNAL* 1 (1): 1–16.
- Maharani, Alfina, and Adnand D Dzikra. 2021. "The Function of Consumer Protection and the Role of Consumer Protection Institutions in Indonesia: Protection, Consumers and Business Actors (Literature Review)." *Journal of Information Systems Management Economics* 2 (6): 659–66. <https://doi.org/10.31933/jemsi.v2i6.607>.
- Mukhlis Kaspul Anwar, H. Dairobi and Hu'shila Awalia Rizqiani. 2024. "Ar-Rahman: Journal of Community Service Vol. 1 No. 02 July – December 2024." *Ar-Rahman: Journal of Community Service* 1 (02).

- Nur Fitriyah Sari. 2022. "The Implementation of Unnamed Contracts in Positive Law and Islamic Business Contract Law." *JISPENDIORA : Journal of Social Sciences, Education and Humanities* 1 (2): 52–57. <https://doi.org/10.56910/jispendiora.v1i2.65>.
- Rahmaniah, Amelia. 2023. "The Importance of Consumer Legal Awareness of Their Rights." 2023.
- Rahmita, Dina, Iqbal Hardiansyah, and Wahyu Setiawan Rambe. 2025. "Comparative Analysis of the Customary Law System and Positive Law in the Harmonization of Public Policy in Indonesia" 2.
- Ramziati, Sulaiman, and Jumadiah. 2019. "Business Contracts in Theoretical and Practical Dynamics." *Unimal Press*, p.63.
- By Anita O'Neill. 2014. "Implementation of Consumer Protection in Indonesia." *Scientific Journal of Aerospace Law* 5 (2). <https://doi.org/10.35968/jh.v5i2.110>.
- Trimulyana, Robi A. 2024. "Digital Transformation in Islamic Banking and Its Impact on Muslim Society." *Persia* 2 (1): 8–12. <https://doi.org/10.62070/persya.v2i1.52>.
- Yufi Cantika. 2023. "The Concept of Thayyiban Halalan in the Qur'an." Gramedia Blog. 2023.
- Yulianti, Rahmani Timorita. 2008. "The Basics of Agreements (Akad) in Sharia Contract Law." *La_Riba* 2 (1): 91–107. <https://doi.org/10.20885/lariba.vol2.iss1.art7>.
- Zaini Miftach. 2018. "The Responsibility of Business Actors to Consumers of Used Clothing Who Are Disadvantaged in Health A.," 53–54.
- Zhafari, Paradise Ridhan. 2024. "Violation of Consumer Rights by Business Actors in the Marketplace by Not Providing Information About Products Clearly" 6 (3): 9633–39.

DECOLONIZATION OF ISLAMIC FAMILY LAW IN INDONESIA: TRACING TRANSFORMATION AND CONTINUITY

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Abstract

The legal history of the Indonesian Islamic family provides the significance influence of the fiqh of Shafi'i and colonization at the same time. This article aims to explore the process of decolonization of Islamic family law in Indonesia by tracing its historical transformation, policy changes, and the continuity of its legal practices from the colonial period to the post-reform era. Through a conceptual, historical, and legislative approach, this article analyzes how the colonization of Islamic family law took place in Indonesia. This article argues that the decolonization of Islamic family law in Indonesia did not occur in a single manner, but instead in two primary forms. First, accommodative decolonization, which was realized through post-independence state policies, such as the theories of *receptie exit* and *receptio a contrario*, the Religious Court Law, the Compilation of Islamic Law, and various policies of the Supreme Court and the Ministry of Religious Affairs, which negotiated fiqh traditions with the need for modern legal protection, especially for women and children. This pattern aligns with Khaled Abou El Fadl's view, which regards legal reform as an inherent part of the Islamic legal tradition. Second, conservative decolonization is reflected in fatwas and classical fiqh discourse developed by Islamic boarding schools and religious organizations, in line with Wael B. Hallaq's criticism of colonial legal modernity. This article argues that the decolonization of Islamic family law in Indonesia is an ongoing process involving the state and religious scholars, and that it does not merely aim to erase the colonial legacy but also to create a contextual, just, and responsive Islamic family law system for vulnerable groups.

Keywords: *Decolonization of law; Islamic family law; Legal transformation*

Abstrak

Sejarah hukum keluarga Islam Indonesia menampilkan pengaruh kuatnya wajah fikih Syafi'i dan kolonisasi sekaligus. Artikel ini membahas bagaimana proses dekolonisasi hukum keluarga Islam di Indonesia dengan melacak transformasi historis, perubahan kebijakan, dan keberlanjutan praktik hukumnya dari masa kolonial hingga pascareformasi. Melalui pendekatan konseptual, historis, dan perundang-undangan, artikel ini menganalisis bagaimana kolonisasi hukum keluarga Islam berlangsung di Indonesia. Artikel ini berargumen bahwa dekolonisasi hukum keluarga Islam di Indonesia tidak berlangsung secara tunggal, melainkan hadir dalam dua corak utama. Pertama, dekolonisasi akomodatif yang diwujudkan melalui kebijakan negara pascakemerdekaan, seperti teori *receptie exit*, *receptio a contrario*, Undang-Undang Peradilan Agama, Kompilasi Hukum Islam, serta berbagai kebijakan Mahkamah Agung dan Kementerian Agama, yang menegosiasikan tradisi fikih dengan kebutuhan perlindungan hukum modern, terutama bagi perempuan dan anak. Corak ini selaras dengan pemikiran Khaled Abou El Fadl yang memandang reformasi hukum sebagai bagian inheren dari tradisi hukum Islam. Kedua, dekolonisasi konservatif yang tercermin dalam fatwa dan diskursus fikih klasik yang dikembangkan oleh pesantren dan organisasi keagamaan, sejalan dengan kritik Wael B. Hallaq terhadap modernitas hukum kolonial. Artikel ini berargumen bahwa dekolonisasi hukum keluarga Islam di Indonesia merupakan proses berkelanjutan yang melibatkan keterlibatan negara dan ulama, serta tidak semata-mata bertujuan menghapus warisan kolonial, tetapi juga menciptakan bangunan hukum keluarga Islam yang kontekstual, berkeadilan, dan responsif terhadap kelompok rentan.

Kata Kunci: *Dekolonisasi hukum; Hukum Keluarga Islam; Transformasi hukum*

INTRODUCTION

Colonialism, which invaded almost all Muslim countries in the world, gave rise to new configurations in many forms in the colonized countries. Colonialism not only brought political and economic domination, but also reshaped ways of life and ways of thinking, for example through educational institutions and the epistemic framework of Muslim societies.(Federspiel, 2022; Momen et al., 2024) Because the colonial powers were vastly superior, militarily, administratively, and ideologically, Muslim societies were ultimately forced to accept what the colonizers brought without any meaningful resistance. Resisting, in fact, became a threat to the social and physical lives of Muslim communities. Here, the ways of life and modes of thought imposed and enforced by the colonizers profoundly affected various aspects of life.

Colonialism not only conquered territories but also gradually reshaped the foundations of how Muslim communities understood and practiced their own laws and identities.(Hussin, 2007a) By introducing the principles, substance, and models of law from the colonizers' home countries, local legal structures were compelled to conform to a completely foreign system. The impact did not stop during the colonial period; it continues to seep into the present day, shaping the mindset, legal practices, and even the identity of Muslim communities. Thus, colonialism has had a significant impact on how the legal systems of Muslim countries were formed and engineered, leading to a fairly sharp transformation of Islamic law. Many Muslim countries experienced the transplantation of Western law during the colonial period, either through full adoption as in Turkey or through integration with local law as in Egypt, Indonesia, and Malaysia.(Wahyuni, 2022) In Nigeria, for example, the British established a hybrid legal system that combined English law, Islamic law, and customary law, while making English law the dominant.(Lawan, 2014) In Kenya, the British instituted Kadhi, Liwali, and Mudir courts to control and reorganize the local legal structure.(Mwakimako, 2011) In Algeria, France imposed French law, especially property law, while making Muslim personal status law a transitional rule.(Gozzi, 2025) The codification of Islamic law in Malaya was a colonial epistemic intervention that changed the way Islam was understood and passed down, while also reshaping Malay identity. In fact, many contemporary interpretations of Islam still bear traces of this colonial engineering.(Hussin, 2007b) The strength of this colonization ultimately gave rise to a decolonization movement aimed at dismantling the influence of Western perspectives in various fields, including law.(Muzakkir, 2023, p. 7)

The idea of decolonization emerged as a way to confront and challenge the enduring legacy of colonial thought—an intellectual inheritance that has long appeared firmly established and difficult to dislodge. Calls for decolonization have largely come from thinkers in the Global South, regions that experienced colonization firsthand, since colonial power historically originated from countries in the Global North (Duvenage, 2024; Esfahani & Alihosseini, 2025; Mfecane, 2024). Decolonization seeks to redefine resistance by placing local or Indigenous perspectives at the center rather than deferring to colonial viewpoints as the primary lens (Deranger et al., 2022; Legault & Bleau, 2025). This movement addresses a wide range of issues, including the field of Islamic law. Unfortunately, reforms in Islamic law across many Muslim-majority countries are often quickly labeled as progressive—particularly because they are seen as advancing the protection of women and children. What is often overlooked, however, is a deeper question: do these reforms reinforce inherited colonial legal frameworks, or do they represent a genuine effort to resist and move beyond colonial legacies—an effort that could truly be called decolonization?

Various researchers have examined decolonization in Islamic studies. Rizvi argues that transforming the ontological, epistemological, and practical aspects of scholarship requires serious decolonization efforts, drawing on Syed Hussein Alatas's ideas. (Rizvi, 2025) Ashraf asserts that, in the critical dialogue between decolonial studies and Islamic liberation theology, the latter must be situated within a decolonial political praxis that promotes a preferential option for the poor. (Kunnummal, 2023) Seedat argues that a decolonial approach can help Islamic psychology (KI) reorganize its vision and orientation through the principles of epistemic freedom, liberation, and humanization, and can also encourage the development of psycho-spiritual and methodological resources within the framework of Islamic humanism oriented towards pluriversal and transformative knowledge. (Seedat, 2021) Woodward also emphasizes that the decolonization of Islamic studies in Indonesia requires critiquing the legacy of the colonial paradigm and formulating a new postcolonial model, particularly by examining the strong influence of Raffles and Snouck Hurgronje in shaping understandings of Indonesian Islam. (Woodward, 2025) Faruque acknowledges that the dominance of Western knowledge has severed Muslims' connection with their own intellectual heritage, fragmenting their identity. Therefore, decolonization should be pursued not by rejecting dialogue with the West, but by revitalizing the categories and concepts of Islamic knowledge so that Muslims can develop a way of thinking rooted in their own traditions. (Faruque, 2024)

Decolonization has also been examined from several perspectives in legal studies. Ihsany and Lutfi found that the practice of electing presidents in Indonesia remains influenced by colonial politics, thereby undermining the ethical, spiritual, and substantive dimensions of justice.(Nasution & Lutfi, 2025) Widjajanto et al. emphasize that, to carry out legal decolonization, the government must integrate customary law into criminal justice practices in Indonesia to ensure true justice.(Widjajanto et al., 2025) Akbar and Yuwanto argue that decolonizing environmental law requires an epistemic shift from state-based sovereignty to a pluralistic, community-based legal order.(Akbar & Yuwanto, 2025) Sulasman even argued that efforts to decolonize Islamic law in Indonesia culminated in the Compilation of Islamic Law (the KHI), which was in line with Pancasila and the 1945 Constitution of the Republic of Indonesia.(Sulasman, 2017)

This article differs from existing studies. Filling an existing gap, this article traces efforts to decolonize Islamic family law in Indonesia by building upon and extending the research previously undertaken by Sulasman. This investigation is important for clarifying how the government and non-governmental institutions have carried out decolonization efforts, thereby providing a clearer picture of the debate over the ideal construction of Islamic family law in Indonesia.

This article explores how the space for the decolonization of Islamic family law is formed and implemented. Therefore, this article draws on the theories of Wael B. Hallaq and Khaled Abou El Fadl regarding Islamic legal decolonization. Hallaq emphasized that, in essence, the decolonization of Islamic law must completely abandon its Western heritage and highlight an epistemology of Islamic law grounded in Islam. Meanwhile, Fadl believes that integrating Western and Islamic perspectives is a middle way that allows Islamic law to remain alive with its original spirit while not being left behind in social and cultural developments. So, with these two theories in mind, this article seeks to determine whether the decolonization of Islamic family law in Indonesia tends to be extreme (non-accommodative) as Hallaq proposes or accommodative as El-Fadl proposes.(Muzakkir, 2025)

This article argues that the decolonization of Islamic family law in Indonesia can be understood in terms of two main approaches: accommodative decolonization and conservative decolonization. The first type of decolonization is reflected in how the state has attempted to accept the changes and modernization of the law inherited from the colonizers while utilizing and developing the doctrine of fiqh as a source of legal norms. Meanwhile,

the second type of decolonization emerges in how non-state institutions often offer alternative perspectives on issues of Islamic family law formulated by the state. Finally, this article also emphasizes that the friction between these efforts illustrates that the decolonization of Islamic family law in Indonesia is still ongoing.

RESEARCH METHOD

This research is a normative legal research with a qualitative design. Data were collected through documentation from various sources, such as journal articles, books, and laws, to illustrate the processes of colonization and decolonization in Indonesia. Thus, this research uses conceptual, historical, and legislative approaches. First, a conceptual approach is used to identify the legal concepts in use. It is also employed by positioning the theories of decolonization proposed by Wael Hallaq and Khaled Abou El Fadl as analytical lenses through which the data were examined and interpreted. Hallaq's ideas are used to understand a model of decolonization that is both strict and uncompromising. In contrast, El Fadl's ideas are employed to interpret a model of decolonization that tends to be more accommodative and open to engagement. Second, a historical approach examines how colonization gave way to decolonization in the context of Indonesian Islamic family law. Third, the historical approach ultimately shows how these social changes are closely related to the legal changes enacted by the colonies and the Indonesian government. Therefore, the data in this study is analyzed using a deductive approach, beginning with general premises and moving toward more specific conclusions. This process was complemented by an interpretative analysis, in which the collected data were carefully examined and meaningfully interpreted to yield a deeper, more nuanced understanding of the issues under study.

FINDINGS AND DISCUSSION

Decolonialism as a Perspective

This section outlines the decolonial approaches offered by several thinkers. In this presentation, the author summarizes key points about decolonialism as a perspective for analyzing key issues. Therefore, the ideas of several essential figures in decolonial studies are outlined here, including Aníbal Quijano, Walter D. Mignolo, Linda T. Smith, and Farid Alatas. In the context of Islamic law studies, the decolonization approaches of Wael Hallaq and Abu El Fadl are also presented.

Unlike postcolonial studies, which originated from Palestinian thinkers, decolonial studies originated from South American scholars, who initially focused on studying the history of colonization in America. Anibal Quijano and Walter D. Mignolo are prominent figures from South America who call for decolonial studies. Although decolonialism was initially intended to resist Western political and economic colonization, its development has taken it in a different direction. Decolonialism has ultimately been cast in a more general direction, seeking to reverse or reject all legacies of colonialism. (Muzakkir, 2023, pp. 134–135) Quijano asserts that decolonialism aims to undermine the legitimacy and power of modern Western perspectives that have persisted and dominated, resulting from a system of domination that presents itself as a global necessity. (Quijano, 2000) Like Quijano, Mignolo argues that decolonialism is a method of de-linking. He emphasizes the plurality of alternative perspectives as a rejection of singular or unified perspectives. (Mignolo, 2011)

Linda T Smith wrote an important book on decolonialism, *Decolonizing Methodologies: Research and Indigenous Peoples*. Decolonization, in Linda's thinking, is an effort to dismantle how colonialism shaped the knowledge, identity, and life experiences of indigenous peoples. She asserts that imperialism has shaped the life experiences of indigenous peoples, which ultimately became the framework that shaped the way indigenous peoples understand the world and modernity. (Smith, 1999, p. 19) She points out that scientific disciplines actually serve to maintain the epistemic position of Europe, where Western knowledge and science are the beneficiaries of the colonization of indigenous peoples. This is because knowledge taken from indigenous peoples is then used to colonize them through the colonization of the mind. (Smith, 1999, pp. 58–59) Thus, for Linda, decolonization requires dismantling the epistemological structures that, for centuries, have placed indigenous peoples as objects and restoring them as full subjects of knowledge.

Thambinathan and Kinsella point out that for communities that have experienced colonization, research is a dirty word. This is because historical research has often been a space for exploitation, the formation of negative stereotypes, and the reproduction of stigmas that undermine the dignity of colonized communities. (Thambinathan & Kinsella, 2021, pp. 1–2) They even assert that the colonialism of knowledge has not ended. To this day, vulnerable communities, including indigenous peoples and refugees, still avoid research due to collective trauma over colonial practices that reduced them to “others.” (Thambinathan & Kinsella, 2021, p. 2) From this perspective, decolonization is not merely a theoretical

discourse, but a response to a long history of dehumanization carried out in the name of science and objectivity.

At the methodological level, Linda offers a framework that positions research as an ethical, political, and spiritual process. Linda emphasizes that research must be rooted in the restoration, respect, and revitalization of local cultures. (Smith, 1999) This approach aligns with the key principles articulated by Thambinathan and Kinsella, who propose four practices of research decolonization: critical reflexivity, reciprocity and self-determination, embracing other perspectives, and transformative action. (Smith, 1999, p. 1) Through critical reflexivity, researchers become aware of their epistemic position and biases; through reciprocity, the power relations between researchers and participants are reconfigured; through the acceptance of alternative ways of knowing, the dominance of Western epistemology is challenged; and through transformative praxis, research is directed towards effecting real social change. Therefore, if Linda believes that theory must depart from community needs and research practices must be a space for recovery, not reproduction of injustice, (Smith, 1999, pp. 142–143) Thambinathan and Kinsella reinforce this view by arguing that research must be a safe space that allows community voices to rise rather than be silenced again, and that researchers must internalize transformative action by making research part of everyday social struggle. (Thambinathan & Kinsella, 2021, pp. 6–7)

Sayyid Husein Alatas, an important figure in decolonial studies, has an interesting perspective. For Alatas, decolonialism is a process of liberating knowledge as a moral effort to restore human dignity in the postcolonial era. He shows how colonialism not only deprived people of material resources but also left its mark on their way of thinking, resulting in what is known as coloniality without colonialism, a condition in which Western intellectual domination continues even though colonial power no longer exists. (Moosavi & Alatas, 2024, p. 1165)

Syed Farid Alatas, the intellectual successor to Sayyid Husein Alatas, not only maintains this tradition but also develops it into the framework of the School of Autonomous Knowledge. Farid emphasizes that the autonomy of knowledge is a practice of epistemic consciousness: the courage to think from one's own social experience without being trapped in academic dependency. Therefore, autonomy is not an emotional rejection of the West, but an intellectual stance that rejects blind dependence, which can dull creativity and diminish the relevance of knowledge to local communities. (Moosavi & Alatas, 2024, pp. 1167–1168)

Not only that, while Syed Hussein Alatas focuses on coloniality as a structure of domination, Farid Alatas shows that Eurocentrism, Orientalism, androcentrism, traditionalism, ethno-nationalism, and sectarianism are equally hegemonic orientations that can limit society's ability to understand itself clearly. (Moosavi & Alatas, 2024, p. 1170) Thus, Farid broadens the field of criticism and deepens the humanistic dimension of the decolonial project by reminding us that the liberation of knowledge requires the courage to challenge domination, both that inherited from colonialism and that rooted in the cultural and social structures of society itself.

Based on these ideas, decolonization can be understood as a gradual process that engages three critical layers of human life. At the epistemic level, decolonization invites us to dismantle the colonial legacy of knowledge that has long viewed indigenous peoples as mere objects, while restoring space for local experiences, memories, and wisdom to be valued once again as legitimate sources of knowledge. At the methodological level, decolonization guides us to reorganize how we research and understand humans in more ethical, equitable, and humane ways by ensuring that every voice, especially those of vulnerable groups, is heard and respected. Meanwhile, at a socio-emancipatory level, decolonization presents knowledge as a space for healing and liberation, where research is no longer a tool that harms or alienates, but a means to restore dignity, strengthen communities, and, together, emerge from the shadow of colonial domination.

In Islamic legal studies, two figures are particularly relevant to understanding decolonization: Wael B. Hallaq and Khaled Abou El Fadl. These two figures have different perspectives on the decolonization of Islamic law, with Hallaq adopting an extreme position and El Fadl an accommodative one. These two perspectives are used as the primary lenses for examining the decolonization of Indonesian Islamic family law. For Hallaq, *turath* presents a diverse and comprehensive view of traditional Islamic law, but due to European-influenced modernization, Islamic law has been reduced. He rejects the reform of Islamic law because it is a project of colonial modernity that erases the supremacy of traditional law in Islamic history. Therefore, he criticizes Muslim reformists for being uncritical of modernity. This differs from El Fadl, who believes that legal reform is an inherent part of the Islamic legal tradition. For him, the problematic reform is liberal reform that aims to undermine the supremacy of Islamic law and the Islamic intellectual tradition. Therefore, it is natural that El Fadl appreciates and supports the work of Muslim reformists who negotiate

change in Islamic law by mapping what can and cannot be changed.(Muzakkir, 2025, pp. 1761–183)

Table 1. Comparison of Hallaq and Abou El Fadl on Islamic Legal Decolonization

Key Aspect	Wael B. Hallaq	Khaled Abou El Fadl
Theoretical Position	Takes a more radical and critical stance toward modernity	Adopts a more accommodative and moderate position
View of <i>Turath</i> (Islamic Legal Tradition)	Sees it as a comprehensive and superior legal tradition diminished by European modernity	Values the tradition but views it as open to reinterpretation and development
Attitude toward Legal Reform	Rejects modern legal reform as a colonial project that undermines classical Islamic law	Considers reform an inherent and legitimate part of the Islamic legal tradition
Critique of Muslim Reformists	Criticizes them for being uncritical toward modernity	Supports reformists who carefully negotiate what can and cannot be changed
Meaning of Decolonization	Calls for a fundamental rejection of modern colonial legal frameworks	Encourages selective engagement with modernity while safeguarding Islamic legal authority

Based on these theoretical explanations, the following sections use the last two perspectives on decolonization from Hallaq and Abou El Fadl as a framework for analysis. The analysis examines whether the construction of Islamic family law in Indonesia represents a complete epistemological break from colonial knowledge structures, as proposed by Hallaq, or a negotiated approach to modernization, as asserted by Abou El Fadl. These two points are the subject of important discussion in this paper.

Colonization in the History of Islamic Law in Indonesia

Initially, Islamic law was freely practiced and applied by the Muslim community in Indonesia. Cases were also resolved in various ways. Fiqh opinions became a vital guide for the application of legal cases. Here, fiqh was not yet subject to state control, allowing it to retain its original form: flexible, adaptive, responsive, and even inclusive. Its application across various regions also led to differences. With this spirit, the law came to life and developed rapidly.

As Islamic kingdoms developed, the tahkim institution, initially simple, evolved into a more structured judicial system, including the courtyards of various mosques in Javanese royal palaces, sharia courts in Sumatra, and qadhi assemblies in the Banjar and Pontianak regions. At this point, the ulama were not only religious figures, but also public servants who ensured that Islamic law was implemented in everyday life. This situation meant that the Dutch, through the VOC, who came as colonists, had to understand and regulate Islamic law, as it was already in practice within the community. Since the 17th century, they had issued various regulations. Through the Batavia Statute of 1642, the VOC also recognized the existence and position of Islamic law for the indigenous community.(Rifqi, 2021) In 1670, through the Resolutie der Indihe Regeering, the VOC also recognized Islamic marriage and inheritance laws, as set out in the Compendium Freijer. Several other documents also present the same position regarding the VOC, such as Pepakem Cirebon, Babad Tanah Jawa, and the Compendium Mogharrer, all sourced from fiqh literature, including the book al-Muharrar. In some places, such as South Sulawesi, regulations were enacted that afforded greater scope to Islamic law.(Syawqi, 2021) This formal effort was reinforced by the Governor-General's Resolution dated June 3, 1823, No. 12, in which the Religious Court in the city of Palembang was inaugurated and Pangeran Penghulu became its chairman. Here, the Religious Court was tasked with several matters, including marriage, divorce, property division, post-divorce rights, child custody, inheritance and wills, guardianship, and other religious legal issues.(Rofiq, 2013, p. 14)

At this point, it can be seen that the application of Islamic law, which turned out to be more focused on Islamic family law, in the colonial period of Indonesia never stood in a vacuum; it was shaped by the dynamics of power, identity politics, and colonial interests that sought to reorganize the social order of the indigenous community. In this context, Receptie in Complexu became one of the earliest epistemic constructions that determined the position of Islamic law. Introduced by Van den Berg during the VOC era and the early days of Dutch colonialism, this theory held that Islamic law automatically applied to indigenous Muslims, that the entirety of family law and certain *muamalat* (transactions) were inherent to Islamic identity, and that its applicability did not require acceptance by customary law. This framework served as the basis for formal colonial recognition of Islamic law, whereby the institutionalization of religious courts, later codified in Staatsblad 1882 No. 152 for Java and Madura, also became part of that recognition.(Sulasman, 2018)

Colonial intervention became increasingly apparent with the issuance of Staatsblad 1835, which stipulated that Religious Court decisions were valid only if the state court had ratified them through an *executoire verklaring*. This provision was not merely an administrative matter; it changed the way the *penghulu* stood before the state. Whereas previously the *penghulu* had decided family and inheritance cases with authority derived from the community's trust, since the Decree was issued and enforced, they have had to seek permission from the colonial court. Many religious leaders felt that their room for maneuver had narrowed, and their long-respected authority had become fragile because it depended on the approval of the colonial authorities. Although its existence was recognized, Islamic law was positioned as inferior through the subordination of the religious court. (Rifqi, 2021)

Understanding that Islamic law played an essential and decisive role for the Muslim community in the archipelago at that time, the Dutch suppressed the power of Islamic law. In this position, the application of Islamic family law in Indonesia during the colonial period was greatly influenced by the dynamics of political identity and colonial interests, which sought to reorganize the indigenous community's social order in accordance with their own standards. The theory of *receptie* was ultimately used as the first weapon to undermine Islamic law, as Snouck Hurgronje proposed. This theory was used as an instrument to guide how Dutch colonial legal policy was constructed as an epistemic project that deliberately subordinated Islamic law to customary law, thereby reducing the religious authority of Muslims to a mere cultural expression. Therefore, this theory asserts that they recognize the validity of Islamic law only if it is consistent with customary law. (As'ad et al., 2023)

The *receptie* theory was clearly illustrated in Staatsblad 1929 No. 221, which explicitly states that civil cases between Muslims may be resolved only by religious judges if customary law recognizes the existence of Islamic law. This provision was the most fundamental shift in the history of Islamic law in the Dutch East Indies. The impact was enormous: inheritance, which had previously been the natural jurisdiction of the Religious Court, was no longer considered part of religious competence. Religious judges' decisions were invalid if they contradicted customary provisions or failed to conform to the structure of colonial law. (Rifqi, 2021) Ultimately, customary law took precedence and became the primary standard. Meanwhile, *Sharia* in this context referred to Islamic law that had no authority in the eyes of the authorities. This strategy must ultimately also be seen as a move to corner Muslims so that they were unable to form independent legal and political forces. This

stemmed from Snouck Hurgronje's observations of the Muslim community in Aceh. Based on his observations, he drew a distinction between orthodox "textual Islam" and local practices considered heterodox. Then he recommended a colonial policy that elevated customary law as the primary source of legitimacy.(Burhanudin, 2014)

At the end of the colonial period, the authority of religious courts was further restricted through various regulations that specified the limits of their jurisdiction in detail. In 1937, the Dutch government issued Staatsblad No. 116. This Staatsblad regulated the authority of Religious Courts in Java and Madura, which were authorized only to examine marriage cases. Meanwhile, inheritance cases were handed over to the General Court. The Dutch colonial government also issued Staatsblad No. 638 and 639, which established the Kerapatan Qadli and Kerapatan Qadli Besar in South Kalimantan. These institutions were designed to resemble the religious courts in Java and Madura, but their authority was strictly defined. Through Staatsblad 1937 No. 116, the government detailed what could be handled by the Religious Court, namely: disputes between Muslim husbands and wives; cases of marriage, divorce, reconciliation, and divorce requiring the mediation of a religious judge; the determination of divorce; dowry cases; and the wife's living expenses that the husband must fulfil.(Rofiq, 2013, pp. 14–15)

However, one development offered a glimmer of hope for the continued existence of Islamic legal institutions at that time. Through Staatsblad No. 610, the colonial government established the High Islamic Court (*Hof Voor Islamietische Zaken*) as an appellate body for the Religious Court. Although it cannot be separated from colonial political motives, the existence of the High Islamic Court remains historical evidence that Islamic legal institutions were formally recognized within the colonial legal structure. Interestingly, these strict restrictions were not applied evenly. In areas outside Java, Madura, and South Kalimantan, Islamic law continued to apply more broadly, with only modest restrictions. This shows how colonial policy was often selective, tailored to political interests and regional control strategies.(Rofiq, 2013, p. 15)

Snouck Hurgronje did indeed play an important role in shaping Dutch legal policy during the colonial period. However, the role of indigenous people in how Snouck created a legal discourse that cornered Islamic law cannot be separated from his indigenous informants. Haji Hasan Mustapa, as researched by Jajang A Rohmana, who served as an indigenous informant, played a significant role, as evidenced by 18 letters sent to Snouck.

The collected letters, especially letter Or. 8952, successfully describes how the indigenous people influenced Snouck's view of Islam. (Rohmana, 2018, p. 296) This fact clearly shows that indigenous information was an important consideration in how to treat the Muslim community in the archipelago.

The analysis in this section highlights several important points related to the colonization of Islamic law, including Islamic family law. First, the colonization of Islamic law was carried out to suppress its power, which was considered a means of resistance against colonialism. Thus, colonization sought to portray Islamic law as inferior to the colonizers' positive law. Therefore, secondly, colonization was carried out through a structured mechanism involving the issuance of legal documents.

Decolonization of Indonesian Islamic Family Law: From Idea to Policy

Several essential questions require exploration in this section. After colonial rule ended, was there a widespread decolonization of Indonesian Islamic family law? What form did this decolonization take and to what extent? However, did the steps taken truly represent decolonization, or was it actually recolonization? These three questions are the starting point for the discussion in this section.

The *Staatsblad*, which the Dutch East Indies government issued several times, has harmed the Muslim community due to its limited practice. The impact was quite significant, as the Religious Court could no longer handle inheritance cases. This is because the provisions of Muslim inheritance law differ substantially from those applied in the General Court. This is where criticism began to emerge, offering new theoretical ideas that undermined the internalized theories of Islamic legal practitioners.

During the colonial period, the validity of Islamic law was recognized as long as it derived its legitimacy from customary law, thereby systematically weakening Sharia authority to serve the political interests of the Dutch East Indies government. (Buzama, 2012, pp. 469–470) In the long history of the struggle for Islamic law in Indonesia, the theories of *receptie* and *receptio a contrario* emerged as a moral and intellectual response to the colonial legacy that placed Muslims in a subordinate position through Snouck Hurgronje's theory of *receptie*. The emergence of reception and *receptio a contrario* was not merely a theoretical controversy but an initial effort to restore the dignity of Islamic law and to restore the voice that the colonial legal structure had silenced. This is a humanistic step that warrants attention.

Here, we can clearly see the struggle to reestablish the Muslim community as a legal subject with the right to determine the moral and normative orientation of its life.

Several years after Indonesia's independence, Hazairin proposed the theory of *receptie exit*. Therefore, the theory of *receptie* must be declared invalid or rejected (*exit*) because its principles contradict Pancasila and the 1945 Constitution. Here, Hazairin emphasized that God's sovereignty, mentioned first, is superior to the people's sovereignty, so that the people deliberate on the implementation of God's commands through their representatives. From this, it is clear that the application of Islamic law has an important position and cannot be ignored. On this basis, the *receptie* theory applied by Snouck has been beneficial to the Muslim community in Indonesia. Therefore, Hazairin ultimately referred to the *exit* theory as the devil's theory. (Rosyadi, 2022, pp. 26–27)

Sayuti Thalib then refined Hazairin's theory by formulating *receptio a contrario* as a total reversal of colonial logic. He emphasized that, for Muslims, Islamic law is the primary guide in life, while customary law is respected and enforced as long as it does not conflict with the fundamental values of Sharia. (Buzama, 2012, p. 471) This theory undermines the claim that customary law is completely superior. Upon closer examination, the theory of *receptio a contrario* seems similar to the theory of *al-'urf*, which intersects with the principle of *al-'adah al-muhakkamah* (custom is law). (Kusmayanti et al., 2024, p. 362) However, it should be emphasized here that not all customs can be accepted or accommodated by Islamic law. Only customs that are relevant and do not violate the principles of Islamic law can be accepted and applied. Islamic law ultimately becomes the primary filter governing the enforcement of customary law. In essence, this theory is not merely correcting the epistemic injustice of the colonial era, but also restoring the position of Sharia as a source of ethics and social order within society. Humanistically, *receptio a contrario* recognizes that Muslim communities have moral and spiritual integrity that the legal system must respect; they are no longer seen as objects of colonial policy that must be regulated, but as human beings who are entitled to laws that are in line with their beliefs.

This push for decolonization gained momentum when the Presidential Decree of July 5, 1959, stipulated that the Jakarta Charter "informs" the 1945 Constitution, thereby restoring Islamic law to its position as an authoritative source rather than merely a moral persuasion. (Buzama, 2012, p. 471) With this step, the state acknowledged that Islamic law could exist within the national legal system without the reductionist mechanisms of the

receptie theory. When viewed substantively, the theory of *receptio a contrario* also opens up space for the integration of Islamic law into national law as part of the identity, history, and moral aspirations of the Indonesian people. However, from a humanistic perspective, this theory does not merely erase the colonial legacy; it rebuilds a legal system that makes space for the values held by the community, allowing them to live under laws that not only regulate but also glorify human life.

What are the significant impacts of the implementation of the theory of *receptio a contrario*? The authority to adjudicate Islamic inheritance disputes has been returned to the Religious Court. As stipulated in Government Regulation No. 45 of 1957, Article 4, the authority of the Court extends to the settlement of disputes in the realm of Islamic family and civil law, including marriage and divorce matters, inheritance, waqf, grants, alms, the management of *baitul mal*, and other matters. Specifically, Law No. 7 of 1989 on Religious Courts explicitly reassigns authority to adjudicate inheritance cases among Muslims. However, according to Rosyadi, the Religious Court still has not freed itself from the shackles of the *receptie* theory. This means that the paradigm of resolution in the Religious Court remains colonized. This is because the general explanation of Law Number 7 of 1989 concerning Religious Courts still gives the parties the right to choose how to resolve inheritance cases, thereby allowing Muslims to resolve conflicts in the General Court. Ultimately, this option was successfully removed through Law Number 3 of 2006 concerning Amendments to Law Number 1989 concerning Religious Courts. (Rosyadi, 2022, pp. 26–27) Here we can see how influential the theory of *receptie* has been in Islamic legal politics in Indonesia for more than half a century in the application of Islamic law in Indonesia.

What about the codification of Indonesian Islamic law? Is codification a way of breaking away from the colonial paradigm, or is it actually the opposite? Researchers view the 1991 introduction of the KHI as part of state law, issued as a Presidential Instruction, as an attempt to incorporate the perspectives of indigenous people and local religious scholars on how Islamic law should be adopted and implemented by the state. This may be an initial movement towards decolonization. In terms of its historical origins, the KHI was not only a legal policy project of the New Order but also a response to the urgent need to provide a single set of guidelines for religious court practices. This is because, prior to 1991, religious court judges relied on various *fiqh* sources, leading to inconsistent rulings. Euis Nurlaelawati notes that the diversity of *fiqh* references led judges to be perceived as lacking practical legal

tools to ensure legal consistency and certainty.(Nurlaelawati, 2010, p. 1) Therefore, the state encouraged unification by compiling three books of KHI on marriage, inheritance, and waqf, which were accepted by the ulama at a workshop held on February 2-5, 1988, and were finally formalized through Presidential Instruction No. 1 of 1991.(Nurlaelawati, 2010, pp. 271–272)

This process demonstrates that the KHI is not a codification that stifles diversity, but rather a bridge between the state's administrative needs and the long tradition of fiqh that endures in society. Although ratified by the state, the KHI remains the result of negotiations between legal modernization, Islamic tradition, and the social identity of Indonesian Muslims. Euis emphasizes that the KHI, although often regarded as a codification, is not formally binding because it functions primarily as a reference that shapes judges' mindsets and legal culture. In her analysis of judicial practice, Euis shows that judges often refer to the KHI to strengthen their arguments, particularly on issues not explicitly addressed in classical fiqh texts, thereby making the KHI a rational legal instrument that encourages the development of a more consistent and modern pattern of legal reasoning(Nurlaelawati, 2010, p. 1)

Although the KHI has been compiled and established as a legal reference, judges in Religious Courts in Indonesia still often consult fiqh books when deciding cases, even after the KHI was enacted as an official guideline. By analyzing 118 verdicts, Euis shows that references to fiqh are actually more dominant than references to the KHI, with 101 references to fiqh compared to 94 references to the KHI. Therefore, she asserts that references to fiqh books are still very dominant and that judges are very reluctant to abandon the habit of quoting fiqh books.(Nurlaelawati, 2010, p. 139) Even when using the KHI, judges still feel the need to add religious legitimacy by referring to classical texts so that, according to Euis, the position of fiqh texts remains difficult to replace.(Nurlaelawati, 2010, p. 25) Regardless of whether judges in the Religious Court consider Arabic texts to have stronger inherent legitimacy,(Nurlaelawati, 2010, pp. 222–223) this step shows that fiqh is an essential source in resolving legal issues.

The above description indicates that efforts to decolonize Islamic family law departed from theoretical ideas, which were then addressed through government policies. The role of the government appears to be significant in maintaining Islamic law so that it remains in the context of national law, rejecting efforts to dismantle Islamic law, which is a legacy of colonialism. However, an important question arises: if decolonization is an effort

to break away from the colonialist perspective, isn't the codification of law a colonial legacy? Isn't the standardization of law a form of colonial legacy that facilitates control over society? If so, can the KHI be called a form of colonization? This question is answered through the character of the thinking of Wael B Hallaq and Khaled Abu Fadhl.

At this point, Muzakkir's analysis of Hallaq and Fadhl's thinking warrants elaboration. Hallaq has a more extreme interpretation of decolonization. He believes that Muslims' efforts to reform Islamic law today will only fail and that the only way to preserve Islamic law is by creating an era that replaces the modern era. This differs from El Fadl, who argues that Islamic law can still evolve and will not fail completely, as Hallaq contends. (Muzakkir, 2025, p. 151) In another discussion, Hallaq rejects modern fiqh outright, whereas El Fadl takes the opposite view, arguing that some aspects of fiqh can be modified while others cannot. (Muzakkir, 2025, pp. 174–175)

From this perspective, Muzakkir more concretely distinguishes the characteristics of Hallaq's and Fadhl's thinking in three respects, particularly with respect to reform. First, while Hallaq considers reform Eurocentric and a project of colonial modernity, El Fadl regards reform as natural, as change is inherent to the legal tradition. Second, Hallaq explicitly states that reform replaces traditional legal elements with new structures. In contrast, Fadhl holds that reform that neither destroys nor ignores the Islamic intellectual tradition is not problematic, whereas liberal reform is clearly problematic. Third, Hallaq openly rejects the role of Muslim reformists because they are considered uncritical of modernity. At the same time, Fadhl appreciates their contributions and recognizes their potential to creatively negotiate which parts of Islamic law may be changed and which cannot. (Muzakkir, 2025, p. 183)

Based on Muzakkir's notes, the researcher stands with El Fadl's point of view. This choice is considered more relevant to efforts to modernize and reform Indonesian Islamic family law. Why is that? Based on the researcher's analysis, the codification of Indonesian Islamic law, along with other modernizations or reforms of Islamic family law represented by the KHI, provides numerous legal guarantees and protections for the Muslim community in Indonesia. Here, bringing Islamic law closer to the authorities does not necessarily have a negative connotation. However, this method is considered a strategic means of protecting the rights of vulnerable groups. For example, in protecting the rights of wives married in secret, which are often ignored by their husbands, the state can provide legal safeguards

through various instruments.(Lubis, Asmuni, Mukarrom, et al., 2025; Lubis, Asmuni, Mukharrom, et al., 2025; Masyithoh et al., 2021)

At this point, however, it must be acknowledged that codification is indeed a colonial legacy. Interestingly, codification in the Indonesian context has actually been used to revive and strengthen the position of Islamic law, rather than to weaken it. It is true that codification raises certain problems, particularly the idea of legal uniformity, whereas previously, communities could choose the legal opinions that were most convenient or beneficial to them (Shehada, 2009). Moreover, legal codification is often closely tied to state political interests (Mawardi & Riza, 2019), which can sometimes lead people to move farther away from applying Islamic law to resolve the cases they face. Nevertheless, what needs to be emphasized is that legal codification, such as the KHI, should be understood as an effort to position Islamic law as a legitimate legal reference recognized by the state to respond to modernity,(Zayyadi et al., 2023) while also providing clearer legal certainty and protection for women and children—who have often been disadvantaged due to arbitrary legal choices in case resolution. Thus, the decolonization of Islamic family law in Indonesia can be seen as following the path proposed by El Fadl, who does not view the colonial legacy as entirely negative, while at the same time presenting the state as actively protecting the Muslim community. Thus, in the analysis, decolonization efforts appear as accommodative decolonization.

The Continuity of Decolonization of Indonesian Islamic Family Law Post-Reformation

In the context of law, efforts at decolonization in Muslim countries appear difficult to implement. This can be seen, for example, in the context of Algeria, where family and property laws were engineered to facilitate colonial domination. Gozzi notes that the Islamic legal system in Algeria was essentially engineered by France and used as a tool to maintain inequality between the Muslim population and French citizens. In the context of property, for example, waqf was dismantled by decrees issued in 1844 and 1858 to enable the transfer of Muslim land to European settlers.(Ghozali, 2024, p. 54) Moreover, the codification of colonial versions of Islamic law, such as the 1916 Morand project, further produced family laws that continued to influence Algeria after independence, demonstrating how deeply colonial traces are embedded in the modern laws of Muslim countries.(Ghozali, 2024, p. 55) This colonial legacy shaped the trajectory of postcolonial Muslim countries, including their

understanding of legal modernization. The Algerianization process after independence was not entirely free of colonial legal patterns, as the new state inherited French administrative logic and legal structures.(Ghozali, 2024, p. 62) In fact, even Muslim nationalism could never escape colonialism because postcolonial states were built within a framework designed by colonialism.(Ghozali, 2024, p. 63)

Other Muslim countries experienced similar situations. Since Muslim countries were established, coloniality has continued through the internalization of Western legal values by the national elite. Wang notes that Turkey, under Atatürk, abolished the caliphate, closed Sharia courts, and adopted the Swiss Civil Code. In contrast, Egypt and Tunisia imitated the French and Italian models of legislation to the extent that Sharia covers only family law.(Yongbao, 2024) At this point, the coloniality of knowledge phase occurred, whereby Muslim elites considered modernity achievable only through the imitation of Western law, ultimately transforming the legal structure of the state into an arena of self-colonization, where Muslim rulers inherited the colonial logic that positioned Sharia as a traditional entity and a potential obstacle to progress. If so, colonialism did not end with the colonial period; it continues to shape the legal structures of modern Muslim states, influencing how they understand, regulate, and negotiate the position of Islamic law within the national legal order. What Saleymah said, that the term Islamic law is a colonial knowledge construct, because in Islam only the terms al-fiqh al-Islamiy and shari'ah are known, is relevant here.(Salaymeh, 2021)

In the context of Indonesian Islamic family law, can decolonization be revived through state policy? Although Indonesia is not an Islamic state, the state has issued various policies related to Islamic family law. This demonstrates that the state continues to ensure the supremacy of Islamic law, which cannot be overridden by other laws, in resolving Islamic family law cases. Islamic family law continues to be shaped by the state in accordance with the legal protection needs of the Muslim community. The following are examples of state policies regulating the marriages of Muslim communities in Indonesia. These policies have succeeded in creating a new configuration or face of Indonesian Islamic family law with a spirit that is more favorable to women and children. This condition further strengthens the position of Islamic family law within the state. This is very different from colonial rules, which were only intended to control society, not to protect Muslim communities.

The Supreme Court, through the Religious Chamber, has issued numerous Supreme Court Circular Letters (SEMA) from 2012 to 2022 as guidelines for judges in the Religious Court in their practice. These SEMAs are considered important instruments for reorganizing the practice of Islamic marriage law to make it more uniform and controlled. One crucial example is the amendment to SEMA No. 3 of 2015 (Religious Chamber Formulation No. 8), which was later refined in a subsequent formulation, providing access to marriage validation for Indonesian citizens who were married abroad but did not register with the Indonesian Embassy, or who registered late after returning to Indonesia. This formulation practically shifts the issue of marriage from a purely “formal administrative” matter to one of protecting the constitutional rights of Muslim families, with the Religious Court as the central institution authorized to validate the legality of such marriages. Amendments to SEMA No. 2 of 2019. The formulation of the Religious Chamber in point 1, letter e, states that requests for annulment of marriage after the marriage has ended due to death must be declared inadmissible, unless there is evidence of bad faith from the outset. In addition, SEMA directs judges to exercise greater caution in divorce cases, including when assessing formal claims that could harm one party. These formulations not only limit the scope for legal manipulation but also strengthen the ethical dimension of marriage, which, in many respects, aligns with the principle of *maslahah* in Islamic legal tradition.

The Ministry of Religious Affairs has also issued several key policies to regulate the administration and registration of Muslim marriages. These regulations can take the form of Minister of Religious Affairs Regulations (PMA), Minister of Religious Affairs Decrees (KMA), and Circular Letters from the Directorate General of Islamic Community Guidance (SE Dirjen Bimas Islam). PMA is more general and normative, serving to implement laws and government regulations in the religious field. KMA is primarily a stipulation that determines matters of an operational or administrative nature. SE is internal, instructional, or technical in nature. For example, the Minister of Religious Affairs Regulation Number 30 of 2024 provides technical guidelines for marriage registration while still adhering to the KHI and other Islamic legal rules used as guidelines for marriage registration. There is also SE Number P-005/DJ.III/Hk.00.7/10/2021, which regulates the postponement of a husband’s remarriage during his wife’s *iddah* period in the event of a *talak raj’iy* (Sam’un & Hadi, 2023). In essence, the state’s reform of Islamic law does not abandon *fiqh*. In other words, *fiqh* remains the primary norm in lawmaking while also accounting for flexibility and benefit.

The above policy, which originated at the state level, can be regarded as a form of accommodative decolonization. This refers to El Fadl's argument, which does not reject the reform of Islamic law. The above policy is not a move to corner Islamic law, but to bring back a more accommodative and responsive face of Islamic law towards the protection of vulnerable groups, especially women and children. In this position, the author affirms Muzakkir's argument that some Islamic turath legacies are unproductive. In this way, Muzakkir emphasizes that it is inappropriate to position turath as a perfect historical legacy ready to be used to heal modern wounds. (Muzakkir, 2023, p. 11) What Muzakkir expresses clearly supports the steps of Islamic legal reform, as has happened in Indonesia, where it is also part of decolonization.

The question that then arises is whether the continuation of decolonization leaves problems behind. The answer is yes in complex factual cases. This happens, for example, when there is a secret polygamous marriage, whereas currently the Religious Court is no longer allowed to grant requests for the legalization of secret polygamy. This becomes problematic when the man refuses to divorce his second wife, whom he married unofficially, while the wife seeks to escape a relationship that cannot protect her and her children, as in the case of Inara Rusli (Nurrijal, n.d.). Similarly, proving a marriage based solely on formal evidence can also be problematic. Cases of unregistered remarriage, where the husband has entered into a legal marriage without the knowledge of his former wife, become complicated when dealing with Islamic family law in Indonesia. In this case, formal evidence is indeed strong, but the judge's interpretation, which takes into account the force of traditional law, can override it to guarantee legal protection for women and children, as happened in the Bima Religious Court. (Wahyudi & Rohmaniyah, 2019) In these two cases, the judge's courage in exercising *ijtihad* became urgent in order to go beyond the letter of the law (Ramadhan & Muslimin, 2022). Thus, even though the decolonization of Islamic law seeks to bring its power to bear in regulating society, in some respects, it still encounters problems that must be resolved through more progressive legal reforms that favor women.

The decolonization of Islamic family law in Indonesia can also be understood through Hallaq's firm rejection of transforming classical *fiqh* into a modernized version of *fiqh*. From this perspective, decolonization seeks to restore Islamic law to a form that remains untouched by the forces of modernization. In that sense, such an effort may lean toward a more conservative vision of family law, as it prioritizes preserving established *fiqh* traditions

rather than reshaping them. Within this framework, the argument that reviving Islamic law is only possible by first uncovering the colonial and nationalist foundations that have “weakened the function of sharia in all aspects of life,” and then rebuilding its authority within a body of knowledge liberated from colonial influence, becomes a key lens for understanding this particular model of decolonization. (Yongbao, 2024, p. 383)

Building on the previous argument, this position maintains that arguments rejecting the modernization of Islamic family law in Indonesia—and instead upholding classical *fiqh* as the authoritative doctrine to be applied—can be understood as forms of decolonization. Such a stance is not only an effort to resist the influence of modernity within *fiqh*, but also a way of reaffirming the perspective of Indonesia’s indigenous Muslim communities, who have long relied on *fiqh* as their primary reference in resolving legal matters. In this context, the outcomes of *Bahtsul Masail* forums—regular scholarly deliberations on Islamic legal issues held by Islamic boarding schools and administrators of Nahdlatul Ulama—may be interpreted as part of this decolonizing process in Indonesian Islamic family law. Fundamentally, the issuance of a *fatwa* serves as a mechanism for decolonizing Islamic family law.

One example of an important issue addressed in a decolonial spirit is divorce outside the court. Administratively, divorce among Muslims in Indonesia must be carried out in court to obtain legal certainty. This rule, within El Fadl’s paradigm, which does not reject renewal, reflects an accommodative form of decolonization. However, the majority disagree with this model because it is inconsistent with *fiqh* and significantly affects the calculation of the *iddah* period, thereby illustrating their attitude towards the modernization of Islamic family law. This is evident in the decision of the Bahstul Masail Nahdlatul Ulama North Jakarta Institute, which explicitly rejects the requirement that divorce be conducted before a judge, as stipulated in the KHI, because the *fiqh* of the four madhhabs does not require divorce to be conducted before a court. (*Putusan LBMNU Jakut soal Cerai Talak dalam Kompilasi Hukum Islam*, n.d.)

Efforts to decolonize Islamic family law in Indonesia using the Hallaq school of thought have been practical through the formulation of Islamic laws from discussions or meetings of scholars through fatwa institutions of several Islamic organizations, such as Nahdlatul Ulama through Bahtsul Masail, Muhammadiyah through the Muhammadiyah Tarjih Council, Persis through fatwa institutions, the Indonesian Ulema Council, and so on.

The products of Islamic legal thought that emerged from major Islamic boarding schools in Indonesia, such as Lirboyo, Ploso, Sidogiri, and others, have provided a range of options. This means they are moving in a decolonial context, in the sense of rejecting the singularity or codification of laws that are reductive and fail to reflect the flexible and dynamic nature of *fiqh*.

Considering this fact, this condition cannot deny that through them, the indigenous Muslim perspective in discussing Islamic legal issues is very strong. This diversity of perspectives is clearly part of the decolonial movement, which opposes a form of unification considered not to represent *fiqh* relevant to the needs of the Indonesian Muslim community. However, we cannot deny that specific characteristics of their fatwas support the reform of Indonesian Islamic family law. This can be seen, for example, in the fatwa declaring *siri* marriages haram issued by Nahdlatul Ulama (*Bahtsul Masa'il NU Sumbar*, n.d.) and Muhammadiyah, ("Hukum Nikah Sirri," n.d.) which is referred to as a *ta'yidiy* fatwa because it reinforces state policy or supports the reform of Islamic family law for the public good. (Asrorun Niam Sholeh, 2024, p. 22)

This explanation shows that the decolonization of Islamic family law in Indonesia is still unfolding in two main forms: first, through policies issued by the government—whether by the Supreme Court or the Ministry of Religious Affairs—and second, through fatwas produced by various Islamic organizations and pesantren-based fatwa bodies. The first form illustrates an effort to strengthen *fiqh* norms within state law, even if that requires modifying them. This approach serves to gradually shift away from colonial legal legacies that have long been firmly embedded in the resolution of family law cases. The second form shows that *fiqh* continues to play a dominant role in addressing legal issues not widely regulated by state policy, while also functioning as a form of critique of the state's version of Islamic law.

CONCLUSION

The decolonization of Indonesian Islamic family law takes two forms. First, it adopts an accommodative approach, evident in the state's reform of Islamic family law, which continues to treat fiqh norms as guidelines, in line with El Fadl's argument for the decolonization of Islamic law. Second, it appears in the form of legal fatwas issued by various Islamic community organizations that are accommodating or maintain traditional Islamic legal doctrines, reflecting the application of El Fadl and Hallaq's ideas of Islamic legal decolonization. At this point, the author argues that efforts to decolonize Islamic family law have succeeded in establishing Islamic law as the primary reference for its development. This effort continues through the state's role as a policymaker and the ulama's role as guardians of the Islamic legal tradition. However, by tracing the development of Islamic family law in Indonesia, the state has played a significant role in shaping public policy, promoting norms that decolonize Islamic family law and continue to advocate for legal protections for vulnerable groups. At this point, the article offers a fairly holistic picture of efforts to decolonize Islamic family law in Indonesia. It clearly shows that decolonization has been underway for a long time, even though it has often been framed as legal reform. However, this study does not explore in depth how fatwas in Indonesia function as forms of decolonization within Islamic family law. For that reason, this topic remains open and could be examined more thoroughly in future research.

REFERENCES

- Akbar, N. A. & Yuwanto. (2025). Decolonizing Environmental Law: Laudato Si' and Al-Mizan as Political-Legal Paradigms for Environmental Justice. *IOP Conference Series: Earth and Environmental Science*, 1537(1), 012057. <https://doi.org/10.1088/1755-1315/1537/1/012057>
- As'ad, M., Zainuddin, M., & Hady, M. S. (2023). The Western Perspective on Islam: Reading the Legacy of Snouck Hurgronje on Islamic Studies. *Teosofi: Jurnal Tasawuf Dan Pemikiran Islam*, 13(1), 80–104. <https://doi.org/10.15642/teosofi.2023.13.1.80-104>
- Asrorun Niam Sholeh. (2024). *Menghidupkan Fatwa: Dinamisasi Fatwa Untuk Kemaslabatan Bangsa*. Sekretariat Komisi Fatwa.
- Bahtsul Masa'il NU Sumbar: Nikah Sirri Haram. (n.d.). NU Online. Retrieved December 20, 2025, from <https://nu.or.id/nasional/bahtsul-masa039il-nu-sumbar-nikah-sirri-haram-PpaWW>
- Burhanudin, J. (2014). The Dutch Colonial Policy on Islam: Reading the Intellectual Journey of Snouck Hurgronje. *Al-Jami'ah: Journal of Islamic Studies*, 52(1), 25–58. <https://doi.org/10.14421/ajis.2014.521.25-58>
- Buzama, K. (2012). Pemberlakuan Teori-Teori Hukum Islam di Indonesia. *Al-'Adalah*, 10(4), 467–472.
- Deranger, E. T., Sinclair, R., Gray, B., Mcgregor, D., & Gobby, J. (2022). Decolonizing Climate Research and Policy: Making space to tell our own stories, in our own ways. *Community Development Journal*, 57(1), 52–73. <https://doi.org/10.1093/cdj/bsab050>
- Duvenage, A. (2024). *Roads to Decolonisation: An Introduction to Thought from the Global South*. Routledge. <https://doi.org/10.4324/9781003468400>
- Esfahani, A. S., & Alihosseini, A. (2025). China and the global south: A postcolonial reading of the northern-led global order. In E. Yazdani (Ed.), *Implications, Prospects, and Challenges in China's Global South Strategy* (pp. 395–429). IGI Global. <https://doi.org/10.4018/979-8-3373-0938-5.ch014>
- Faruque, M. U. (2024). Decolonizing the Muslim mind: A philosophical critique. *Philosophical Forum*, 55(4), 353–375. <https://doi.org/10.1111/phil.12378>
- Federspiel, H. M. (2022). European Colonialism and Southeast Asian Islam. In K. Aljunied (Ed.), *Routledge Handbook of Islam in Southeast Asia* (pp. 128–143). Taylor and Francis. <https://doi.org/10.4324/9780429275449-9>
- Ghozali, N.-E. (2024). The Inadequacies of the Algerian Political System—Or the Impossibility of a Democratic Transition. In G. Gozzi, *The Islamic World and the Mediterranean* (1st ed., pp. 89–115). Routledge. <https://doi.org/10.4324/9781003431206-8>
- Gozzi, G. (2025). Colonial Law and Muslim Law. In G. Gozzi (Ed.), *The Islamic World and the Mediterranean: From Colonial Legacy to Political and Cultural Interdependence* (pp. 53–66). Taylor and Francis. <https://doi.org/10.4324/9781003431206-8>
- Hukum Nikah Sirri. (n.d.). *MTT*. Retrieved December 20, 2025, from <https://tarjih.or.id/hukum-nikah-sirri/>

- Hussin, I. (2007a). The pursuit of the perak regalia: Islam, law, and the politics of authority in the colonial state. *Law and Social Inquiry*, 32(3), 759–788. <https://doi.org/10.1111/j.1747-4469.2007.00076.x>
- Hussin, I. (2007b). The pursuit of the perak regalia: Islam, law, and the politics of authority in the colonial state. *Law and Social Inquiry*, 32(3), 759–788. <https://doi.org/10.1111/j.1747-4469.2007.00076.x>
- Kunnummal, A. (2023). Islamic Liberation Theology and Decolonial Studies: The Case of Hindutva Extractivism. *Religions*, 14(9). <https://doi.org/10.3390/rel14091080>
- Kusmayanti, H., Mulyanto, D., Yuanitasari, D., & Assalihee, M. (2024). Contradiction Implications of the Receptie a Contrario Theory in Minangkabau Inheritance. *Justicia Islamica*, 21(2), 247–266. <https://doi.org/10.21154/justicia.v21i2.8859>
- Lawan, M. (2014). Islamic law and legal hybridity in nigeria. *Journal of African Law*, 58(2), 303–327. <https://doi.org/10.1017/S0021855314000151>
- Legault, G., & Bleau, D. (2025). Indigenizing or Appropriating? Navigating the Boundaries of Institutional Decolonization. *Capitalism, Nature, Socialism*, 36(2), 71–91. <https://doi.org/10.1080/10455752.2024.2445586>
- Lubis, R. R., Asmuni, A., Mukharrom, T., Seroza, C. B., & Kahar, A. (2025). Towards Legal Justice: Expanding Criteria for Obligatory Bequests in Unregistered Wives in Polygamous Marriages. *Al-Ahkam*, 35(1), 117–146. <https://doi.org/10.21580/ahkam.2025.35.1.25358>
- Lubis, R. R., Asmuni, Mukharrom, T., Seroza, C. B., & Irfan, M. (2025). Reconstruction of Obligatory Bequest in the Perspective of the Objectives of Islamic Law: Contextualizing Islamic Law in a Case Study of The Secret Wife in Polygamous Marriage. *Jurnal Ilmiah Mizani*, 12(1), 64–85. <https://doi.org/10.29300/mzn.v12i1.3809>
- Masyithoh, N. D., Suteki, Yunanto, Ernawati, B., & Hidayati, N. (2021). Unregistered Polygamous Marriage of Civil Servants and its Implication for Wives' Financial Problem, Social Fate and Loss of Children's Welfare. *International Journal of Early Childhood Special Education*, 13(2), 312–318. <https://doi.org/10.9756/INT-JECSE/V13I2.211067>
- Mawardi, A. I., & Riza, A. K. (2019). WHY DID KOMPILASI HUKUM ISLAM SUCCEED WHILE ITS COUNTER LEGAL DRAFT FAILED? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia. *JOURNAL OF INDONESIAN ISLAM*, 13(2), 421–453. <https://doi.org/10.15642/JIIS.2019.13.2.421-453>
- Mfecane, S. (2024). Decolonizing masculinities. In *The Routledge Handbook of Feminist Anthropology*. Routledge.
- Mignolo, W. D. (2011). *The Darker Side of Western Modernity: Global Futures, Decolonial Options*. Duke University Press. <https://doi.org/10.2307/j.ctv125jqbw>
- Momen, A., Ebrahimi, M., & Yusoff, K. (2024). British Colonial Education in the Indian Subcontinent (1757-1858): Attitude of Muslims. *Journal of Islamic Thought and Civilization*, 14(1), 17–39. <https://doi.org/10.32350/jitc.141.02>

- Moosavi, L., & Alatas, S. F. (2024). The intellectual biography of Syed Farid Alatas: Hegemonic orientations, epistemic decolonisation and the School of Autonomous Knowledge. *Current Sociology*, 72(6), 1163–1184. <https://doi.org/10.1177/00113921231194094>
- Muzakkir, M. R. (2023). *Dekolonisasi: Metodologi Kritis dalam Studi Humaniora dan Studi Islam*. Yayasan Bentala Tamaddun Nusantara.
- Muzakkir, M. R. (2025). *Studi Islam dan Masyarakat Muslim Kontemporer: Dari Neo-Tradisional, Liberal, Sampai Dekolonial*. Suara Muhammadiyah.
- Mwakimako, H. (2011). The historical development of muslim courts: The kadhi, mudir and liwali courts and the civil procedure code and criminal procedure ordinance, c. 1963. *Journal of Eastern African Studies*, 5(2), 329–343. <https://doi.org/10.1080/17531055.2011.571392>
- Nasution, A. I., & Lutfi, M. (2025). Decolonizing Constitutional Democracy: Reconfiguring Indonesia's Presidential Election System from the Perspective of Siyasa Syar'iyah. *Tribakti: Jurnal Pemikiran Keislaman*, 36(2), 239–258. <https://doi.org/10.33367/9jfh0ph27>
- Nurlaelawati, E. (2010). *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts*. Amsterdam University Press.
- Nurrijal, M. A. (n.d.). *Awal Mula Inara Rusli Nikahi Siri Insanul Fahmi gegara Tertipu Status Single*. detikjogja. Retrieved February 21, 2026, from <https://www.detik.com/jogja/berita/d-8233744/awal-mula-inara-rusli-nikahi-siri-insanul-fahmi-gegara-tertipu-status-single>
- Putusan LBMNU Jakut soal Cerai Talak dalam Kompilasi Hukum Islam*. (n.d.). NU Online. Retrieved November 25, 2025, from <https://jakarta.nu.or.id/bahtsul-masail/putusan-lbmnu-jakut-soal-cerai-talak-dalam-kompilasi-hukum-islam-69KOK>
- Quijano, A. (2000). Coloniality of Power and Eurocentrism in Latin America. *International Sociology*, 15(2), 215–232. <https://doi.org/10.1177/0268580900015002005>
- Ramadhan, S., & Muslimin, J. M. (2022). Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought. *Juris: Jurnal Ilmiah Syariah*, 21(1), 89–100. <https://doi.org/10.31958/juris.v21i1.5723>
- Rifqi, M. J. (2021). The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory. *Millah: Journal of Religious Studies*, 217–252. <https://doi.org/10.20885/millah.vol21.iss1.art8>
- Rizvi, S. (2025). Decolonising 'Islam.' In F. Peter, P. Schrode, & R. Stegmann (Eds.), *Conceptualizing Islam: Current Approaches* (pp. 95–107). Taylor and Francis. <https://doi.org/10.4324/9781003259350-8>
- Rofiq, A. (2013). *Hukum Perdata Islam di Indonesia*. PT Raja Grafindo Persada.
- Rohmana, J. A. (2018). *Informan Sunda di Masa Kolonial: Surat-Surat Haji Hasan Mustapa untuk C. Snouck Hurgronje dalam Kurun Waktu 1894-1923*. Octopus Publishing.
- Rosyadi, I. (2022). *Rekonstruksi Epistemologi Hukum Keluarga Islam*. Kencana.

- Salaymeh, L. (2021). Decolonial Translation: Destabilizing Coloniality in Secular Translations of Islamic Law. *Journal of Islamic Ethics*, 5(1–2), 250–277. <https://doi.org/10.1163/24685542-12340054>
- Sam'un, S., & Hadi, M. N. (2023). Husband's 'Iddah in Indonesian Islamic Law Context: Insights from the Fatwa Approach of the Indonesian Women's Ulema Congress. *Al-Hukama': The Indonesian Journal of Islamic Family Law*, 13(2), Article 2. <https://doi.org/10.15642/alhukama.2023.13.2.297-323>
- Seedat, M. (2021). Signifying Islamic psychology as a paradigm: A decolonial move. *European Psychologist*, 26(2), 131–141. <https://doi.org/10.1027/1016-9040/a000408>
- Shehada, N. (2009). Flexibility versus rigidity in the practice of islamic family law. *Political and Legal Anthropology Review*, 32(1), 28–46. <https://doi.org/10.1111/j.1555-2934.2009.01022.x>
- Smith, L. T. (1999). *Decolonizing Methodologies: Research and Indigenous People*. Zed Books Ltd.
- Sulasman. (2017). The Process of Decolonization on Islamic Law in Indonesia: A Historical Perspective. *Tamarikh : Journal of Historical Studies*, 8(2), 131–142. <https://journals.mindamas.com/index.php/tawarikh/article/viewFile/822/780>
- Sulasman, H. (2018). The Islamic law in Indonesia in historical perspective. *Islamic Quarterly*, 62(2), 247–269.
- Syawqi, A. H. (2021). Perkembangan Politik Zaman Hindia Belanda dan Pengaruhnya Terhadap Hukum Islam. *Al'Adalah*, 24(1), 29–43. <https://doi.org/10.35719/aladalah.v24i1.69>
- Thambinathan, V., & Kinsella, E. A. (2021). Decolonizing Methodologies in Qualitative Research: Creating Spaces for Transformative Praxis. *International Journal of Qualitative Methods*, 20, 16094069211014766. <https://doi.org/10.1177/16094069211014766>
- Wahyudi, M. I., & Rohmaniyah, I. (2019). Interpretasi Berkeadilan dan Local Wisdom dalam Kasus Pembatalan Nikah: Dilema Kasus Rujuk Bawah Tangan di Bima. In L. Holden & E. Nurlaelawati (Eds.), *Nilai-Nilai Budaya dan Keadilan Bagi Perempuan di Pengadilan Agama Indonesia: Praktik Terbaik* (pp. 93–118). SUKA-Press in cooperation with Pusat Pengarusutamaan Gender dan Hak Anak (PPGHA/PSW) UIN Sunan Kalijaga and GCRF – Oxford University.
- Wahyuni, S. (2022). Legal Transplant: Influence of the Western Legal System in the Muslim Countries. *Justicia Islamica*, 19(1), 21–37. <https://doi.org/10.21154/justicia.v19i1.2756>
- Widjajanto, A., Astawa, I. G. P., & Rulyandi, M. (2025). Decolonising restorative justice in Indonesia: A comparative study across Customary Law traditions. *Legality : Jurnal Ilmiah Hukum*, 33(2), 470–492. <https://doi.org/10.22219/ljih.v33i2.40481>
- Woodward, M. (2025). Paradigms, Models, and Counterfactuals: Decolonizing the Study of Islam in Indonesia. *Studia Islamika*, 32(1), 101–135. <https://doi.org/10.36712/sdi.v32i1.46005>
- Yongbao, W. (2024). The Impact of Colonialism and Nationalism on the Marginalization of Islamic Law in the Muslim World. *Malaysian Journal of Syariah and Law*, 12(2), 375–387. <https://doi.org/10.33102/mjssl.vol12no2.653>

Zayyadi, A., Ridwan, Hidayat, A., Ubaidillah, & Masuwd, M. A. (2023). Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia. *Al-Manahij: Jurnal Kajian Hukum Islam*, 17(2), 249–262.
<https://doi.org/10.24090/mnh.v17i2.7584>

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RECONSTRUCTION OF DISABILITY-FRIENDLY NATIONAL FIQH: A PARADIGM TRANSFORMATION FROM RUKHSHAH TO ĀZIMAH

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ABSTRACT

This article examines the reconstruction of disability-friendly *fiqh kebangsaan* (national Islamic jurisprudence) through a paradigmatic shift from the *rukhsab* (legal concession) approach to *‘azimah* (normative obligation) within the context of the Indonesian nation-state. Prevailing discourses on disability in classical Islamic jurisprudence predominantly frame persons with disabilities as recipients of individual dispensations, resulting in a charity-based approach that inadequately addresses systemic discrimination embedded in public policy, employment, and social institutions. Employing a normative-critical analysis of classical *fiqh* texts, legal maxims, national regulations, and international human rights instruments—particularly the *Convention on the Rights of Persons with Disabilities* (CRPD)—this study argues that the *rukhsab* paradigm must be transformed into an *‘azimah*-oriented framework that positions the state as an active duty-bearer in guaranteeing disability rights. The findings reveal three major insights: first, legal maxims such as *al-mashaqqah tajlib al-taysir* and *al-darar yuzal* should not be narrowly interpreted as individual exemptions but rather as normative mandates for inclusive public policies; second, classical Islamic political jurisprudence has implicitly articulated state responsibility toward vulnerable groups, although this dimension has not been systematically developed in contemporary *fiqh* discourse; and third, the integration of *fiqh kebangsaan* with principles of social justice and international human rights law produces a jurisprudential model oriented toward empowerment rather than benevolence. This article concludes that the *‘azimah* approach is more contextually relevant to Indonesia and aligns with both *maqāṣid al-shar‘ah* and substantive justice. Policy recommendations include strengthening derivative legislation of the Disability Law, allocating inclusive public budgets, and enhancing the institutional authority of the National Disability Commission.

Keywords: *fiqh kebangsaan*, disability, *rukhsab*, *‘azimah*, social justice, disability rights.

ABSTRAK

Artikel ini menganalisis rekonstruksi fikih kebangsaan ramah difabel melalui transformasi paradigma dari pendekatan *rukhsab* (keringanan) menuju *‘azimah* (kewajiban normatif) dalam konteks negara-bangsa Indonesia. Selama ini, fikih disabilitas dalam tradisi klasik cenderung menempatkan penyandang disabilitas sebagai subjek penerima dispensasi individual, sehingga bersifat karitatif dan kurang menyentuh akar diskriminasi struktural yang dialami difabel dalam ruang publik, dunia kerja, dan kebijakan negara. Dengan menggunakan pendekatan normatif-kritis terhadap teks fikih klasik, kaidah fikih, serta regulasi nasional dan instrumen hak asasi manusia internasional, khususnya *Convention on the Rights of Persons with Disabilities* (CRPD), artikel ini menunjukkan bahwa paradigma *rukhsab* perlu ditransformasikan menjadi *‘azimah* yang mewajibkan negara hadir secara aktif sebagai penjamin hak difabel. Hasil kajian mengungkapkan tiga temuan utama: pertama, kaidah fikih seperti *al-masyaqqah tajlib al-taysir* dan *al-darar yuzal* tidak semestinya dipahami sebatas dispensasi individual, melainkan sebagai mandat kebijakan publik yang inklusif; kedua, fikih politik klasik sebenarnya telah meletakkan dasar kewajiban negara dalam melindungi kelompok rentan, namun belum terartikulasikan secara sistematis dalam kerangka hukum kontemporer; ketiga, integrasi fikih kebangsaan dengan prinsip keadilan sosial dan HAM menghasilkan model fikih yang berorientasi pada pemberdayaan, bukan belas kasihan. Artikel ini menegaskan bahwa pendekatan *‘azimah* lebih relevan dengan konteks Indonesia serta sejalan dengan *maqāṣid al-syar‘ah* dan keadilan substantif. Studi ini merekomendasikan penguatan legislasi turunan UU Disabilitas, alokasi anggaran inklusif, dan optimalisasi peran Komisi Nasional Disabilitas sebagai implikasi kebijakan dari rekonstruksi fikih kebangsaan ramah difabel.

Kata kunci: fikih kebangsaan, disabilitas, *rukhsab*, *‘azimah*, keadilan sosial, hak penyandang disabilitas.

INTRODUCTION

In contemporary social discourse, the issue of concern for people with disabilities is increasingly emerging, marked by a change in terminology from the initial term “disability” to “disability” (*Different Ability*) (Karlina, 2023). This change is not just a linguistic euphemism, but rather a deconstructive attempt to counter the stigmatization and discrimination inherent in the group. However, language refinement alone is not enough as an indicator of substantive partisanship. More than that, this euphemism is expected to be a catalyst for the collective realization that physical differences are Divine decrees—not a hierarchy of human perfection, but a diversity that must be accepted with full respect (Ritonga, 2024). In this context, Islam offers an inclusive theological perspective, affirming that plurality is *sunnatullah* that must be managed with the principle of *ta’aruf* (knowing each other).

Islam expressly rejects the reduction of human values based on physical perfection, as stated in Q.S. al-Hujurat (49:13) and various hadiths of the Prophet which emphasize that a person’s glory lies in piety and righteous deeds. (Muslim, 1955) By denying physical standards as a parameter of individual qualities, Islam implicitly provides protection for the rights of people with disabilities, prohibiting any form of humiliation or marginalization of them. This principle is in line with the spirit of equality that is the foundation of modern human rights, while strengthening the argument that religion and human rights can synergize in building inclusivity (Prasetyo, 2024).

The synergy between religious values and global commitment to the rights of people with disabilities needs to be strengthened by the state’s role as an actor in ensuring justice. Internationally, the issue of disability has gained legitimacy through a series of UN documents (Farhan & Suherman, 2024), ranging from *the Declaration on the Rights of Mentally Retarded Persons* (1971), the Declaration on the Rights of Disabled Persons (1975), to the Convention on the Rights of Persons with Disabilities (CRPD) in 2006 (Maftuhin, 2020b). The ratification of these instruments is evidence of the world’s commitment to mainstreaming the rights of persons with disabilities, but their implementation requires state intervention through affirmative policies. This article will analyze how Islam and the state can collaborate in realizing holistic protection for people with disabilities, integrating spiritual values with structural responsibilities

In Indonesia, the issue of protecting the rights of people with disabilities is still inferior to the issue of human rights protection. As a result, the state’s attention to the rights

of people with disabilities is not as much as its attention to the issue of other human rights enforcement. This fact does not stand alone (Umam & Arifin, 2019). One of the factors that causes the state to pay more attention to other human rights issues compared to the issue of the rights of people with disabilities is due to the lack of pressure from powerful countries and the United Nations on the issue of rights of people with disabilities in Indonesia. They do not consider the neglect of the rights of persons with disabilities as a gross human rights violation (Maftuhin, 2020b).

Another factor that also affects is the cultural and social conditions in Indonesia that do not encourage independence for people with disabilities. The values of collectivism and the feudal system that are still thick in society result in people with disabilities being less visible in the public sphere. As a result, the state's attention to the rights of persons with disabilities has become less than its attention to other human rights enforcement issues (Khasri, 2020).

The Government of Indonesia has made a number of efforts to strengthen the protection of the rights of persons with disabilities. However, its implementation in the field still faces various challenges, especially related to limited resources and inadequate infrastructure (Jayanti & Marlina, 2018). This condition shows that the government's commitment has not been fully realized in effective policies. Therefore, stronger encouragement is needed, both from civil society and international pressure, to ensure that governments are more serious in upholding the rights of persons with disabilities in accordance with global standards.

On the other hand, fiqh as a product of Islamic thought that is a reference for Indonesian Muslims has not had a significant impact on the empowerment of people with disabilities. The discourse contained in the fiqh still places them as weak people who deserve mercy through rukhshah solutions, and ignores their need to be treated equally with human beings in general (Syauqi & Prasetyawan, 2024).

This study will analyze critically and integratively the Islamic values contained in fiqh and the role of the state in providing protection for the rights of persons with disabilities. In particular, this article is expected to encourage a disability-friendly, more inclusive and equitable reconstruction of national fiqh by transforming the paradigm from the rukhshah approach as obtained in the majority of fiqh works to the azimah approach.

RESEARCH METHOD

This study employs **normative legal** research with a conceptual and philosophical approach, situating disability discourse within Islamic jurisprudence and the framework of the modern nation-state (Ariawan, 2013). Normative legal research is chosen because the central issue examined in this article concerns the reconstruction of legal norms, principles, and doctrines rather than the measurement of empirical behavior. Accordingly, the research focuses on analyzing legal concepts, jurisprudential paradigms, and regulatory frameworks that shape the protection of the rights of persons with disabilities.

The primary sources of this research consist of classical Islamic legal texts (*kitab al-turāth*), particularly works on *usul al-fiqh*, *fiqh al-‘ibādāt*, and *fiqh siyāsah*, which articulate the doctrines of *rukhsah*, *‘azimah*, and state responsibility toward vulnerable groups. These sources are examined to identify the dominant paradigm governing disability within traditional *fiqh* discourse. In addition, statutory regulations related to disability rights in Indonesia—most notably Law No. 8 of 2016 on Persons with Disabilities—are analyzed alongside relevant international legal instruments, especially the Convention on the Rights of Persons with Disabilities (CRPD), as comparative normative references.

This research applies three interrelated analytical approaches. *First*, a conceptual approach is employed to clarify and critically reassess key legal concepts such as *rukhsah*, *‘azimah*, *maqasid al-shari’ah*, social justice (*al-‘adālah al-ijtimā‘iyyah*), and state obligation (*mas’ūliyyah dawliyyah*). This approach enables the identification of conceptual inconsistencies in the prevailing charity-based paradigm of disability within *fiqh* discourse. *Second*, a philosophical approach is utilized to examine the ethical and teleological foundations of Islamic law, particularly how *maqasid al-shari’ah* provides normative justification for transforming individual legal concessions into structural state obligations. *Third*, a statute and comparative approach is adopted to assess the compatibility and convergence between Islamic legal principles and contemporary human rights norms governing disability inclusion.

The data analysis is conducted through qualitative normative interpretation, using methods of legal reasoning (*istinbat*) and systematic interpretation (Marzuki, 2016). Classical legal doctrines are critically read not merely as historical artifacts but as normative resources capable of being reconstructed to address contemporary structural injustice. Legal maxims such as *al-mashaqqah tajlib al-taysir* and *al-darar yuzāl* are reinterpreted from an individual-exemption framework into a policy-oriented mandate for inclusive governance. Through this

method, the study formulates a reconstructed model of *fiqh kebangsaan* that shifts the locus of obligation from persons with disabilities to the state as the primary duty-bearer.

Finally, the validity of the analysis is ensured through doctrinal consistency and normative coherence, by systematically aligning Islamic legal principles, constitutional values, and international human rights standards. This methodological design allows the study not only to critique the limitations of the *rukhsah* paradigm but also to propose a legally and theologically grounded ‘*azimah*-based framework for disability-inclusive public policy.

FINDINGS AND DISCUSSION

The State and the Protection of the Rights of Persons with Disabilities

The issue of protecting the rights of people with disabilities in Indonesia is not as loud as other human rights issues, such as freedom of opinion or women’s rights, but it does not mean that the state completely ignores their rights (Farhan & Suherman, 2024). Normatively, the principles of the rights of persons with disabilities as citizens have been recognized in various legal instruments, one of which is Law Number 39 of 1999 concerning Human Rights (HAM). Although the law does not explicitly mention the rights of persons with disabilities, its articles affirm the principle of universality of human rights that applies to all citizens, including persons with disabilities. For example, Article 29 Paragraphs (1) and (2) of this Law states that “(1) Everyone has the right to the protection of his or her personal self, family, honor, dignity, and property rights. (2) Everyone has the right to recognition before the law as a private person wherever he is” (*Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia*, n.d.). This statement is the legal basis that people with disabilities, as part of citizens, have the right to equal protection.

Of course, normative recognition alone is not enough if it is not followed by concrete implementation. Although a legal framework in the form of a law already exists, more detailed regulations are needed to ensure that the rights of persons with disabilities are effectively fulfilled. The 1999 Human Rights Law in general does guarantee the rights of persons with disabilities, but does not provide specific guarantees for the protection of rights and the fulfillment of special needs for persons with disabilities (Riyadi, 2018).

A positive development occurred when for the first time explicitly and specifically the rights of persons with disabilities were mentioned and regulated in Law Number 8 of 2016 concerning Persons with Disabilities (Tiwi, 2020). In this law, everything related to disability is regulated. Article 5 states 22 rights of persons with disabilities, 4 special rights of

women with disabilities, and 7 special rights of children with disabilities who receive protection from the state. The protection is intended to strengthen, foster the climate, and develop the potential of people with disabilities so that they form strong and independent individuals with disabilities (*Undang-Undang Republik Indonesia Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas*, n.d.).

Broadly speaking, all laws and government regulations that have been passed mandate that the state be present to provide protection of the rights of persons with disabilities in three categories: the protection of their rights in the domestic area, the guarantee of their role in the public world, and the protection of rights in the world of work (Sholihah, 2016).

The protection of the rights of persons with disabilities in the domestic area is regulated by Law Number 23 of 2004 concerning the Elimination of Domestic Violence. In this Law, there is no specific mention and there is no special article about the disabled, but the scope of the household as mentioned by article 2 in this Law guarantees all members of the household, including the disabled, to get their rights (Zulfahmi, 2024). The household as a domestic area that is closed from the outside world has the potential for violations of the rights of the weak such as women, children and the disabled.

The state also provides security guarantees and services for people with disabilities in public spaces. As a vulnerable group, people with disabilities often receive treatment that is not in accordance with their limitations. Buildings and other public facilities are mostly not built and designed for their benefit. This condition results in a loss of sense of security and comfort for people with disabilities (Ridlwan, 2013). The government through Government Regulation of the Republic of Indonesia Number 39 of 2020 provides a guarantee of the provision of decent accommodation for persons with disabilities when undergoing judicial proceedings (*Peraturan Pemerintah Republik Indonesia Nomor 39 Tahun 2020 Tentang Akomodasi Yang Layak Untuk Penyandang Disabilitas Dalam Proses Peradilan*, n.d.). In this regulation, from the provision of facilities to companions, translators, and others that make it easier for people with disabilities to process in court must be fulfilled.

In the world of work, the protection of the rights of people with disabilities is contained in Law Number 13 of 2003 concerning Manpower. This law specifically regulates the protection of the rights of workers with disabilities, starting from the period of job training to termination of employment. Article 67 of this Law states the obligation of employers who employ workers with disabilities to provide protection to them in accordance

with the conditions they experience (Rochmawati & Sonhaji, 2016). In the explanation of this article, it is stated that the form of protection that must be provided by entrepreneurs is the provision of accessibility, work tools, and personal protective equipment that suits their needs (*Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (PDF, JDIIH Kemenaker)*, n.d.). Conceptually, this law has provided comfort and security for people with disabilities at work.

On June 9, 2020, the government showed its seriousness in protecting the rights of people with disabilities by establishing the National Commission on Disability (KND) through Presidential Regulation Number 68 of 2020. This independent and non-structural commission is under and accountable to the President directly (Rosdianti, 2021). This institution is given the task of preparing activity plans, monitoring and evaluation, and advocating for the implementation of respect, protection, and fulfillment of the rights of persons with disabilities, as well as carrying out cooperation in handling persons with disabilities with related parties (*Peraturan Presiden Republik Indonesia Nomor 68 Tahun 2020*, n.d.).

Normatively, the existence of special regulations and institutions aimed at protecting the rights of persons with disabilities—such as Law Number 8 of 2016 concerning Persons with Disabilities and the establishment of the National Commission on Disabilities (KND)—should be a transformative instrument in eliminating the structural inequalities faced by these vulnerable groups. The regulation explicitly mandates the principles of equality, non-discrimination, and universal accessibility (Sholihah, 2016). However, from the perspective of the policy implementation gap, there is a significant disparity between the ideal goal of regulation and the empirical reality on the ground. Recent studies have revealed that the existence of this regulation has not substantively improved the quality of life of people with disabilities, indicating failures in the aspects of *enforcement* and *compliance* (Nisa & Dharmawan, 2025).

A critical study conducted by Annisa Amelia Putri (2024) from the Faculty of Law, Krisnadwipayana University confirmed the existence of *structural negligence* in the implementation of disability protection policies. The findings of the study reveal that corporate and governmental compliance with accessibility standards—such as the provision of *wheelchair access*, inclusive toilets, and *braille* facilities—is still partial and sporadic. Furthermore, the low absorption rate of disabled workers in the formal sector reflects systemic exclusion that is contrary to the spirit of *affirmative* action mandated by law. This

phenomenon not only indicates a violation of the law, but also reflects the cultural ableism that is still rooted in labor recruitment practices (Putri, 2024).

This reality is further confirmed through the latest empirical data released by the Central Statistics Agency (BPS) at the end of May 2025. In a job fair in Grogol Petamburan, West Jakarta, 41 companies were recorded offering 3,504 job vacancies, but zero vacancies explicitly accommodated people with disabilities (“Keluh Penyandang Disabilitas Tak Temukan Loker Di Job Fair Jakbar,” n.d.). This data not only confirms labor market discrimination, but also indicates a failure of monitoring and evaluation by the relevant authorities. In fact, within the framework of *the Convention on the Rights of Persons with Disabilities* (CRPD) that Indonesia has ratified, the state has a legal obligation to ensure equal employment opportunities. Thus, these findings show that regulatory commitments have not been balanced with adequate accountability mechanisms, so inclusive policies are only symbolic with no real impact.

This phenomenon indicates that although the legal framework already exists, its implementation on the ground is still very weak. Factors such as lack of supervision, low public awareness, and lack of sanctions for violators also contribute to the failure. As a result, many people with disabilities remain marginalized, both in terms of employment opportunities, education, and social participation. This condition shows that existing policies have not been able to create real change, so a more holistic approach is needed—not only relying on legal instruments, but also involving the social and religious values that live in society (Ramadhani, 2025).

As a country with a majority Muslim population, efforts to increase government alignment and public awareness in implementing disability-friendly policies in the world of work and public spaces need to involve a religious doctrinal approach. This is because religion, in this case Islam, has a strong influence in shaping people’s perceptions and behaviors. The integration between state policies and religious values can be an effective strategy to create an inclusive environment for people with disabilities. This approach is relevant considering that the Qur’an and Al-Sunnah as authoritative sources of Islam prioritize the principle of equality and condemn discrimination against people with disabilities (Huda, 2019).

In this context, the presence of a national fiqh that is responsive to people with disabilities can accommodate their rights as an implementation of the principles of al-’ādalah (justice) and al-takaful al-ijtimai (social concern) in Islam. National jurisprudence not only

serves as a normative basis for inclusive policies, but also strengthens the moral commitment of the community to support groups with disabilities. Thus, more serious efforts are needed from all stakeholders—including the government, religious leaders, and the community—to ensure that the existing policies are not only symbolized, but actually felt by people with disabilities in Indonesia.

Rukhshah Paradigm in Disability Fiqh

The transformation of the concept of national jurisprudence in classical literature that is responsive to people with disabilities into the framework of rukhshah in ushul fiqh is seen as a strategic approach to strengthen the legitimacy of shari’i as well as legal flexibility in fulfilling the rights of people with disabilities. If national jurisprudence functions as a normative foundation that integrates the principles of justice (*al-’adalah*) and social concern (*al-takaful al-ijtimai*), then in the classical fiqh view, the application of the rukhshah paradigm can provide a deeper theological justification for the adjustment of Islamic law in the context of disability. This is because rukhshah is not just a leniency, but a shari’a recognition that certain conditions—such as physical or mental limitations—require an adaptive legal response without sacrificing the principle of justice (Hikam, 2023).

In the theory of Ushul Fiqh, *rukhsbah* is defined as a new law that is established based on a postulate that is different from the previous legal postulate because of a reason that is justified by shari’i (Zuhair, n.d.). This definition emphasizes the change from the original law (*’azimah*) that was previously in force to a new law (*rukhsbah*). The change in the law is not just a change from one legal provision to another, but must meet two main conditions, namely: (1) the existence of the sharia postulates that underlie the change, and (2) the existence of a justifying reason (*’udzur syar’i*) that legitimizes the new law (Zuhair, n.d.).

The existence of *rukhsbah* is not a form of neglect of the provisions of sharia, but a manifestation of Islam’s flexibility in balancing legal demands with the reality of the human condition. Rukhshah actually emphasizes that Islamic sharia is built on the principles of compassion (*rahmah*) (al-Jauziyyah, 2005), ease (*taysir*), and avoidance of difficulties (*raf’ al-haraj*) (al-Zuhaili, 2006). Therefore, as Abu Ishaq al-Shatibi emphasized, the absence of *rukhsbah* in the shari’a would be contrary to *maqasid al-shari’ah* (the main purpose of the shari’a), which is the protection of five main things: religion (dīn), soul (nafs), intellect (’aql), offspring (nasl), and property (māl) (al-Shatibi, 2003). Thus, *rukhsbah* is not just a legal relief,

but an integral part of the justice and wisdom of Islamic sharia in responding to various life situations.

Based on these principles, the existence of rukhshah in fiqh literature is an inevitability based on philosophical and practical considerations. Within the framework of Islamic law, rukhshah is not merely a complement, but a concrete manifestation of the flexibility of the shari'a in responding to dynamic social realities. The study of fiqh shows that the absence of discussion of rukhshah in a legal discourse will result in incompleteness of analysis, because rukhshah functions as a balancing mechanism for basic provisions (*'azimah*). This phenomenon becomes even more evident when it highlights laws relating to vulnerable groups, such as the disabled, where jurisprudence consistently provides legal dispensations that suit their specific needs (Adib, 2025).

Moreover, the systematization of the discussion of rukhshah in the books of jurisprudence—both classical and contemporary—reflects the depth of scholarly thought in integrating the principles of *taysir* (ease) and *raf' al-haraj* (removal of difficulties) into the legal structure. The thematic presentation of rukhshah in each chapter of fiqh is not only technical, but also philosophical, because it is proof of the consistency of the sharia in realizing maqasid al-shari'ah, especially the protection of human welfare (*hifz al-nafs*) and the maintenance of the rights of marginalized groups. Thus, *rukhsbah* is not just an exception to the law, but an instrument of justice that guarantees the relevance of sharia in all times and conditions (Afridawati, 2015).

As a concrete implementation of the principle of *rukhsbah* in jurisprudence, the book *al-Umm*—the monumental work of Imam Shafi'i that is the main reference of the Shafi'i madhhab—expressly provides practical solutions for people with disabilities in performing prayer. One of the provisions reads:

الأعمى والمريض الذي لا يقدر على القيام يصلي قاعداً فإن لم يستطع فعلى جنبه (al-Shafi'i, 2007)

“People with blind disabilities and sick people who are unable to stand can pray by sitting. If you are unable to sit, you can pray lying down.”

This provision is not just a leniency, but a profound reflection of the principles of *taysir* (ease) and *raf' al-haraj* (removal of difficulties) in Islamic law. Imam Shafi'i not only sees physical limitations as a reason to abort obligations, but instead offers an alternative implementation that still maintains the essence of worship. Thus, rukhshah in this context

functions as an inclusivity mechanism that ensures that blind people can still perform prayers according to their ability, without reducing their spiritual value (Imran, 2022).

More than that, this approach also shows how classical jurisprudence has considered aspects of social justice (*al-'adālah al-ijtimā'iyah*) and the rights of people with disabilities long before the modern concept of inclusion developed. This strengthens the argument that Islamic law is dynamic and responsive to human needs, while at the same time emphasizing that rukhshah is not a form of degrading “relaxation”, but rather a respect for the shari’a for the real conditions of the ummah (Azhar, 2020).

Classical jurisprudence even developed a broader and differentiated waiver scheme for various disability conditions. As stated in the consensus of the scholars (ijma’) quoted by Ibn Qattan, there is a special recognition for certain groups of people with disabilities to obtain dispensation in the implementation of compulsory worship:

أجمع العلماء على أن الأعمى والمقعّد ومن به عاهة دائمة لهم الرخصة في ترك الجمعة والجماعة-
(Qattan, 2004)

“Scholars have agreed that the blind, the paralyzed, and those with permanent disabilities are granted relief from participating in Friday prayers and congregational prayers.”

This consensus not only demonstrates the flexibility of Islamic law, but more importantly, affirms the principle that the burden of sharia should be tailored to the capabilities of each individual.

The application of *rukhshah* in such cases emphasizes the characteristics of fiqh that always considers the real condition of human beings (*fiqh al-waqi’*). In the construction of Islamic law, this principle is not just a complement, but an integral part of the methodology of legal istinbath that is always in dialogue with social reality. The rukhshah mechanism shows how classical jurisprudence is able to respond to the diversity of human conditions without being trapped in rigid legal formalism. This is reflected in the various sharia dispensations given to people with disabilities, where anthropological considerations are the basis for granting the relief.

On the other hand, the application of *rukhshah* also maintains the basic principles of sharia so as not to burden beyond the ability (*la taklif illa bi al-wus’*). This principle is not only theologically meaningful, but contains a deep ethical dimension about the relationship between God and man (Afridawati, 2015). In the context of the disabled, rukhshah is a tangible manifestation of the principle of taysir (convenience) which is the spirit of Islamic law. Thus, this mechanism should not be understood as a form of “privilege” or “restriction”,

but as a legal recognition of the different capacities possessed by each individual, as well as proof of the elasticity of the sharia in embracing all levels of society.

The principle of *la taklif illa bi al-wus'* is not only a normative theory, but has been operationalized in the fatwas of classical scholars. For example, Al-Marghinani from Madzhab Hanafi in Al-Hidayah emphasizes that people with visual disabilities or people with paralysis are not required to attend congregational prayers in mosques if they face difficulties in access. According to him, they only need to carry out prayers independently at home, as long as the condition meets the criteria of 'uzur shar'i (obstacles recognized by sharia) (al-Marghinani, 2000). This opinion not only reflects Islamic justice, but is also relevant to the issue of modern inclusivity, where public facilities are often not friendly to people with disabilities. This also emphasizes that fiqh flexibility is not a form of reducing obligations, but an adjustment that maintains human dignity and benefit.

The flexibility of fiqh in providing *rukhsah* (relief) is not only limited to prayer for people with disabilities, but also includes various other forms of worship, such as zakat and hajj. This shows that the principle of convenience (*taysir*) in Islamic sharia is comprehensive, while still taking into account the difficulties faced by vulnerable groups. For example, Al-Kasani, an expert in Islamic law from the Hanafi school, explained that people with disabilities who do not have the ability to work are exempt from the obligation of zakat fitri. More than that, according to him, the responsibility for zakat shifts to other people—either family or community—who are obliged to issue zakat fitri on their behalf (al-Kasani, 1986). This view reinforces the concept of social solidarity in Islam, where leniency is not just liberation, but also involves the collective role of the ummah.

Similar facilities also apply in the implementation of the Hajj. For people with disabilities who experience physical or accessibility difficulties—such as the lack of transportation or friendly facilities—they are allowed to delegate Hajj to others. This opinion is supported by al-Sarakhsi in the book al-Mabsut, which states:

(al-Sarakhsi, 1993) المقعد والأعمى إذا لم يجدا محملاً يجزئهما أن ينيبا من يحج عنهما

“A paralyzed and blind person, if he does not get a vehicle or supporting facilities to perform Hajj, it is enough for him to send others to perform Hajj on their behalf.”

Thus, *rukhsah* in the Hajj is not a form of abandonment of obligations, but a sharia solution that ensures the spiritual rights of every Muslim are fulfilled according to their ability. This approach is in line with *maqasid al-shari'ah* (the goal of sharia) in safeguarding the

welfare of humans, especially people with disabilities, without sacrificing the principles of justice and equality.

Although *the rukhshah* principle reflects the sensitivity of the shari'a to human limitations, its implementation in the context of disability is often stuck in a reductive approach. This paradigm has been applied in various discussions of classical to contemporary fiqh. Vardit Rispler-Chaim in his research, *Disability in Islamic Law*, maps that the giving of rukhshah covers various aspects of life, ranging from worship, marriage, to jihad (Rispler-Chaim, 2007). These findings show that fiqh tends to offer solutions to the limitations of people with disabilities through a rukhshah approach rather than *'azimah* (original law). At first glance, this approach is seen as a form of convenience for people with disabilities in carrying out their obligations. However, if examined more deeply, *rukhsah* is actually only a short-term solution that has not touched the root of the problem.

The provision of *rukhsah* is often only in the form of a reduction in obligations (such as dispensation in worship or the elimination of zakat obligations) or adjustments to the way it is implemented. Although it seems to be alleviating (*taqlil al-taklif*), this approach ignores the fundamental problem faced by people with disabilities, namely *differential treatment* in society. In other words, *rukhsah* does not change the social structure that marginalizes people with disabilities, but rather simply allows them to carry out their obligations on a limited basis—without an inclusion effort that allows them to participate on an equal footing with non-disabled people.

The fundamental weakness of the fiqh approach to disability issues is that it focuses too narrowly on the fulfillment of individual obligations, while disability rights as part of social justice receive less attention. In addition, classical jurisprudence tends to view the subject of law as an individual, not an institution. As a result, fiqh fails to encourage the role of the state and social institutions in creating an inclusive system. In fact, without institutional involvement (such as state policies, public facilities, and employment opportunities), efforts to address the rights of persons with disabilities will only stagnate at the individual level—an inadequate approach in addressing the systemic challenges of discrimination (Maftuhin, 2020a).

Disability-Friendly National Fiqh : from Rukhsah to Ázimah

The classical fiqh paradigm that dwells on the fulfillment of individual obligations (*al-taklif al-fardi*) and ignores the role of institutions (*al-taklif al-jamā'i*) is considered to have

failed to fulfill the rights of persons with disabilities holistically. The rukhshah approach, while intended to ease the burden, actually reinforces marginalization because it does not touch structural aspects such as accessibility, employment, and political representation. Therefore, a paradigmatic reconstruction is needed towards a national fiqh that transforms the concept of rukhshah into *‘azimah*—not just providing relief, but requiring the state to create an inclusive system.

The shift from a rukhshah approach to *‘azimah* in the context of disability is not just a change in terminology, but a paradigm shift from passive accommodation to active guarantee. If rukhsah focuses on the adaptation of individuals with disabilities to an exclusive environment, *‘azimah* demands the transformation of the environment itself through state intervention. Thus, *‘azimah* is no longer interpreted as an original obligation that burdens people with disabilities, but as an obligation of the state to create conditions that allow people with disabilities to exercise their rights and obligations equally. This approach transforms the narrative of disability from an object of mercy to a sovereign subject of law, while also answering criticism of rukhsah’s failure to address systemic inequality.

The idea of national fiqh in the Indonesian context can be realized through the integration of fiqh values with the principles of social justice (*al-‘adālah al-ijtimā’iyyah*) enshrined in the constitution, such as the strengthening of Law Number 8 of 2016 concerning Persons with Disabilities. National jurisprudence no longer focuses on the provision of charitable rukhsah, but on the enforcement of *‘azimah* in the form of the state’s obligation to ensure equal access to education, health, and employment.

The discussion of classical and contemporary jurisprudence does not completely ignore the role of the state in fulfilling the rights of the vulnerable such as the disabled. In fiqh, there are several fiqh narratives that implicitly and explicitly affirm the responsibility of the state (*al-dawlah*) or public authority (*al-sultah*) in guaranteeing the basic rights of people with disabilities, especially within the framework of the concepts of *huqūq Allāh* (the public rights of Allah) and *huqūq al-‘ibād* (individual rights). For example, in al-Māwardī’s book *al-ahkām al-Sultaniyyah* (d. 450 H), it is explained that the state is responsible for providing means of living (*al-rizq*) for vulnerable groups, including the disabled, through the *mechanism of bayt al-māl* (state treasury):

وَأَمَّا الْأَرْزَاقُ الْمَوْضُوعَةُ لَهُدِهِ الْأَصْنَافِ فَإِنَّهَا تُؤْخَذُ مِنْ بَيْتِ الْمَالِ، وَإِنْ عَدِمَ بَيْتُ الْمَالِ فَالْإِمَامُ مُخَيَّرٌ
بَيْنَ أَنْ يَحْمِلَ النَّاسَ عَلَىٰ إِنْفَاقِهِمْ أَوْ يُفْرِضَهُمْ مِنْ بَيْتِ الْمَالِ إِذَا وُجِدَ وَهَذَا الْقِسْمُ يَشْتَمِلُ عَلَىٰ

الصُّعْفَاءِ وَالرِّمَى وَالْعَاجِزِينَ وَالْمَجْدُومِينَ وَالْأُولَى بِهِمْ، فَإِنَّهُمْ لَا كَسْبَ لَهُمْ وَلَا حِرْفَةَ يُعِيلُونَهَا (al-

Mawardi, 2006) .

“As for the means of living (al-arzāq) that are set for these groups (the weak and disabled), they are taken from the baitul mal (state treasury). If the state treasury is empty, the imam (ruler) can choose between obliging the community to provide for them or lending property from the baitul mal if available. This group includes the weak, the chronically ill, the underprivileged, the lepers, and people like them, because they have neither income nor work to sustain them.”

This text of al-Māwardī proves that the responsibility of the state towards the disabled is not just a modern discourse, but a principle that has been embedded in the tradition of classical Islamic law. However, the realization of this concept is often hampered by two fundamental problems: *First*, although al-Māwardī affirms the obligation of the state, the mechanism of *bayt al-māl* in contemporary systems is often not optimized for disability issues. The state treasury is allocated more for physical infrastructure projects than for inclusive social security, so that people with disabilities remain marginalized. In fact, if referring to the classification of al-Māwardī, the disabled are a group that “has neither income nor employment (*lā kasb labum wa lā hirfah yu’lūnahā*) conditions that should automatically trigger state intervention. *Second*, the responsibility of the state in the book al-ahkām al-Sultaniyyah is in line with the ‘*azīmah*’ paradigm proposed earlier. Al-Māwardī does not speak of relief (*rukhsah*) for the disabled, but rather the guarantee of rights through structural instruments (*bayt al-māl*). This reinforces the argument that Islam actually has a legal framework for a more progressive approach, but is limited by an overly individual-focused interpretation of fiqh.

This fragment of al-Māwardī is historical evidence that classical Islamic political jurisprudence has actually designed an inclusive social protection system. The problem is not in the absence of a concept, but in the failure of Muslim countries to seriously actualize it. Therefore, the reconstruction of the ‘*azīmah*’ paradigm is not a radical renewal, but a restoration of neglected Islamic principles—in which the state must be present as a guarantor of rights, not just a dispensationer.

Similarly, Ibn Qayyim al-Jawziyyah (d. 751 AH) in *I’lām al-Muwaqqi’in* affirms that the ruling authority is obliged to guarantee the basic needs of society, including accessibility for the disabled, as part of social justice:

وَالْوَلِيُّ الْأَمْرُ مُلْزَمٌ بِإِقَامَةِ الْعَدْلِ وَإِنْصَافِ الْمَظْلُومِ وَرَفْعِ الصَّيْرِ عَنِ الْمُضْطَّرِّ وَالضَّعِيفِ، وَمِنْ ذَلِكَ أَهْلُ الْحَاجَاتِ وَالْعَاهَاتِ الَّذِينَ لَا يَقْدِرُونَ عَلَى سَدِّ حَاجَتِهِمْ، فَإِنَّ مِنْ أَعْظَمِ الْعَدْلِ أَنْ يُؤْمِنَ لَهُمْ سَبِيلَ الْعَيْشِ وَالْقُدْرَةَ عَلَى حَوَائِجِهِمْ. (al-Jawziyyah, 2003)

“The government is obliged to uphold justice, defend the oppressed, and eliminate the difficulties of the distressed and the weak. This includes people with special needs (*ahl al-hājāt*) and people with disabilities (*al-'ahāt*) who are unable to meet their own needs. Indeed, the most important part of justice (*al-'adl*) is to guarantee their way of life and facilitate the fulfilment of their needs.”

This statement affirms that the responsibility of rulers is not only limited to maintaining political stability or security, but also includes ensuring inclusive social justice. The concept of justice (*al-'adl*) that he teaches is holistic, including the protection of vulnerable groups, including people with disabilities (*ahl al-hājāt wa al-'ahāt*). In this perspective, the state should not be passive, but must actively ensure accessibility and fulfillment of their basic needs, such as clothing, food, and health and education facilities. Thus, Ibn Qayyim’s statement is not only relevant in the context of his time, but also an ethical foundation for inclusive policies in the modern era, where social justice must reach all levels of society without discrimination.

These two narratives from al-Mawardi and Ibn Qayyim clearly establish social justice as a state obligation in Islam. Al-Māwardī emphasizes the concrete responsibility of the state through bayt al-māl to meet the needs of vulnerable groups, while Ibn Qayyim expands on this concept by emphasizing accessibility and the rights of persons with disabilities as part of the justice that must be realized. Both show that in the Islamic system of government, the protection of weak groups is not just charity, but a structural obligation that comes from the principles of sharia and maqāṣid al-sharī'ah. This view forms a clear framework: the state must actively create a fair and inclusive system, not just provide momentary relief.

Several other narratives in classical fiqh emphasize the state’s obligation to fulfill the rights of persons with disabilities, not just as a form of generosity, but as an imperative responsibility. Ibn Taymiyah, for example, explicitly stated that the state is obliged to provide accessibility for people with disabilities as well as provide financial assistance from the state treasury. In Majmoo’ al-Fatawa, he wrote:

وَيَجِبُ عَلَى الْوَلِيِّ الْأَمْرِ أَنْ يُبَسِّرَ طُرُقَاتِ الْمَدِينَةِ لِلْعُمَيَّانِ وَالْمَقْعَدِينَ، وَأَنْ يُعْطِيَهُمْ مِنَ الْفُضُولِ فِي بَيْتِ الْمَالِ (Ibn Taymiyyah, 2001)

“The government is obliged to facilitate the city roads for the blind and paralyzed, and to provide them with excess wealth in the state treasury.”

A similar argument is reinforced by Ibn Qayyim in *al-Turuq al-Hukmiyyah*, who emphasizes that the provision of facilities for the disabled is not a secondary policy, but part of the wisdom of the shari’a. He explained:

وَمِنْ حِكْمَةِ الشَّرِيعَةِ أَنْ أَمَرَ الْوَلَاةَ بِإِقَامَةِ الْحَوَائِطِ لِلْعُمَيَّانِ فِي الطَّرِيقَاتِ، وَتَخْصِصِ مَوَاضِعَ لِذَوِي الْعَاهَاتِ فِي الْمَسَاجِدِ (al-Jawziyyah, 2007)

“Including the wisdom of the Shari’ah is to order the ruler to make a roadblock for the blind, and to provide a special place for the disabled in mosques.”

Furthermore, Ibn al-Humam in *Fath al-Qadir* not only discusses accessibility, but also obliges the state to provide special and companion housing for the disabled:

يَجِبُ عَلَى الْوَالِي أَنْ يَبْنِيَ لِلْمَعْقِينِ مَنَازِلَ مُخْتَصَّةً قَرِيبَةً مِنَ الْمَسَاجِدِ، وَأَنْ يُوظَّفَ لَهُمْ مَنْ يَخْدُمُهُمْ (Ibn al-Humam, 1995)

“The government is obliged to build special houses for people with disabilities near mosques, and assign people to serve them.”

From these three views, it can be seen that the consistency of classical scholars in placing the state as the main actor responsible for the fulfillment of the rights of persons with disabilities, both in infrastructure and social support.

Although a number of classical fiqh books expressly state the state’s obligation to fulfill the rights of persons with disabilities, this kind of narrative does not develop into a systematic legal framework. In conventional jurisprudence discourse, this issue is actually drowned out by the dominance of the discussion of *rukhsah* (individual dispensation), which is more caustic than structural. At least, there are three factors that explain why this happens: *First*, the hegemony of the individualistic paradigm in classical fiqh. As stated by Mohammad Hashim Kamali, traditional jurisprudence emphasizes vertical relations (individual-God-worship) and horizontal relations (rights between individuals) rather than structural relations between citizens and states. As a result, state responsibilities are often not formulated concretely (Kamali, 2008). *Second*, the socio-historical context that formed the frame of thought of past scholars. Fazlur Rahman noted that classical fiqh was born from a pre-modern society that did not know the concept of a welfare state. Without this institutional framework, state obligations tend to be understood in a minimalist way—limited to giving alms, not as a right that must be guaranteed through public policy (Rahman, 1982). *Third*, the limitations of critical hermeneutics in the interpretation of religious texts. As criticized by

Khaled Abou El Fadl, classical jurists often get caught up in a literal reading of the nash, without exploring its socio-political implications (Abou El Fadl, 2001). In fact, principles such as *maslahah* (public interest) and *‘adl* (justice) should be the basis for strengthening the rights of people with disabilities in state policies.

Thus, although the normative basis for disability rights actually exists in the *fiqh* tradition, the neglect of the structural dimension causes this discourse not to develop into a progressive legal concept. As a result, contemporary *fiqh* discourse on disability dwells more on the question “What is the leniency for the disabled?” than “What is the state’s obligation for the disabled?” In fact, from the perspective of *maqāṣid al-sharī‘ah*, especially the protection of the right to life, the right to justice, and the right to dignity, the responsibility of the state should be the main focus (Auda, 2007). This paradigm transformation is urgent so that *fiqh* is not only a tool for legitimizing *rukhsah*, but also a driver of inclusive policies.

The paradigm transformation in understanding the rules of *fiqh* on disability requires a new, more progressive approach. Over the years, the rules of *fiqh* such as “*al-masyaqqah tajlib at-taysir*” (al-Suyuti, 2004) (difficulty brings convenience) and “*adb-dhararu yuzāl*” (al-Suyuti, 2004) (harm must be eliminated) are often understood narrowly as granting individual relief (*rukhsah*) for people with disabilities. In fact, these two rules should be understood as a mandate for the state to create an inclusive system.

First, the rule of “*al-masyaqqah tajlib at-taysir*” should not only be interpreted as an individual dispensation, but as an obligation of the state to provide adequate accessibility and facilities. When people with disabilities face difficulties (*masyaqqah*) in accessing public facilities, the state is obliged to provide facilities (*taysir*) in the form of inclusive infrastructure, not just exempt them from obligations.

Second, the rule of “*adb-dhararu yuzāl*” is often misinterpreted as providing leniency for worship as a solution to physical limitations. For example, it is not allowed to pray Friday prayers due to access difficulties. The new paradigm demands a more substantive understanding: the state must eliminate the source of harm (*dharar*) itself by providing facilities that allow persons with disabilities to carry out their obligations independently. Thus, this transformation of understanding shifts the responsibility from the individual to the state in realizing an inclusive society.

With this approach, *fiqh* rules are no longer a tool to provide dispensation, but rather a legal basis to realize social justice for people with disabilities through pro-accessibility state policies.

This paradigm transformation in the state's approach to persons with disabilities has a strong epistemological foundation in the construction of Islamic law, especially through three fundamental fiqh rules that are imperative:

First, the rule **تَصَرَّفُ الْإِمَامُ عَلَى الرَّعِيَّةِ مَنْوُطٌ بِالْمَصْلَحَةِ** (al-Suyuti, 2004) (Leaders' policies towards the people must be based on benefits). This rule is not only normative but also has strict juridical consequences. In the perspective of *maqāṣidī*, the benefits (*maṣlahah*) in question must be comprehensively understood including: (1) the material dimension in the form of providing accessible infrastructure, (2) the social dimension in the form of the elimination of discrimination, and (3) the participatory dimension in the form of the active involvement of persons with disabilities in policy formulation. Its implementation requires the formulation of affirmative policies that are structural, not just caritative policies.

Second, the rule **الْوَلِيُّ أَحَقُّ بِالضُّعْفَاءِ** (al-Qaraḥi, 2007) (The government has more right to take care of the weak). This rule contains the concept of *state responsibility* which is special (*khassab*) to vulnerable groups. The government's position as *wālī al-amr* entails the following obligations: (1) protective through anti-discrimination regulations, (2) facilitative through the provision of universal accessibility, and (3) emancipatory through sustainable empowerment programs. In the context of disability, this rule shifts the paradigm from a charity-based approach to a rights-based approach.

Third, the rule **إِعَانَةُ ذَوِي الْحَاجَاتِ مِنْ فُرُوضِ الْكِفَايَاتِ** (al-Nadwi, 1998) (Helping people in need, including *fardhu kifayah*). This rule places the state as the *primary duty bearer* in ensuring the fulfillment of the basic rights of persons with disabilities. The failure of the state to fulfill this obligation falls under the category of *tadyr' al-farā'id* (neglect of shari'i obligations) which has theological and juridical consequences. Its implementation demands: (1) special budget allocation, (2) the establishment of special institutions, and (3) independent oversight mechanisms.

An analysis of these three principles brings to the conclusion that the state's negligence in fulfilling the rights of persons with disabilities is not only a *human rights violation*, but also falls into the following categories: (1) *ta'attul 'an al huquq* (neglect of rights), (2) *ida'at al-masalib* (neglect of benefits), and (3) *khilaf al-maqasid al-sar'iyyah* (distortion of the purpose of the Shari'a). Therefore, the state is obliged to transform its policies through three pillars

of action: (1) binding legislation, (2) implementation with a comprehensive approach, and (3) continuous evaluation.

CONCLUSION

In conclusion, this study has stated how the principles of fiqh provide theological legitimacy and at the same time offer an operational framework for the state in fulfilling the rights of persons with disabilities. The transformation of the approach from compassion to the recognition of rights requires a policy rearrangement based on three principles: (1) substantive justice (*al-adl*), (2) public benefit (*al-maslahah al-'ammah*), and (3) state responsibility (*al-mas'uliyah al-damliyyah*). The biggest challenge lies in how to transform this *normative* concept into an implementable technical policy, through strengthening regulations, improving bureaucratic capabilities, and supervising based on community participation. The next research is suggested to develop a measurement indicator that combines international human rights standards with maqasid al-shari'ah standards in the evaluation of disability policies.

Based on this analysis, the following policy recommendations are urgent to be implemented immediately, namely: *First*, prioritize the acceleration of the preparation of derivative regulations of Law Number 8 of 2016 concerning Persons with Disabilities to provide strict sanctions to those who do not provide accessibility and work quotas for people with disabilities. *Second*, allocating a special budget in the State Budget/Regional Budget for matters related to disability empowerment such as inclusive infrastructure development, training for disabled workers, and research based on local needs. *Third*, strengthening the institution of the National Commission on Disabilities (KND) which is authorized to carry out broader supervision of government and private agencies. This recommendation can answer the failure of the charitable rukhsah approach and optimize the 'azimah paradigm through structural steps, in accordance with the principles of maqāṣid al-sharī'ah and the standards of the Convention on the Rights of Persons with Disabilities (CRPD). For maximum results, the collaboration of all parties: the government, scholars, and disability organizations is needed to ensure the effective implementation of these recommendations.

REFERENCES

- Abou El Fadl, K. (2001). *Speaking in God's Name: Islamic Law, Authority, and Women*. Oneworld Publications.
- Adib, M. A. (2025). Konsep Mubadalah dalam Fiqih untuk Penyandang Disabilitas: Studi Kritis tentang Fleksibilitas Hukum Islam. *SERUMPUN: Journal of Education, Politic, and Social Humaniora*, 3(1), 66–79. <https://doi.org/http://dx.doi.org/10.61590/srp.v3i1.172>
- Afridawati, A. (2015). Stratifikasi Al-Maqashid Al-Khamsah (Agama, Jiwa, Akal, Keturunan Dan Harta) Dan Penerapannya Dalam Masalah. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, 13(1), 15–30. <https://doi.org/https://doi.org/10.32694/qst.v13i1.1211>
- al-Jauziyyah, I. Q. (2005). *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin (Vol. 3)*. Dar al-Hadits.
- al-Jawziyyah, I. Q. (2003). *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin (Vol. 3)*. Dar al-Kutub al-'Ilmiyyah.
- al-Jawziyyah, I. Q. (2007). *al-Turuq al-Hukmiyyah fi al-Siyasah al-Syar'iyah*. Dar 'Alam al-Fawa'id.
- al-Kasani, A. B. (1986). *Bada'i' al-Sana'i' fi Tartib al-Shara'i' (Vol. 2)*. Dar al-Kutub al-'Ilmiyyah.
- al-Marghinani, B. al-D. (2000). *al-Hidayah Sharh Bidayah al-Mubtadi (Vol. 1)*. Dar Ihya' al-Turath al-'Arabi.
- al-Mawardi, A. al-H. (2006). *al-Abkam al-Sultaniyyah*. Dar al-Kutub al-'Ilmiyyah.
- al-Nadwi, 'Ali Ahmad. (1998). *al-Qawa'id al-Fiqhiyyah*. Dar al-Qalam.
- al-Qarafi, S. al-D. (2007). *Anwar al-Buruq fi Anwa' al-Furuq (Vol. 3)*. Dar al-Salam.
- al-Qattan, I. (2004). *Al-Iqna' fi Masa'il al-Ijma' (Vol. 1)*. Dar al-Basha'ir al-Islamiyyah.
- al-Sarakhsi, M. bin A. (1993). *al-Mabsut (Vol. 4)*. Dar al-Ma'rifah.
- al-Shafi'i, M. bin I. (2007). *al-Umm (Vol. 1)*. Dar al-Ma'rifah.
- al-Shatibi, A. I. (2003). *al-Muwafaqat fi Usul al-Shari'ah (Vol. 2)*. Dar al-Kutub al-'Ilmiyyah.
- al-Suyuti, J. al-D. 'Abd al-R. (2004). *al-Ashbah wa al-Naza'ir fi al-Furuq wa al-Qawa'id al-Fiqhiyyah*. Dar al-Kutub al-'Ilmiyyah.
- al-Zuhaili, W. (2006). *al-Fiqh al-Islami wa Adillatuh (Vol. 1)*. Dar al-Fikr.
- Ariawan, I. G. K. (2013). Metode Penelitian Hukum Normatif. *Kertha Widya Jurnal Hukum*, 1(1), 21–30. <https://doi.org/https://doi.org/10.37637/kw.v1i1.419>
- Auda, J. (2007). *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*. The International Institute of Islamic Thought (IIIT).
- Azhar, I. S. (2020). Relasi Maslahat Mursalah Dengan Maqoshid Syari'ah Dalam Penetapan Hukum Fikih. *Tazkiya: Jurnal Pendidikan Islam*, 9(1), 44–62. <https://doi.org/http://dx.doi.org/10.30829/taz.v9i1.749>
- Farhan, S. R., & Suherman, A. (2024). Perlindungan Hukum Terhadap Penyandang Disabilitas dalam Perspektif Hak Asasi Manusia di Indonesia. *Jurnal Inovasi Hukum Dan Kebijakan*, 5(4). <https://ejournals.com/ojs/index.php/jihk/article/view/493>
- Hikam, A. B. (2023). *Konstruksi Taklif Penyandang Disabilitas Dalam Perspektif Al-Qur'an*. Institut

PTIQ Jakarta.

- Huda, N. (2019). *Disabilitas dalam Perspektif Hukum Islam dan HAM*. Refika Aditama.
- Ibn al-Humam, K. al-D. (1995). *Fath al-Qadir 'ala al-Hidayah (Vol. 5)*. Dar al-Fikr.
- Ibn Taymiyyah, T. al-D. (2001). *al-Hisbah fi al-Islam*. Dar al-'Asimah.
- Imran, H. (2022). Respon Fikih Terhadap Pandemi Wabah Penyakit: Analisis Penerapan Konsep Rukhshah Pada Tata-cara Pelaksanaan Sebagian Ibadat Dalam Masa Pandemi COVID-19. *Jurnal Al-Nadhair*, 1(1), 1–26. <https://doi.org/https://doi.org/10.61433/alnadhair.v1i01.4>
- Jayanti, & Marlina. (2018). *Disability Rights in Indonesia: Challenges and Opportunities*. Penerbit Universitas Indonesia.
- Kamali, M. H. (2008). *Sbahi'ah Law: An Introduction*. Oneworld Publications.
- Karlina, Y. (2023). Hukum dalam Teroka Linguistik. *Penerbit BRIN EBooks*.
- Keluh penyandang disabilitas tak temukan loker di job fair Jakbar. (n.d.). *Detik.com*. <https://news.detik.com/berita/d-7947344/keluh-penyandang-disabilitas-tak-temukan-loker-di-job-fair-jakbar>
- Khasri, M. R. K. (2020). Egalitarisme Sosial: Refleksi Kritis atas Moral-Compass Kebijakan Publik tentang Penyandang Disabilitas di Indonesia Pasca Reformasi 1998. *The Indonesian Conference on Disability Studies and Inclusive Education*, 1, 169–190. <https://conference.uin-suka.ac.id/index.php/icodie/article/view/19>
- Maftuhin, A. (2020a). *Islam dan Disabilitas: dari Teks ke Konteks (Ed.)*. Penerbit Gading.
- Maftuhin, A. (2020b). *Promoting Disability Rights in Indonesia (Ed.)*. PLD Press.
- Marzuki, P. M. (2016). *Penelitian Hukum*. Kencana.
- Muslim, A. al-H. M. bin al-H. (1955). *Sabih Muslim*. Mathba'ah 'Isa.
- Nisa, A. K., & Dharmawan, N. K. S. (2025). Pengaturan Pemberdayaan Sosial Bagi Penyandang Disabilitas Dalam Perspektif Pengembangan Potensi Keterampilan, Akses Magang, Dan Ekonomi. *Jurnal Media Akademik (JMA)*, 3(11). <https://doi.org/https://doi.org/10.62281/veqhp361>
- Peraturan Pemerintah Republik Indonesia Nomor 39 Tahun 2020 tentang Akomodasi yang Layak untuk Penyandang Disabilitas dalam Proses Peradilan*. (n.d.). <https://peraturan.bpk.go.id/Details/142170/pp-no-39-tahun-2020>
- Peraturan Presiden Republik Indonesia Nomor 68 Tahun 2020*. (n.d.). <https://peraturan.bpk.go.id/Details/139334/perpres-no-68-tahun-2020>
- Prasetyo, E. Y. (2024). Sinergi Hak Asasi Manusia, Agama, dan Sekularisme: Telaah Etis-Kultural atas Gagasan Abdullahi A. An-Na 'Im. *Jurnal Peradaban*, 4(1), 51–63. <https://doi.org/https://doi.org/10.51353/0ny6xv25>
- Putri, A. A. (2024). Implementasi Undang-Undang Nomor 8 Tahun 2016 Terkait Pemenuhan Hak Atas Pekerjaan Bagi Penyandang Disabilitas di Kota Bekasi. *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana*, 6(2). <https://doi.org/https://doi.org/10.37893/krisnalaw.v6i2.899>
- Rahman, F. (1982). *Islam and Modernity: Transformation of an Intellectual Tradition*. University of Chicago Press.

- Ramadhani, N. (2025). Kajian Hukum terhadap Faktor-Faktor Penyebab Tindak Pidana Lalu Lintas di Kota Bukittinggi dan Upaya Penanggulangannya. *Sumbang12 Law Journal*, 4(1), 145–155. <https://jurnal.umsb.ac.id/index.php/smb12lj/article/view/6882>
- Ridlwan, Z. (2013). Perlindungan Hak Konstitusional Penyandang Disabilitas. *Fiat Justicia Jurnal Ilmu Hukum*, 7(2), 231–243. <https://doi.org/https://doi.org/10.25041/fiatjustisia.v7no2.382>
- Rispler-Chaim, V. (2007). *Disability in Islamic Law*. Springer.
- Ritonga, M. S. (2024). *Penanggulangan Ujaran Kebencian Melalui Pendekatan Teologis Dalam Al-Qur'an*. Institut PTIQ Jakarta.
- Riyadi, E. (2018). *Hukum dan Hak Penyandang Disabilitas di Indonesia*. Pustaka Pelajar.
- Rochmawati, A. E., & Sonhaji, S. (2016). Perlindungan Hukum Bagi Tenaga Kerja Penyandang Disabilitas dalam Pemenuhan Hak-hak Pekerja Berdasarkan Undang-undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan di Kabupaten Semarang. *Diponegoro Law Journal*, 5(2), 1–20. <https://doi.org/https://doi.org/10.14710/dlj.2016.11124>
- Rosdianti, Y. (2021). Quo Vadis National Disability Commission? *Jurnal HAM*, 12, 209.
- Sholihah, I. (2016). Kebijakan Baru: Jaminan Pemenuhan hak bagi penyandang disabilitas. *Sosio Informa*, 2(2), 166–184. <https://doi.org/https://doi.org/10.33007/inf.v2i2.256>
- Syauqi, M. L., & Prasetiawan, A. Y. (2024). Fiqih bagi Penyandang Disabilitas: Telaah Hukum Islam terhadap Konsep Ahliyyah dan Maslahah. *INKLUSI*, 11(1), 83–102. <https://doi.org/https://doi.org/10.14421/ijds.110105>
- Tiwi, P. (2020). *Implementasi Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas Perspektif Hukum Islam*. UIN Raden Intan Lampung.
- Umam, M. M., & Arifin, R. (2019). Aksesabilitas Kaum Difabel Dalam Perlindungan Hukumnya Dalam Perspektif Hak Asasi Manusia. *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 18(1). <https://doi.org/https://doi.org/10.31941/pj.v18i1.1089>
- Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan (PDF, JDIIH Kemenaker)*. (n.d.). https://jdih.kemnaker.go.id/asset/data_puu/peraturan_file_13.pdf
- Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*. (n.d.). <https://peraturan.bpk.go.id/Details/45361/uu-no-39-tahun-1999>
- Undang-Undang Republik Indonesia Nomor 8 Tahun 2016 tentang Penyandang Disabilitas*. (n.d.). <https://peraturan.bpk.go.id/Details/37251/uu-no-8-tahun-2016>
- Zuhair, M. A. al-N. (n.d.). *Usul al-Fiqh (Vol. 1)*. al-Maktabah al-Azhariyyah li al-Turath.
- Zulfahmi, Z. (2024). Domestic violence (KDRT) in the perspective of Islamic criminal law. *Jurnal Hukum Keluarga*, 1(01), 18–25. <https://doi.org/10.63731/jhk.v1i01.4>

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THE LEGAL IMPLICATIONS OF QARDH FINANCING FOR STAKEHOLDER WELFARE IN ISLAMIC ECONOMIC LAW

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ABSTRACT

In the context of Baitul Maal Wa Al Tamwil (BMT) Maslahah, qardh loans are a financial product that, according to Sharia principles, do not require material compensation. Qardh loans are a product aimed at welfare by assisting members with capital, facilitating qardh loans, and building relationships of trust and solidarity among members. The nadzar (vow) in qardh loans involves members providing alms to the BMT for the benefit of stakeholders. This research focuses on the integration of nadzar (vow) into qardh loans, which has implications for stakeholder welfare and BMT profits, a theory lacking in Islamic economics. The method used in this research is qualitative, using a case study approach at BMT Maslahah in East Java. The results indicate that qardh loans have implications for stakeholder welfare. Borrowing members enjoy ease of application requirements and relatively quick disbursement, principal repayment as agreed, interest-free installment payments, low administrative fees, and no collateral. Qardh loans are accompanied by a nadzar (vow) contract, where members provide alms to the BMT for income. BMT income is accumulated with other financing income for BMT operations and monthly remaining operating results (SHU) which are distributed to members in the form of bonuses and profit sharing of savings deposits. Meanwhile, the annual remaining operating results (SHU) are distributed to stakeholders, namely BMT reserve funds of 20%, management fees of 5%, management fees of 10%, member education funds of 5%, social funds of 10% and members receive 50% according to the portion of capital each year. So it is known that 85% of members stated that it has increased their income and improved their welfare and 15% of members stated that it has facilitated loan installment payments.

Keywords: Qardh Loans; Nadzar; Member Welfare

ABSTRAK

Dalam konteks Baitul Maal Wa Al Tamwil (BMT) Maslahah, pinjaman qardh merupakan produk keuangan yang, menurut prinsip Syariah, tidak memerlukan kompensasi materi. Pinjaman qardh merupakan produk yang bertujuan untuk kesejahteraan dengan membantu anggota dengan modal, memfasilitasi pinjaman qardh, dan membangun hubungan saling percaya dan solidaritas di antara anggota. Nadzar (sumpah) dalam pinjaman qardh melibatkan anggota yang memberikan sedekah kepada BMT untuk kepentingan para pemangku kepentingan. Penelitian ini berfokus pada integrasi nadzar (sumpah) ke dalam pinjaman qardh, yang memiliki implikasi terhadap kesejahteraan pemangku kepentingan dan keuntungan BMT, sebuah teori yang kurang dalam ekonomi Islam. Metode yang digunakan dalam penelitian ini adalah kualitatif, menggunakan pendekatan studi kasus di BMT Maslahah di Jawa Timur. Hasil penelitian menunjukkan bahwa pinjaman qardh memiliki implikasi terhadap kesejahteraan pemangku kepentingan. Anggota peminjam menikmati kemudahan persyaratan aplikasi dan pencairan yang relatif cepat, pembayaran pokok sesuai kesepakatan, pembayaran cicilan tanpa bunga, biaya administrasi yang rendah, dan tanpa jaminan. Pinjaman Qardh disertai dengan kontrak nadzar (sumpah), di mana anggota memberikan sedekah kepada BMT untuk mendapatkan penghasilan. Penghasilan BMT diakumulasikan dengan penghasilan pembiayaan lainnya untuk operasional BMT dan sisa hasil operasional bulanan (SHU) yang dibagikan kepada anggota dalam bentuk bonus dan pembagian keuntungan dari simpanan. Sementara itu, sisa hasil operasional tahunan (SHU) dibagikan kepada para pemangku kepentingan, yaitu dana cadangan BMT sebesar 20%, biaya pengelolaan sebesar 5%, biaya pengelolaan sebesar 10%, dana pendidikan anggota sebesar 5%, dana sosial sebesar 10%, dan anggota menerima 50% sesuai dengan porsi modal setiap tahunnya. Dengan demikian diketahui bahwa 85% anggota menyatakan bahwa hal itu telah meningkatkan penghasilan mereka dan meningkatkan kesejahteraan mereka, dan 15% anggota menyatakan bahwa hal itu telah mempermudah pembayaran cicilan pinjaman.

Kata kunci: Pinjaman Qardh; Nadzar; Kesejahteraan Anggota

INTRODUCTION

In the framework of Islamic economics, financial instruments are not solely profit-oriented, but also carry out a social mission to realize justice, solidarity, and collective welfare. One of the instruments that reflects the social dimension is *Qardh*, which is a charity loan without remuneration given to help those in need (Mustofa & Khoir, 2019). Normatively, qardh does not contain elements of usury and is not for commercial purposes, but as a mechanism for social redistribution and strengthening the value of ukhuwah in economic activities (Prabowo et al., 2023). In the practice of Islamic finance institutions, qardh not only functions as an emergency financing facility, but also as a means of economic moral education that instills responsibility, social concern, and spiritual commitment of members to the institution (Ghufron & Febrianto, 2025).

In the context of sharia micro-institutions, Baitul Maal wa Tamwil (BMT) holds a strategic role as a community-based financial institution that integrates social functions (*Baitul Maal*) and business functions (*Tamwil*) (Ali et al., 2022). The participatory characteristics of BMT membership make members as owners as well as users of services, so that the success of the institution is highly determined by the interaction and contribution of internal stakeholders, including members, administrators, supervisors, and managers (Tedi et al., 2025). Within this framework, the implementation of qardh loans not only impacts the individual welfare of borrowers, but also has the potential to affect the welfare of institutions and all stakeholders collectively (Febrianto & Maulida, 2025).. Therefore, BMT Maslahah East Java is a relevant object of study to examine how qardh loans contribute to the welfare of stakeholders in a multidimensional manner (Az-Zuhaili, 1985).

However, the implementation of qardh in institutional practice is inseparable from challenges. One of the main risks is the emergence of *moral hazard*, namely the tendency of some members to ignore the obligation to return due to the nature of the non-interest qardh (Al Jazayri, 2000; Arifin, 2002; Za'tary, 2008).. This condition has the potential to interfere with the sustainability of the institution if it is not managed properly. In addition, there is an interesting dynamic in the practice of BMT Maslahah, namely the integration of nadzar commitment as a form of voluntary contribution of members after obtaining the benefits of qardh (Saqib et al., 2015). This practice shows the existence of a social-spiritual mechanism that strengthens the moral responsibility of members while supporting the financial stability of the institution through the collection of charitable funds. Thus, qardh not only functions

as a social financing instrument, but also as a medium for strengthening social and spiritual capital in the BMT ecosystem (Nuzulia, 2026).

Empirically, preliminary observations show that qardh loans provide significant benefits for members, especially in meeting urgent needs with simple procedures, low costs, no collateral, and quick access. This convenience increases member loyalty and encourages participation in the form of voluntary contributions through nadzar or alms (Az-Zuhaili, 1999). The funds collected then become part of the institution's income which is redistributed to members through deposit bonuses, profit sharing, and residual business results (SHU). This mechanism indicates a reciprocal relationship between qardh, member participation, and the collective well-being of stakeholders (Usmani, 2008).

However, the study of stakeholder welfare from the perspective of BMT is still limited. Some of the literature emphasizes the impact of qardh on the welfare of individual borrowers, while the dimension of stakeholder welfare comprehensively including members, administrators, supervisors, managers, and institutions has not been widely explored (Ahmad, 2010; Za'tary, 2008). In fact, the sustainability of stakeholder welfare is highly dependent on the health of the institution, which is determined by the level of loan repayment, member participation, and the effectiveness of institutional management (Ali et al., 2022). In the perspective of Islamic economics, well-being is not only measured materially, but also includes spiritual and social dimensions as a concept *falah* and *maqasid al-shariah*, which emphasizes the protection of religion, soul, intellect, heredity, and property (AAOFII, 2010).

BMT Maslahah East Java, which has been operating since 1997 and has grown with a network of dozens of branches, has a vision of realizing welfare with its members (Ghufron & Febrianto, 2025). However, the concept of stakeholder welfare in BMT practice is complex and cannot be measured quantitatively, so it requires in-depth empirical study. In this context, research on the implications of qardh loans on stakeholder welfare is important to understand the relationship between qardh social function, institutional stability, and collective well-being in the Islamic microfinance system (Prabowo et al., 2023).

Based on this description, this study aims to comprehensively analyze the implications of qardh loans on the welfare of stakeholders in BMT Maslahah East Java, including financial, social, and spiritual dimensions. The results of the research are expected to make a theoretical contribution to the development of sharia microeconomics studies, especially related to an inclusive and sustainable social financing model, as well as make a

practical contribution to strengthening BMT governance and the development of community-based Islamic financial institutions.

RESEARCH METHODS

This qualitative research employs a case study approach aimed at obtaining a comprehensive and in-depth understanding of the phenomenon under investigation. The study adopts an intrinsic case study design, which focuses on exploring a particular case in its natural context in order to understand the dynamics, practices, and institutional processes involved (Nuzulia, 2026). Through this approach, the research seeks to capture the complexity of the implementation of qardh financing facilities within Islamic microfinance institutions, particularly within the operational context of Baitul Maal wat Tamwil (BMT) (Ali et al., 2022).

Field research was conducted over a relatively long observation period, beginning in 2018 and continuing until the 2024 fiscal year, allowing the researcher to observe institutional dynamics and financing practices in a more comprehensive and longitudinal manner. Data were collected through direct interaction with 100 BMT members in East Java who received qardh financing facilities, enabling the study to explore the experiences, perceptions, and socio-economic impacts of the financing scheme from the perspective of beneficiaries.

In addition to member participants, the study also involved 25 key informants representing BMT institutional stakeholders, including employees, branch managers, area managers, directors, operational managers, board members, supervisors, and members of the Sharia Supervisory Board (Dewan Pengawas Syariah). These informants were selected purposively due to their strategic roles and expertise in the management and supervision of BMT financing operations. Their perspectives provide valuable insights into institutional governance, financing policies, risk management, and the practical implementation of Islamic financial contracts within BMT operations (Ali et al., 2022, 2022).

While the primary focus of this research is based on field data obtained through interviews and observations, supporting literature such as previous studies, the historical development of BMT, and discussions of BMT financing contracts are used as complementary sources to strengthen the analytical framework of the study (Febrianto & Lathiefah, 2025). These sources serve primarily as supplementary references that support the interpretation of field findings rather than as the main source of analysis. Through the integration of field observations, stakeholder interviews, and supporting literature, this

methodological approach enables the research to develop a comprehensive understanding of the role of qardh financing within BMT institutions and its contribution to the socio-economic empowerment of members in East Java.

FINDING AND DISCUSSION

People who become members of BMT get financial service facilities, including (1) can save their funds as members (2) become saver members, (3) become members of term savings, (4) become financing members, (5) become borrower members and (6) get other services, electricity bill payments, telephone payments, water, transfers between members, transfers between partners, zakat infaq and *shadaqah payments*.

In addition, the behavior of members and the community to make their choice to BMT is influenced by (1) information and assessment of BMT that is quite good, (2) humanism and dynamics always get information about the existence of BMT, (3) the size and flexibility of BMT services that are easy, unconvoluted and very responsive, (4) transaction needs both business capital, and other consumptive needs, (5) the location of BMT that is quite close to members and can be easily accessed because each sub-district there is one BMT, (6) the belief in the attitude towards the existence of BMT provides certainty and comfort in transactions, (7) the relationship with BMT is not only transactional in material matters but also an emotional relationship, (8) the family environment with the status of students and alumni of Islamic boarding school students, (9) the belief in the welfare that is embedded in the personality of members because they join BMT, (10) the fulfillment of business capital because many of the Members have benefited from BMT for those who have joined, (11) increased income or income after getting additional capital from BMT (12) the role of pesantren alumni and status as BMT managers, (13) practicality in saving wealth even though it is small but makes it a blessing, (14) post-service behavior will always join and the desire to increase income, (15) direct promotion of both pesantren alumni, relatives, neighbors, co-workers and many more from informants who are convinced of BMT's performance, (16) religion, and (17) culture *Sam'an wa Tha'atan* (Bank Indonesia, 2000).

Source of loan funds *Qardh* sourced from BMT's productive funds, or it can also be sourced from BMT capital, social funds, zakat, infaq, alms, grants, money waqf and other social funds. However, the borrower must return the principal of the loan in a lump sum or installments within a certain time (Usanti, 2017). However, for BMT members, the source of qardh loan funds comes from members' productive funds which also require the results

of funds that have been invested (interview, Maftuhun Amin, 2023). Qardh loans are given to members who need quick funds, so the option is with a loan *Qardh* as a social product to contribute capital to the member's business or help the social sector, then the member returns the loan funds (Antonio, 2001; Ascarya, 2007).

The *qardh* contract applied at BMT Maslahah is: (1) As a complementary product of various products offered to members and has proven their loyalty. (2) As a facility to borrow funds to members who need fast funds. (3) As a loan to members who fall into the category of small entrepreneurs, (4) As a product to contribute to the small sector or help the capital sector. (5) As an alternative product of a financing contract that does not meet the requirements in transacting using *murabahah*, *mudharabah*, *musyarakah*, *ijarah* and other contracts that use guarantees or certain other administrative requirements. (Interview: khasani, 2023)

There is an understanding of lending *Qardh* among the community. Understanding of *Qardh* said that 1) *Qardh* does not provide financial benefits to financial institutions such as BMT, 2) funding *Qardh* can be done to help small businesses and social needs, 3) funds *Qardh* can be sourced from zakat, infaq, and alms funds, 4) Akad *Qardh* can help customers' finances quickly and in the short term. 5) The bailout can be taken from the bank's capital 6) *Qardh* will not harm Sharia Banks and is precisely the advantage of Sharia Banks, 7) not only profits but there are social elements *Scarlet Witch* or please help (Sukma et al., 2019) 8) This Islamic financial instrument (*qardh*) as a means to improve socio-economic justice and financial inclusion in Nigeria's Muslim community (Zauro et al., 2020) 9) Monetary policy based *qardhul hasan* positively affect the real sector of the economy and increase economic output providing full employment (Selim, 2018) 10) contributing to the field of Islamic accounting 11) segregation of transactions *Baitul Maal* and *bait al tammil* (Wulandari, 2019).

The following is the income obtained by BMT Maslahah in the last six years from 2019 to 2024

Table 1

	2019	2020	2021	2022	2023	2024
Total Financing	266,88	253,52	384,09	445,27	463,62	486,14
Qardh Loan	25,20	20,43	15,44	12,32	12,46	12,95
Qardh Loan Percentage	9,44%	8,06%	4,02%	2,77%	2,69 %	2,67
Qardh Income	2,94	2,84	2,02	1,41	1,26	1,25

Data processed : Financial Analysis Report of *Baitul Mal wa Al-Tammil* (BMT) Maslahah

(presented in units of billions)

Conveyed from Mr. Dumairi Nor, (Chairman of the BMT Maslahah Board) at the UIN Walisongo Field Work Lecture on June 20, 2024, that the welfare of BMT Maslahah members cannot be separated from the background of the students of the Sidogiri Islamic Boarding School. BMT's market share is an emotional market share based on pesantren, and few of the members have a rational market share because the rational market share only explores a few facilities that are profitable for him and compares with other financial institutions. The emotional market share prioritizes the identity of its students by upholding the principle of *sam'an watha'athan* rather than having to think rationally, because world affairs cannot always be thought about rationally, but seen from the irrational side, the one who gives and establishes rizqi is Allah SWT. While humans are only obliged to try and pray to Allah SWT, the Giver of Rizqi.

The interest in this *qardh* product is because the facilities that members get are interest-free loans. The requirements are only to show the original identity, the realization process is fast with a time range of 1 (one) to 2 (two) working days. Ease of access is that BMT Maslahah visits the Member's place of business and can interact and communicate directly, does not come to the BMT office to make it easier for members, in addition to the ease of understanding *qardh loan contracts*, which are more widely accepted than other contracts. (Interview: Yuliana, Mansur, Istianah, 2023).

After performing *the qardh* contract, the members of the nadzar will give alms to BMT "every week paid together with the principal installment of the loan". Members sign the *agreed nadzar* statement letter . This loan contract is very easy and simpler because I don't understand sharia law, and the loan of 1 (one) million, received in full 1 (one) million, and pays the administration of only 5 (five) thousand. To pay the installments, every day members save to BMT which is picked up every day at the place of business, then every week, members' savings are deducted from the principal installment of the loan and pay alms. (Interview: Moh. Hafifi, Atim Haryanto, 2024)

The reason for considering that borrower members use *qardh* and savings loan products is for the need for additional business capital so that their business grows so that their income is also expected to increase. Therefore, the level of ease of requirements in obtaining services, increased profits, is perceived as a level of fairness, namely the absence of profit sharing or required margin. It's just that members are given an understanding in terms of sharing benefits with fellow members. Sharing sustenance is a form of loyalty of BMT members to always provide benefits and share welfare. In the context of profits,

members understand that their business capital loans have profits that are obtained even if they are small. Meanwhile, BMT does not determine and require and does not force members to pay returns or profits obtained from their business. However, members whose loyalty is strong in terms of sharing profits, give rise to the perception that the profits they get are getting benefits and blessings in their business.

Sharing does not have to be much, does not have to wait for a big income and can be done with *the commitment of the nadzar*. Because some of the members are alumni of Islamic boarding schools, the welfare of the alumni of the students is how to carry out the principles of *sam'an watha athan* to the teachers, the alim, the kyai and make all their daily activities with the culture of the students, carrying out all the commandments of Allah SWT following the Sunnah of the Prophet, not taking sides left or right. Welfare is not measured by material alone which is sufficient but rather abstract satisfaction that cannot be measured by material.

Qardh loans selected and promoted by BMT are more flexible and easy to understand by ordinary members, because the capital loan contract for business, can be more free to use the loan funds. This *qardh* loan contract is a capital loan contract for members that must be returned according to the maturity agreed with BMT and is not required for profit sharing. Members' *qardh loans* can increase the strengthening of business capital, increase the variant of the trading business, increase the stock of merchandise, increase customers, increase sales turnover, increase profit from the results of their business.

The characteristics of the welfare of BMT Maslahah members are, BMT members have a spiritual emotional relationship between the Sidogiri Islamic Boarding School, alumni of the Sidogiri Islamic Boarding School and the sympathizers of the Islamic Boarding School, although in the institution there is no relationship in its operational activities. The welfare of members can be known by the ease of obtaining *qardh loan facilities*, easy administrative requirements, relatively fast application time until loan realization, return of the principal of the loan according to the agreement, installment payments can be made through officers who pick up at work, do not pay loan interest, low administrative fees, unsecured and non-burdensome loans, welfare value that can be seen from the aspect of togetherness in profit sharing, economic cooperation between members and mutual benefit, profits from business results are distributed to members through BMT, maintaining the stability of members' capital, valuable economic education, also in the sustainability of BMT's business, namely the ease of implementation of *qardh loan contracts* to members, *qardh* loan capital comes from BMT's productive funds derived from members' deposits, maintaining BMT's capital

stability, The requirements of *Bait Al Maal* and *Bait Al Tammil* have been met, BMT profits are distributed to members in the distribution of deposit profit sharing, deposit bonuses and in the distribution of residual business results (SHU) according to the portion of the member's capital.

The results of this study are known that 100 informants with a percentage of 100% that *qardh* loan products can be mapped into 5 groups of parts and the results are obtained that group 1 with 72 informants, with a percentage of 3% choose BMT Maslahah products on the grounds of very easy requirements. A total of 40 people with a percentage of 69% chose BMT Maslahah products on the grounds that there were no deductions in *savings and qardh* loans. A total of 10 people with a percentage of 17% chose the BMT Maslahah *qardh* product on the grounds that no loan (interest) services were required. A total of 6 people with a percentage of 10% chose BMT Maslahah products because of suggestions and input from colleagues.

Furthermore, group 2 obtained the results that 48 informants with a percentage of 83% still chose BMT Maslahah products on the grounds that they were comfortable, very trusting and quite prosperous in using BMT products. A total of 4 people with a percentage of 7% still choose BMT products on the grounds that access to get BMT services is easy. A total of 4 people with a percentage of 7% still chose BMT products with the reason of supporting the Sidogiri alumni association. As many as 2 people with a percentage of 3% are still possible to move to a similar cooperative or another bank because they have some savings in other banks.

Group 3 obtained the results that 48 informants with a percentage of 85% gave suggestions for the use of *qardh* loan products to remain and exist continuously, not only for a moment and occur at certain moments because these products are urgently needed by members who need business capital and there are no collateral requirements. 9% did not provide advice for *qardh* loans remains and exists for the reason that not all members who are granted *the Qardh loan facility* are able to meet their obligation to pay the principal of their installments for certain reasons, so it will also have an impact on BMT's income and health. 6 % less for

Group 4 obtained the results that 73 informants with a percentage of 90% gave recommendations that *qardh* loans can increase business capital, can increase business income, increase business variants, increase capital strengthening, increase confidence that by giving shodaqoh that is set aside from the profits of the business, they get additional

blessings of the wealth received. Besides doing shodaqoh can add rewards. Meanwhile, 10% feel dissatisfied because if the borrower member is strong in terms of capital, the facilities provided (the contract offered) is no longer using *the qardh* loan contract but is recommended to move to *a murabahah* contract or other contract that has certain requirements that must be met such as financing in general on the condition of using collateral.

Group 5 that 100 informants with a percentage of 85% stated that they had benefited and added welfare to members because the qardh loans carried out have provided many business benefits, especially the business capital factor undergone and the smooth distribution of the needs of their merchandise as well as the increase in their economic business turnover so that they get peace and tranquility in running their business and have implications for the fulfillment of it more prosperous economic needs. Meanwhile, 15% of the members' statements that in addition to getting benefits to increase the smoothness and profitability of their business, it also makes it smooth in paying installments, providing shodaqoh for BMT's profits so that BMT also grows and develops due to the minimal level of congestion so that BMT will be healthier in running its business.

The welfare of stakeholders in BMT Maslahah is the welfare of members, management, supervisors and employees as well as profits for BMT. This is marked by the selection of products and the use of products chosen by members. The welfare of members can be known by the ease of obtaining *qardh loan facilities*, easy administrative requirements, relatively fast application time until loan realization, return of the principal of the loan according to the agreement, installment payments can be made through officers who pick up at work, do not pay loan interest, low administrative fees, unsecured and non-burdensome loans, welfare value that can be seen from the aspect of togetherness in profit sharing, economic cooperation between members and mutual benefit, profits from business results are distributed to stakeholders and BMT portions, maintaining the stability of members' capital, valuable economic education, also in the sustainability of BMT's business, namely the ease of applying *nadzar* on *qardh* loans to members, *qardh* loan capital comes from BMT's productive funds which come from members' deposits. The form of income distribution is the distribution of deposit profit sharing, deposit bonuses. ouch.

Meanwhile, in the welfare of other stakeholders, in one year the distribution of residual business results (SHU) is carried out. This annual SHU is distributed to stakeholders in accordance with the decision of the members' meeting, namely BMT reserve fund of 20%, management services 5%, management services 10%, education fund of members 5%, social

fund of 10% and members get 50% according to the portion of capital in each year. So it is known that 85% of members stated that they have increased their income and increased their welfare, while 15% in addition to increasing welfare also increased the smoothness in loan installment payments.

Thus, the welfare of BMT stakeholders can at least be met with their basic needs or primary needs such as food, drink, clothing, shelter, health and education. In welfare (*al maslahah*) that material needs are met, property is the main element in fulfilling basic needs, clothing, food and board. However, the need for wealth is not the final goal, but welfare is interpreted by the fulfillment of *al-mabaadi' al-khamsyah*, namely the protection of religion (*hifz al-din*), safeguarding the soul (*hifz al-nafs*), safeguarding the intellect (*hifz al-aql*), safeguarding one's offspring (*hifz al-nasl*), and safeguarding property (*hifz al-maal*).

CONCLUSION

From the discussion above, it can be concluded that BMT Maslahah *qardh* loans to stakeholders can provide welfare benefits not only in financial benefits but also in benefits that add more value, because *qardh loans* provide ease of obtaining loan facilities, easy administrative requirements, and welfare value which can be seen from the aspect of togetherness in sharing profits. BMT can maintain the stability of members' capital, the profits collected by BMT are distributed in the distribution of savings savings, savings savings bonuses. Meanwhile, the remaining annual business results (SHU) are distributed to stakeholders with the provision of BMT reserve funds of 20%, management services of 5%, management services of 10%, education funds of members 5%, social funds of 10% and members get 50% according to the portion of capital in each year, so that it can be known that 85% of members have increased their income and increased their welfare.

BIBLIOGRAPHY

- AAOFII. (2010). *Standar Syariah untuk Lembaga Keuangan Islam , Organisasi Akuntansi dan Audit untuk Lembaga Keuangan Islam*. AAOFII, Bahrain.
- Ahmad, W. M. (2010). *Fi Qardhul Hasan Muamalat*. Sinar Grafika.
- Al Jazayri, A. (2000). *Al-Fiqh 'alal madhabib 'al-arba'a* (Vol. 3). Ihlas Vakifi Yayinidir.
- Ali, Z. Z., Wulandari, A., & Radiamoda, A. M. (2022). Qardh Implementation in Islamic Financial Institutions (LKS) and Advantage in Enterprise World. *Az-Zarqa': Jurnal Hukum Bisnis Islam*, 14(2), 221–241. <https://doi.org/10.14421/azzarqa.v14i2.2592>
- Antonio, M. S. (2001). *Bank Syariah: Dari Teori Ke Praktik*.
- Arifin, Z. (2002). *Dasar Dasar Manajemen Bank Syariah*. Azkia Publisher.
- Ascarya. (2007). *Akad & Produk Bank Syariah*. PT. Rajagrafindo Persada.
- Az-Zuhaili, W. (1985). *Al Fiqh Al Islam Wa Adillatuhu*. Daar al Fikr.
- Az-Zuhaili, W. (1999). *Fiqih Muamalah Perbankan Syariah*.
- Bank Indonesia. (2000). *Executive Summary Hasil penelitian Potensi, Preferensi, dan Perilaku Masyarakat Terhadap Bank Syariah; Studi Pada Wilayah Propinsi Jawa Timur*. Laporan Penelitian Bank Indonesia.
- Febrianto, A., & Lathiefah, N. N. (2025). SCARCITY OF SUBSIDIZED FERTILIZER AND WEATHER FACTORS: IMPLICATIONS FOR AGRICULTURAL PRODUCTIVITY AND FOOD SECURITY IN PROBOLINGGO REGENCY. *Profit : Jurnal Kajian Ekonomi Dan Perbankan Syariah*, 9(1), 87–95. <https://doi.org/10.33650/profit.v9i1.11136>
- Febrianto, A., & Maulida, L. (2025). Harnessing Social Media Marketing to Boost Customer Engagement in Islamic Financial Services. *Journal of Educational Management Research*, 4(3), 1052–1064. <https://doi.org/10.61987/jemr.v4i3.1015>
- Ghufron, M. I., & Febrianto, A. (2025). *Creative Empowerment of Inmates: Batik and Merchandise Training for Economic Independence at Class II.B Prison Probolinggo*. 6(1).
- Mustofa, M. B., & Khoir, M. K. (2019). Qardhul Hasan Dalam Perspektif Hukum Islam Pada Baitul Maal wa Tamwil (BMT) Dan Implementasinya. *At Taajir*, 11.
- Nuzulia, E. E. (2026). STUDI KUALITATIF IMPLEMENTASI TEORI-TEORI PENDIDIKAN DALAM PRAKTIK PEMBELAJARAN SOSIOLOGI. *Journal of Education Science*, 5(1).
- Prabowo, B. A., Barus, U. M., & Wau, H. S. M. (2023). Implikasi Hukum Hybrid Contract dalam Akad Al-ijarah Wa Ar-rahn pada Pegadaian Syariah di Kota Yogyakarta. *JURNAL MERCATORIA*, 16(2), 151–167. <https://doi.org/10.31289/mercatoria.v16i2.10071>

- Saqib, L., Zafar, M. A., Khan, K., Roberts, K. W., & Zafar, A. M. (2015). Local agricultural financing and Islamic banks: Is Qard-al-Hassan a possible solution? *Journal of Islamic Accounting and Business Research: Emerald*, 6(1), 122–147.
- Selim, M. (2018). *The effectiveness of Qard-al-Hasan (interest free loan) as a tool of monetary policy*.
- Sukma, F. A., Akbar, R. K., Azizah, N. N., & Juliani, G. P. (2019). *Konsep Dan Implementasi Akad Qardhul Hasan Pada Perbankan Syariah Dan Manfaatnya*.
- Tedi, H., Fajarni, O. F., Aminudin, Ronald, M. R., Darul, I., & Acep Hidayat. (2025). The Impact of Performance Factors on Performance on Quality in Project Implementation. *Journal of Educational Management Research*, 4(2), 697–709. <https://doi.org/10.61987/jemr.v4i2.1024>
- Usanti. (2017). *Hukum Perbankan*. Media Pranada.
- Usmani, M. (2008). *Sebuah Pengantar Keuangan Islam*. Maktaba Ma'arifur Quran.
- Wulandari. (2019). Enhancing the role of Baitul Maal in giving Qardhul Hassan financing to the poor at the bottom of the economic pyramid Case study of Baitul Maal wa Tamwil in Indonesia, Permata. *Permata*.
- Za'tary, A. (2008). *Fiqhu al Muamalat Al Maliyah Al Muqorin*. Daar al Isho'.
- Zauro, N. A. B., Saad, R. A. J., & Sawandi, N. (2020). *Enhancing socio-economic justice and financial inclusion in Nigeria The role of zakat, Sadaqah and Qardhul Hassan*.

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ISLAMIC LEGAL REASONING IN DISPUTE RESOLUTION AND SHARIA FINANCIAL RISK MANAGEMENT OF DSN-MUI FATWAS

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Abstrack

This article examines Islamic legal reasoning in dispute resolution and risk management within contemporary Islamic finance through a corpus analysis of DSN-MUI fatwas on ta'wid, debt restructuring, and debt transfer issued between 2000 and 2024. Moving beyond a transactional understanding of fiqh as a system of contract validation, the study argues that DSN-MUI has developed a governance-oriented pattern of legal reasoning that integrates risk mitigation and conflict resolution into the architecture of Sharia-compliant finance. The analysis identifies three structural dimensions of this reasoning: recognition of risk as an inherent economic reality; reliance on *maqasid al-shari'ah* and *maslahah*-oriented justification; and operationalization of distributive justice through debtor differentiation and evidence-based compensation standards. The article further distinguishes governable risk (*mukhabatarah*) from prohibited uncertainty (*gharar*), demonstrating how the fatwa corpus shifts Islamic jurisprudence from risk avoidance toward structured risk governance. By situating DSN-MUI fatwas within a hybrid legal order in which religious authority and state regulation interact, the study reconceptualizes legal certainty as predictability of adaptive response rather than contractual rigidity. It concludes that contemporary Islamic legal reasoning is evolving into a systemic governance framework capable of addressing financial complexity while maintaining Sharia compliance.

Keywords: Islamic legal reasoning; dispute resolution; risk management; Islamic finance; DSN-MUI fatwas.

Abstrak

Artikel ini menganalisis penalaran hukum Islam dalam resolusi sengketa dan manajemen risiko keuangan syariah melalui studi korpus fatwa DSN-MUI tentang ta'wid, restrukturisasi utang, dan pengalihan utang periode 2000–2024. Berbeda dari pendekatan fikih yang semata berorientasi pada validitas akad, penelitian ini menunjukkan bahwa DSN-MUI mengembangkan pola penalaran yang bersifat tata kelola (governance-oriented), dengan mengintegrasikan mekanisme mitigasi risiko dan penyelesaian sengketa ke dalam desain kontrak keuangan syariah. Analisis mengidentifikasi tiga dimensi utama: pengakuan risiko sebagai realitas inheren dalam aktivitas ekonomi; penggunaan justifikasi berbasis *maqasid al-shari'ah* dan *maslahah*; serta operasionalisasi keadilan distributif melalui diferensiasi debitur dan pembatasan kompensasi pada kerugian riil. Artikel ini juga menegaskan distingsi antara risiko yang dapat dikelola (*mukhabatarah*) dan ketidakpastian terlarang (*gharar*), serta menunjukkan bagaimana fatwa berfungsi dalam tatanan hukum hibrida antara otoritas keagamaan dan regulasi negara. Temuan ini menegaskan bahwa penalaran hukum Islam kontemporer berkembang menuju kerangka tata kelola sistemik yang adaptif namun tetap berlandaskan prinsip syariah.

Kata Kunci : Penalaran hukum Islam; resolusi sengketa; manajemen risiko; keuangan syariah; fatwa DSN-MUI.

INTRODUCTION

The development of contemporary Islamic economics and finance reflects a significant paradigmatic shift from a normative focus on determining the permissibility of transactions toward broader concerns involving dispute resolution, risk management, and contractual governance. In modern financial systems characterized by uncertainty, market complexity, and systemic interconnectedness, issues such as default, moral hazard, debt restructuring, compensation for non-performance, and the transfer of obligations have become unavoidable realities, including within Islamic financial institutions. These developments challenge the traditional perception of Islamic law as merely a system of halal-haram classification and require a reinterpretation of *fiqh al-mu'āmalāt* as a normative framework capable of addressing equitable risk allocation and sustainable dispute resolution. (Hallaq, 2009; Mensah, 2021)

Within this transformation, Islamic legal reasoning becomes a key analytical framework. Islamic legal reasoning refers to the methodological process through which fatwa-issuing authorities derive operational norms from primary sources—the Qur'an, Hadith, and classical jurisprudence—to address contemporary issues. This process integrates considerations of *maqāṣid al-sharī'ah*, socio-economic realities, and governance needs. (Auda, 2008); (Hallaq, 1995) In contrast to classical jurisprudence that often emphasized formal legal structures, contemporary Islamic financial fatwas increasingly adopt purpose-oriented reasoning. Accordingly, the legitimacy of a norm is evaluated not only through textual conformity but also through its implications for justice, systemic stability, and the protection of vulnerable parties.

In Indonesia, the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI) plays a central role in shaping the normative framework of Islamic finance through its fatwas. Since its establishment, DSN-MUI has issued fatwas that not only validate contracts and financial products but also regulate risk allocation and dispute resolution. This is evident in fatwas addressing *ta'wid* (compensation for loss), debt restructuring and rescheduling, novation, subrogation, and the management of non-performing financing. Empirical studies indicate that DSN-MUI fatwas function as authoritative references for regulators, financial institutions, mediators, arbitrators, and religious court judges when constructing legal reasoning in Islamic economic disputes in Indonesia. (Rusli & Djajaputra, 2026); (I. F. Lubis et al., 2024)

Current scholarship on Islamic economic law demonstrates several dominant trends. First, global literature frequently emphasizes legal and contractual standardization through frameworks developed by international institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). This approach prioritizes legal certainty, contractual uniformity, and risk mitigation through standardized contract design aimed at strengthening global market confidence.(El-Halaby et al., 2021);(M. K. Hassan & Rabbani, 2022) Second, a growing body of research examines Islamic economic dispute resolution within institutional frameworks, focusing on litigation in religious courts, arbitration, and alternative dispute resolution mechanisms. These studies highlight procedural effectiveness and institutional legitimacy in resolving financial conflicts.(A. Hassan, 2025);(Herdatama et al., 2026);(Warits et al., 2026) Third, contemporary Islamic legal scholarship increasingly develops maqāṣid-based reasoning to address modern economic complexity, particularly in ensuring contractual justice, protecting vulnerable parties, and balancing legal certainty with normative flexibility.(Auda, 2008);(Mohd Zain et al., 2024)

Despite these advancements, several important gaps remain. Most studies on Islamic financial dispute resolution and risk management focus primarily on post-conflict adjudication, including court rulings, arbitration awards, and mediation outcomes. The role of fatwas as pre-judicial sources of legal reasoning remains relatively underexplored. In practice, however, DSN-MUI fatwas often serve as the initial normative reference shaping contract structures, institutional policies, and even regulatory frameworks within Indonesia's Islamic financial system.(Fakhrudin et al., 2024) Furthermore, previous research typically examines fatwas in a fragmented manner—focusing on individual rulings related to compensation or restructuring—without analyzing them as a coherent corpus reflecting an evolving pattern of institutional legal reasoning.(Nashirudin & Sa'adah, 2019)

Another limitation concerns comparative discussions between national fatwa authorities and global regulatory standards. Existing studies often frame the relationship between DSN-MUI and AAOIFI in terms of compliance or harmonization rather than examining deeper epistemological differences in how Islamic law conceptualizes risk, contractual failure, and dispute resolution.(El-Halaby & Hussainey, 2016) Comparative legal scholarship suggests that different legal regimes may serve distinct governance functions depending on their socio-political and regulatory contexts.(Black, 2002);(Jonathan et al., 2023);(Al Abiad & Masadeh, 2024) In this regard, DSN-MUI fatwas may be better

understood as a form of contextualized legal reasoning aligned with Indonesia's national legal system and socio-economic conditions rather than as deviations from global standards.

Four interrelated research gaps therefore emerge. First, studies addressing DSN-MUI's authority tend to emphasize political legitimacy or industry compliance while rarely examining how this authority operates through systematic legal reasoning in responding to financial risks and disputes. Second, governance-oriented research often treats fatwas as final normative outputs rather than as instruments of risk governance operating both *ex ante* and *ex post*. Third, the literature on Islamic financial risk management remains largely technical-economic, leaving the jurisprudential dimension—particularly regarding breach, restructuring, and the transfer of obligations—insufficiently explored. Fourth, research on Islamic legal reasoning in financial fatwas remains limited, as most studies focus instead on judicial reasoning in court decisions.

In modern financial systems, risk management and dispute resolution are conceptually inseparable. Risk management operates *ex ante* to identify and mitigate potential contractual failure, while dispute resolution functions *ex post* when conflicts arise after preventive mechanisms fail. Both dimensions are interconnected through contractual design and governance structures. Contracts that incorporate Islamic principles of risk allocation can minimize the likelihood of disputes, whereas fair dispute resolution mechanisms reinforce institutional trust. This study argues that DSN-MUI fatwas implicitly integrate these dual functions by regulating not only permissibility but also mechanisms for risk mitigation and justice-oriented conflict resolution.

The novelty of this study lies in reconstructing the pattern of Islamic legal reasoning in dispute resolution and risk management through a corpus analysis of DSN-MUI fatwas concerning *ta'wid*, debt restructuring, and the transfer of obligations. Rather than viewing fatwas as isolated legal statements, this research conceptualizes them as expressions of institutional legal reasoning integrating *fiqh al-mu'āmalāt*, *maqāṣid al-sharī'ah*, contemporary financial realities, and Indonesia's regulatory framework. Fatwas are therefore understood as instruments of risk governance and conflict resolution rather than merely declarations of permissibility.

The central research question is: How does DSN-MUI construct mechanisms of dispute resolution and risk management in Islamic finance through its pattern of Islamic legal reasoning, particularly in relation to compensation, restructuring, and debt transfer? This question is elaborated into three sub-questions: (1) How does DSN-MUI define legal

responsibility in cases of breach and default? (2) Which reasoning instruments—such as *maqāṣid al-sharīʿah*, *qiyās*, *istiḥsān*, or regulatory considerations—dominate these fatwas? (3) How does DSN-MUI’s reasoning position itself in relation to AAOIFI global standards and dispute resolution practices within Indonesia’s national legal system?

By addressing these questions, this study contributes theoretically to the development of Islamic legal reasoning scholarship through the conceptual framework of *Fiqh al-Mukhāṭarah wa al-Nizāʿ* (Fiqh of Risk and Dispute Resolution). Practically, it provides a normative reference for regulators, Islamic financial institutions, mediators, arbitrators, and religious court judges in managing financial disputes and designing Sharia-compliant risk mitigation mechanisms. At the policy level, it supports strengthening fatwas as instruments of *ex ante* governance and preventive compliance within Indonesia’s Islamic financial system.

RESEACRH METHODE

This study employs a normative-doctrinal legal research design, focusing on the analysis of legal norms contained in DSN-MUI fatwas as its primary object of inquiry. Unlike empirical legal research, which examines social behavior and institutional practices, normative-doctrinal research concentrates on legal texts, doctrinal structures, and patterns of legal reasoning embedded within authoritative sources. The study applies four complementary approaches. (Creswell et al., 2018) First, a conceptual approach is utilized to examine key juridical concepts such as *taʿwid* (compensation), *hawalah* (debt transfer), and *maqasid al-shari’ah* (objectives of Islamic law), clarifying their doctrinal meanings and normative functions within Islamic financial law. Second, a comparative approach is adopted to contrast the legal reasoning of DSN-MUI with global standards developed by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), particularly at the ontological, epistemological, and axiological levels. Third, a case approach is employed by positioning each fatwa as a unit of normative reasoning, allowing for in-depth examination of its argumentative structure. Fourth, a historical approach is used to trace the evolution of DSN-MUI fatwas from 2000 to 2024, identifying shifts in reasoning patterns in response to regulatory and market developments.

The data sources consist of primary, secondary, and tertiary legal materials. The primary legal materials comprise twelve selected DSN-MUI fatwas concerning *taʿwid*, debt restructuring, *hawalah*, novation, and subrogation.(Patton, 2015) These fatwas were purposively selected based on their relevance to issues of risk governance and dispute

resolution in Islamic finance. Secondary legal materials include AAOIFI standards, regulations issued by the Financial Services Authority (Otoritas Jasa Keuangan/OJK), decisions of the Religious Courts, and international academic literature on Islamic finance and legal theory. Tertiary materials, such as legal dictionaries and encyclopedias of Islamic law, are used to verify terminological accuracy and conceptual consistency. Data analysis is conducted using a pattern-based legal reasoning analysis. This method identifies recurring argumentative structures within the selected fatwas, including (1) normative premises, (2) reasoning methods—such as *qiyās*, *istiḥsān*, or *maṣlaḥah*-based considerations—and (3) the final justificatory conclusions articulated by DSN-MUI. The recurring patterns are then reconstructed into a theoretical framework termed *Fiqh al-Mukhtarah wa al-Niza'* (Fiqh of Risk and Dispute Resolution), which conceptualizes Islamic legal reasoning as an integrated model of risk governance and conflict management. To ensure validity and reliability, the study applies source triangulation by cross-referencing fatwas with regulatory instruments, judicial decisions, and international standards. Peer debriefing with academic colleagues specializing in Islamic legal theory and financial regulation is also conducted to enhance interpretive rigor. This research is limited to the normative textual analysis of fatwas and does not extend to empirical investigation of their practical implementation within Islamic financial institutions.

FINDING AND DISCUSSION

DSN-MUI Fatwas as a Corpus of Institutional Legal Reasoning

In this study, corpus analysis is defined as a methodological approach that treats the collection of DSN-MUI fatwas not as separate, casuistic documents but as a unified textual body representing an evolving pattern of institutional legal reasoning over time. This approach follows the tradition of legal scholarship that emphasizes the importance of reading normative documents holistically in order to capture recurring argumentative structures and cross-temporal consistency in legal logic. (Hallaq, 2009) Unlike partial fatwa studies that analyze one or two rulings in isolation, the corpus approach enables the identification of patterns in normative evolution and institutional responses to developments within the Islamic financial industry. The corpus examined in this research consists of twelve DSN-MUI fatwas issued between 2000 and 2024 concerning *ta'wid* (compensation), debt restructuring, *hawalah* (debt transfer), novation, and subrogation. These fatwas were purposively selected based on their relevance to issues of financial risk and dispute resolution. By analyzing them as an integrated textual system, the study seeks to uncover the institutional

logic embedded within DSN-MUI's normative production rather than merely describing discrete doctrinal outcomes.

The corpus analysis reveals a consistent—though not always explicit—structure of legal reasoning within DSN-MUI fatwas. Three structural layers can be identified. First, each fatwa contains a normative premise grounded in the primary sources of Islamic law—the Qur'an, Hadith, *ijmā'*, and *qawā'id fiqhiyyah* (legal maxims). However, these references are frequently declarative, without detailed methodological explanation of how scriptural texts are operationalized into concrete regulatory norms. Second, the dominant reasoning method relies on considerations of *maqasid al-shari'ah* and *maṣlaḥah* (public interest), while classical juristic instruments such as *qiyās* are rarely articulated explicitly. This structural pattern aligns with Auda's observation that contemporary Islamic legal reasoning has shifted from a text-centered paradigm toward a purpose-oriented (*maqāṣid*-based) approach. Third, the final justification of the fatwas tends to rest more heavily on arguments of substantive justice and public welfare than on formal doctrinal validation. (Auda, 2008) The emphasis lies on achieving equitable outcomes and preserving systemic stability rather than on demonstrating methodological orthodoxy in a strictly technical sense.

The author's interpretation suggests that DSN-MUI has developed a reasoning model closer to purpose-based reasoning than to form-based reasoning. This tendency is particularly evident in more recent fatwas (2019–2022), which increasingly incorporate regulatory and systemic considerations, including references to Financial Services Authority (OJK) policies and financial industry stability—elements largely absent in earlier rulings. This evolution indicates a shift from a predominantly private-law orientation focused on bilateral contractual relations toward a governance-oriented *fiqh* attentive to systemic implications. Similar transformations have been observed in the broader development of Islamic law in contemporary Muslim jurisdictions. (Hooker, 2008)

The structural findings must be situated within the theoretical framework of institutional legal reasoning. Theoretically, institutional legal reasoning refers to processes of norm formation that aim not merely to regulate individual behavior but also to sustain institutional stability and legitimacy within complex regulatory systems. (Black, 2002) In modern financial ecosystems, legal institutions function to generate predictability, manage systemic risk, and cultivate public trust. Budiwanti & Eidhamar argue that in contemporary regulatory environments, non-state authorities—including Sharia supervisory bodies—play a significant role in shaping governance norms through soft-law instruments such as ethical

standards and religious opinions.(Budiwanti & Eidhamar, 2026) Within this framework, DSN-MUI operates as an institutional normative actor that shapes the legal expectations of contracting parties even before disputes arise. Its authority does not derive from coercive state power but from institutional recognition by regulators, industry actors, and religious courts.(R. A. Lubis & Sativa, 2026);(Rusli & Djajaputra, 2026) Fatwas thus function as anticipatory governance instruments that structure contractual behavior and mitigate potential disputes. From a critical standpoint, however, the effectiveness of this institutional role depends on DSN-MUI's capacity to ensure compliance and consistent implementation. Without adequate monitoring and enforcement mechanisms, institutional authority risks becoming symbolic rather than operational—a concern echoed in Franciosi's analysis of ethical oversight in Islamic finance.(Franciosi, 2025)

The findings demonstrate that risk management implications within the DSN-MUI fatwa corpus operate at two distinct levels. At the micro-contractual level, fatwas concerning ta'wid and sanctions for breach function as mechanisms for mitigating moral hazard. The limitation of compensation strictly to actual losses prevents excessive creditor exploitation while signaling that debtor negligence entails tangible economic consequences. This approach is consistently reflected in Fatwa No. 17/DSN-MUI/2000, No. 43/DSN-MUI/2004, and reinforced in Fatwa No. 129/DSN-MUI/2019 and No. 134/DSN-MUI/2020.

At the macro-systemic level, fatwas concerning debt restructuring and distressed financial institutions—particularly Fatwa No. 130/DSN-MUI/2019—explicitly acknowledge systemic risk requiring institutional intervention grounded in *maṣlaḥah 'āmmah* (public interest). This pattern aligns with Mensah's argument that variations in risk management approaches within Islamic finance reflect institutional design differences rather than normative inconsistency within Islamic law.(Mensah, 2021) The author's interpretation leads to the thesis that DSN-MUI's legal reasoning implicitly functions as a risk governance instrument, even though it is not explicitly framed as such. The reliance on *maqāṣid* and *maṣlaḥah*-based reasoning provides interpretive flexibility necessary to address the complexities of modern financial risk, consistent with Auda's *maqāṣid* framework. The moral-legal differentiation in cases of default establishes an equitable mechanism of risk allocation between creditors and debtors. Furthermore, the integration of Sharia norms with state regulatory considerations in recent fatwas reflects implicit recognition that systemic risk

management requires collaboration between religious and public authorities.(Arifin, 2024);(Suaidi et al., 2025)

Integrating the preceding layers of analysis, this study argues that the DSN-MUI fatwa corpus represents a form of governance-oriented fiqh operating as an instrument of risk governance and dispute resolution within Indonesia's Islamic financial system. This development resonates with Hooker's observation regarding the emergence of a "national madhhab" in Indonesian Islamic law, in which fiqh evolves through dialogue with state law and societal needs. Nevertheless, several structural limitations emerge from critical analysis. First, while the dominance of *maṣlahah*-based reasoning provides flexibility, it also carries the potential risk of subjectivity and inconsistency if not supported by transparent and standardized methodological frameworks. El-Gamal similarly cautions that excessive flexibility in Islamic financial engineering may compromise methodological coherence.

Second, the fatwas emphasize substantive justice over procedural architecture. As a result, implementation and enforcement mechanisms depend on external institutions—regulators, courts, and industry actors—whose institutional capacities and commitments may vary. Empirical studies confirm that the effectiveness of Islamic economic dispute resolution is strongly influenced by institutional capacity and procedural efficiency.(Herdatama et al., 2026);(Warits et al., 2026) Third, no fatwa explicitly formulates a structured procedural framework for risk identification, measurement, and mitigation. Existing mechanisms remain largely reactive and resolute rather than preventive and systematically designed. In contrast, global standards such as those developed by AAOIFI have advanced more systematic approaches in this regard, albeit with limited sensitivity to local contexts.(El-Halaby & Hussainey, 2016);(Mohamed et al., 2026)

The theoretical implication of these findings is the need to further develop the concept of institutional legal reasoning within contemporary Islamic legal studies. Such development must extend beyond the analysis of normative outputs to encompass institutional capacity, accountability mechanisms, and implementation effectiveness.(Asmoi & Musadad, 2026);(Khasanah & Salleh, 2025) The potential of fatwas as instruments of risk governance can only be fully realized through strengthened institutional frameworks, enhanced methodological transparency, and closer coordination with regulatory and judicial authorities, as recommended in recent studies on Islamic financial governance in Indonesia.

Moral and Legal Differentiation in Cases of Default

The distinction between moral and legal dimensions in cases of default should not be understood merely as a descriptive categorization but rather as an analytical framework that enables systematic evaluation of DSN-MUI's normative responses. Conceptually, this framework rests on three pillars: (1) differentiation of legal subjects, distinguishing debtors based on capacity and intent; (2) differentiation of normative sanctions, distinguishing legal consequences according to subject classification; and (3) procedural differentiation, distinguishing relevant dispute-resolution mechanisms.

Through this framework, moral–legal differentiation becomes more than a rhetorical narrative; it functions as an analytical instrument for assessing the consistency, fairness, and effectiveness of DSN-MUI's legal reasoning in addressing the complexities of contractual default. It allows for structured evaluation of how normative principles are translated into enforceable legal consequences within Islamic finance. The corpus analysis reveals consistent application of subject differentiation across DSN-MUI fatwas from Fatwa No. 17/DSN-MUI/2000 to Fatwa No. 134/DSN-MUI/2020. The findings demonstrate that DSN-MUI explicitly distinguishes between two categories of debtors:

1. *Al-mu'sir*: a debtor genuinely unable to repay due to objective constraints such as bankruptcy, force majeure, or external economic hardship beyond personal control.
2. *Al-mumthil*: a debtor who is factually capable of repayment but deliberately delays or avoids fulfilling obligations.

This distinction is not merely moral but carries concrete normative consequences. In cases of *al-mu'sir*, the fatwas require leniency measures such as rescheduling, restructuring, or even debt remission (*tabarru'*). In contrast, in cases of *al-mumthil*, the imposition of *ta'wid* (compensation for actual loss) is permitted, and in certain cases, restrictions on future financial transactions may apply. The author's interpretation suggests that the persistence of this differentiation over two decades (2000–2024) demonstrates that DSN-MUI does not operate on a purely casuistic basis but rather operationalizes a distributive justice framework. Legal treatment is calibrated according to debtor capacity and good faith. This approach aligns with the objectives of *maqasid al-shari'ah*, particularly the protection of vulnerable parties (*hifz al-muštad'afin*) and the prevention of injustice (*man' al-zulm*), consistent with the *maqāšid*-based reasoning advanced by Auda and further developed in contemporary scholarship (Ngabas et al., 2025).(Auda, 2008);(Ngabas et al., 2025)

The claim that DSN-MUI employs evidence-based legal reasoning must be operationalized through examination of procedural standards embedded within the fatwas.

Analysis of Fatwa No. 129/DSN-MUI/2019 and No. 134/DSN-MUI/2020 demonstrates explicit limitation of *ta'wid to al-takālif al-fi'liyyah* (actual incurred costs), subject to three cumulative evidentiary criteria:

1. *Real cost* – Compensation must reflect actual expenditures, not opportunity loss, time-based penalties, or projected profits.
2. *Quantifiable* – Losses must be measurable and supported by documentary evidence such as invoices, financial statements, transfer records, or audit reports.
3. *Direct causation* – Losses must result directly from the debtor's default and not from indirect, speculative, or opportunistic claims.

Based on the textual structure of the fatwas, the author reconstructs a tiered evidentiary framework capable of operational application in Islamic financial institutions and dispute-resolution bodies:

Table 1. Evidentiary Standards and Burden of Proof for Ta'wid Claims Based on the DSN-MUI Fatwa Corpus

LEVEL	TYPE OF LOSS	STANDARD OF PROOF	BURDEN OF PROOF
1	Actual administrative costs	Internal documentation (receipts, invoices, transfer records)	Creditor
2	Legal and advocacy costs	Court decisions, service contracts, official receipts	Creditor
3	Actual liquidity loss	Cash-flow reports, forensic audits, independent accounting verification	Creditor + Independent verification
4	Reputational or speculative loss	Not recognized as basis for <i>ta'wid</i>	–

Source: Author's compilation based on analysis of DSN-MUI Fatwas No. 17/2000, No. 43/2004, No. 129/2019, and No. 134/2020.

Through this structure, DSN-MUI does more than articulate a normative principle; it provides operational guidance for calculating and substantiating compensable losses. This approach reflects best practices in modern financial risk management emphasizing verifiability and accountability. (Hasibuan et al., 2025); (Rahmawati et al., 2025) The moral-legal differentiation framework and tiered evidentiary standards constructed by DSN-MUI generate concrete implications for actors within the Islamic financial dispute-resolution ecosystem.

First, mediators and non-litigation institutions, sharia mediators may utilize this framework to classify debtors at the outset of mediation—distinguishing mu'sir from mumṭil—and tailor facilitation strategies accordingly. The tiered evidentiary standards help

verify creditor claims, preventing mediation from devolving into subjective bargaining. Proportional settlements may be designed, such as rescheduling for mu‘sir or limited compensation for mumtil. These parameters provide mediators with normative legitimacy independent of individual juristic discretion. *Second*, Sharia Arbitrators and Arbitration Institutions. For arbitrators, the DSN-MUI framework offers clear substantive legal grounds in adjudicating default disputes. Arbitral awards may directly reference subject differentiation and evidentiary standards to reject non-compliant compensation claims, distinguish between bankrupt and negligent debtors, and limit compensation strictly to verified actual loss. This enhances decision predictability and reduces inter-arbitrator inconsistency. (A. Hassan, 2025);(Herdatama et al., 2026)

Third, religious court judges, which hold jurisdiction over Islamic economic disputes, may incorporate this framework into judicial reasoning. Empirical findings indicate that ambiguity in normative parameters often weakens proportionality assessments in litigation.(Warits et al., 2026) By adopting DSN-MUI’s evidentiary hierarchy, judges may require stricter proof from creditors, differentiate rulings between mu‘sir and mumtil, and employ fatwas as interpretive guides in resolving ambiguous contractual clauses. This reflects the function of DSN-MUI fatwas as soft law integrated into judicial.(Asmoi & Musadad, 2026); *Fourth*, Islamic financial institutions (internal governance), Islamic financial institutions may use this framework to design standard operating procedures (SOPs) for non-performing financing management. Distinct treatment protocols for mu‘sir and mumtil may be institutionalized, while documentation systems may be aligned with fatwa-based evidentiary requirements. Additionally, client education regarding differentiated consequences of default can foster clearer contractual expectations and reduce dispute probability.(Alfarisi et al., 2025);(Yasardin et al., 2025)

Fifth, Limitations and Strengthening Agenda. Despite its analytical robustness, several structural limitations remain. First, DSN-MUI fatwas do not explicitly establish independent verification mechanisms to prevent collusion or evidentiary manipulation between creditors and debtors. Second, the tiered evidentiary standards require further operationalization through uniform technical guidelines applicable across Islamic financial institutions and dispute-resolution bodies. Third, no formal supervisory mechanism currently monitors the consistent implementation of these standards in practice. From a theoretical perspective, these findings reinforce El-Gamal’s argument that modern Islamic financial law evolves through functional equivalence with conventional legal systems while retaining distinctive

ethical and procedural framing. The *mu'sir–mumt'il* differentiation and the evidentiary standard of *al-takālif al-fi'liyyah* illustrate how DSN-MUI bridges the prohibition of riba and the practical necessity of contract enforcement through restorative and accountable compensation design. Thus, moral–legal differentiation in DSN-MUI fatwas represents not merely doctrinal nuance but a structured governance mechanism aimed at balancing distributive justice, contractual discipline, and systemic stability within Indonesia's Islamic financial architecture.

Debt Restructuring as a Risk Governance Instrument

Another key finding demonstrates that debt restructuring within the DSN-MUI fatwa corpus is not understood as an indicator of contract failure or a violation of legal certainty principles. Instead, restructuring is positioned as an inherent part of a legitimate, Sharia-compliant risk management cycle. Fatwas concerning rescheduling, contract conversion, and refinancing reveal the explicit use of the principles of *raf' al-ḥaraj* (removal of hardship) and *maṣlaḥah* (public interest) to preserve contractual relationship continuity.(Zuhdi et al., 2025);(Wazin et al., 2025) Fatwa No. 47 and No. 48/DSN-MUI/2005, for example, introduce a resolution-based approach grounded in *ṣulḥ* (amicable settlement) and *ta'āwun* (cooperation), framing restructuring as a form of inter-party collaboration to avoid greater loss. In this approach, payment failure is not immediately criminalized or financially penalized but is analyzed as an economic problem requiring adaptive solutions. Practically, this approach allows Sharia financial institutions to adjust financing schemes without resorting to costly, slow, and reputationally risky litigation.(Alfarisi et al., 2025)

Contemporary Islamic finance literature notes that such normative flexibility is an advantage of the Sharia system compared to conventional finance, which tends to be rigid and enforcement-focused. In the conventional system, restructuring is often viewed as a deviation from the original contract, whereas within the DSN-MUI framework, restructuring is understood precisely as the realization of *maqasid al-shari'ah* in preserving business continuity (*hifz al-māl* - protection of wealth).(Yasardin et al., 2025) From a legal theory perspective, this approach reflects a shift from a paradigm of contract sanctity towards contract sustainability. Contracts are no longer treated as absolute promises that must be enforced without considering economic and social context, but rather as dynamic instruments that can be adjusted to achieve substantive justice and systemic stability. This

finding is relevant to the global discourse on bankruptcy and debt restructuring law, which increasingly emphasizes rehabilitative rather than repressive approaches.

Debt Transfer, Novation, and Subrogation as Legal Engineering Techniques

The DSN-MUI fatwas concerning *hawālah* (debt transfer), novation, and subrogation demonstrate that the institution consciously adopts a legal engineering approach to respond to the complexities of modern financing. Within the context of an increasingly integrated and multi-layered financial system, default risk cannot always be resolved through rigid bilateral contract enforcement. (Aziem et al., 2026) Consequently, DSN-MUI utilizes *fiqh* instruments that allow for the substitution of legal subjects and the transfer of rights and obligations without invalidating the entire contractual relationship.

Fatwa No. 31/DSN-MUI/2002 on Debt Transfer (*Hawālah*) serves as the foundational cornerstone of this approach. This fatwa affirms that transferring debt obligations from the original debtor to a third party is permissible as long as it fulfills the principles of mutual consent (*tarāḍī*), clarity of the subject matter, and does not inflict injustice (*ẓulm*) upon any party. In modern financing practice, *hawālah* functions as a credit risk redistribution mechanism, enabling liability restructuring without forcing financial institutions into high-risk litigious positions. (Rahmawati et al., 2025); (Sya'bani, 2024)

Further development is evident in Fatwa No. 103/DSN-MUI/2016 on subjective novation and Fatwa No. 104/DSN-MUI/2016 on subrogation. Both fatwas explicitly accommodate the concept of legal subject substitution—whether on the debtor or creditor side—which is functionally equivalent to the concepts of novation and subrogation in modern civil law. Through subjective novation, the original legal relationship is not simply extinguished but is reconstructed with a new party that is legally and economically more capable of fulfilling the obligations. Meanwhile, subrogation allows the party that settles a debt to assume the rights of the original creditor, thereby maintaining claim continuity without creating risk duplication. (Hapinra, 2025) The significance of this finding lies in the fact that DSN-MUI does not take a defensive stance against modern legal concepts like assignment of rights or subrogation. Instead, these concepts are accepted insofar as they meet the parameters of substantive justice, transparency, and party consent. This approach affirms that Sharia validity is not determined by the formal shape of legal institutions, but by their function and normative purpose. Thus, DSN-MUI applies normative selection based on *maqasid al-shari'ah*, particularly the protection of wealth (*hifz al-māl*), justice (*‘adl*), and the prevention of disproportionate loss.

From a comparative law perspective, the DSN-MUI approach shows functional similarities with common law remedies in cases of default and insolvency, especially regarding the flexibility of resolution and the balanced protection of creditor and debtor interests.(Ezekwesiri & Ayo-Odewale, 2025) However, the difference lies in the ethical framework and ultimate purpose. While common law emphasizes efficiency and certainty of rights, DSN-MUI fatwas frame these legal engineering techniques within the horizon of Sharia ethics and social responsibility. This aligns with the argument by Hassan and Aldabousi et al. that Islamic law possesses an adaptive capacity to operate effectively within the global financial system without losing its normative identity.(Moustafa Aldabousi et al., 2025) Therefore, debt transfer, novation, and subrogation in DSN-MUI fatwas can be understood not merely as technical exceptions, but as integral components of the legal risk architecture in Sharia finance. These techniques illustrate that contemporary Islamic law is moving from a static paradigm towards a functional and governance-oriented paradigm, where the sustainability of economic relationships and systemic justice become primary considerations.

Fatwas as Instruments of Systemic Risk Governance

Systemic risk governance refers to the institutional mechanisms through which risks capable of disrupting the stability of the financial system as a whole are identified, mitigated, and managed—rather than risks confined to individual entities.(Schwartz, 2012) In contrast to micro-level risk management, which focuses on firm-specific exposure, systemic risk governance emphasizes interconnectivity, contagion effects, and negative externalities that may trigger system-wide crises. Within Islamic finance, this framework encompasses not only prudential-economic considerations but also Sharia-based normative constraints to ensure that systemic interventions remain aligned with principles of justice and public welfare (*maṣlaḥah*). (Askari et al., 2012) Accordingly, in this study systemic risk governance is defined as the ensemble of institutions, norms, and mechanisms designed to prevent, manage, and respond to risks that threaten the stability of the Islamic financial system while maintaining Sharia compliance.

Analysis of the DSN-MUI fatwa corpus reveals a significant shift in normative orientation from the micro-contractual level toward the macro-systemic level. Fatwas issued in the earlier period (2000–2010) largely centered on bilateral contractual concerns: the validity of contracts (*akad*), rights and obligations of parties, and mechanisms for resolving

individual disputes. By contrast, fatwas in the more recent period (2019–2024) explicitly enter the domain of systemic governance. A pivotal turning point is Fatwa No. 130/DSN-MUI/2019, which provides guidance for the Indonesian Deposit Insurance Corporation (LPS) in handling Islamic banks facing solvency problems. This fatwa explicitly invokes *maṣlaḥah ‘āmmah* (public interest) to justify institutional intervention in distressed Islamic banks, including rescue measures, resolution actions, and depositor protection.

The author’s interpretation is that the deployment of *maṣlaḥah ‘āmmah* at the systemic level signals DSN-MUI’s implicit recognition of “too big to fail” dynamics and contagion risk as defining characteristics of modern banking systems. The failure of an Islamic bank may not only harm shareholders or creditors but also destabilize the Islamic financial sector and erode public trust. In this setting, the fatwa no longer operates merely as an ethical guide for individual compliance or contract legitimacy; it becomes part of the architecture of the national financial safety net. (Altaf, 2025);(Bin-Armiya & Kambakov, 2026) The author’s interpretation is that the integration between DSN-MUI fatwas and state regulation reflects the development of a hybrid legal order, in which religious norms and state regulation mutually reinforce each other’s legitimacy. Within this configuration, fatwas provide Sharia-based normative justification for technically designed public policy interventions, while state regulatory authority supplies operational force and implementability to Sharia norms articulated in fatwas.(Black, 2002) The relationship is not strictly hierarchical but rather circular and mutually constitutive.

The analysis further indicates that DSN-MUI fatwas operate at two critical moments within the systemic risk governance cycle. First, *Ex Ante Governance: Crisis Prevention*. Fatwas on debt restructuring, rescheduling, and contract conversion (e.g., Fatwa No. 47/2005, No. 48/2005, and No. 153/2022) function as preventive mechanisms by enabling contractual adjustment before payment distress escalates into systemic default. By providing Sharia-legitimate pathways for restructuring, DSN-MUI helps reduce the accumulation of non-performing financing that may generate broader instability. This preventive orientation aligns with the principle of *dar’ al-mafāsid* (preventing harm), which prioritizes averting systemic damage over merely treating harm after it materializes.(Auda, 2008) Second, *Ex Post Resolution: Crisis Management*. Fatwa No. 130/2019 constitutes the clearest illustration of ex post resolution. It provides Sharia legitimacy for LPS interventions, including merger, acquisition, or liquidation of failing Islamic banks. Without such legitimacy, state intervention in Sharia-labeled institutions may be contested as normatively illegitimate or inconsistent

with Sharia principles. In this respect, the fatwa functions as a risk resolution instrument that enables public authorities to act decisively during crises while preserving normative credibility.

These findings broaden how fatwas should be understood in contemporary Islamic legal studies. Fatwas are no longer merely normative responses to individual queries; they have evolved into instruments of public policy operating within complex regulatory ecosystems. This evolution requires reconceptualizing fatwa authority through governance theory rather than jurisprudential theory alone. As argued in contemporary scholarship, modern Islamic law should be analyzed as operating within (and contributing to) the regulatory state rather than as a fully autonomous normative system detached from public institutions. (Awass, 2019); (Mirvaxidovich, 2025) For regulators (OJK and LPS), DSN-MUI fatwas supply Sharia-based normative justification for systemic interventions that might otherwise be controversial. For Islamic financial institutions, fatwas provide legal and normative certainty that restructuring and resolution actions will not later be challenged as Sharia violations. For judges and arbitrators, fatwas operate as interpretive guides in disputes involving systemic distress—beyond individualized breach scenarios—thereby strengthening coherence and predictability in adjudication.

Despite this progress, critical analysis reveals several limitations. First, Fatwa No. 130/2019 remains general and does not provide detailed operational guidance on how *maṣlaḥah ‘āmmah* should be applied across different crisis scenarios (e.g., differentiated treatment for systemically important versus non-systemic institutions). Second, no fatwa explicitly addresses cross-authority coordination in crisis management—for example, structured coordination among LPS, OJK, and Bank Indonesia. Third, the fatwa corpus remains more reactive—responding after systemic stress becomes visible—than proactive in designing structured preventive mechanisms. Accordingly, a forward-looking research and policy agenda involves developing an explicitly Sharia-based macroprudential framework integrated with fatwa reasoning—one that systematically addresses crisis prevention, inter-agency coordination, and operational benchmarks for applying *maṣlaḥah ‘āmmah* in systemic interventions.

Contextualized Reasoning of DSN-MUI and Standardized Reasoning of AAOIFI in Default and Insolvency

A comparison between DSN-MUI fatwas and AAOIFI standards on issues of default (*wanprestasi*), financial distress, and insolvency reveals fundamental epistemological

differences in how contemporary Islamic law is constructed and operationalized. These differences lie not merely in the substance of norms, but in the orientation of legal reasoning, the function of fatwas, and their relationship with modern legal and financial governance systems. AAOIFI develops Sharia standards with the primary aim of creating uniformity and legal certainty across jurisdictions. In default issues, AAOIFI emphasizes general principles such as the prohibition of *riba*, the necessity of compensation based on real loss, and the importance of contractual clarity from the outset. This approach is *ex ante*, focusing on the design of ideal contracts to minimize potential disputes and payment failure. (El-Halaby & Hussainey, 2016) In contrast, DSN-MUI develops a pattern of contextualized reasoning that starts from national institutional and socio-economic realities. DSN-MUI fatwas do not merely formulate ideal norms but also respond to concrete problems arising in the practice of Indonesian Sharia finance, such as the high default risk for MSMEs (Micro, Small, and Medium Enterprises), limited financial literacy, and the need for stability in the domestic Sharia banking system. Thus, DSN-MUI's reasoning is problem-driven and *ex-post* responsive, without abandoning Sharia normative principles. (Hooker, 2008)

On the issue of *ta'wid* (compensation for default), both AAOIFI and DSN-MUI agree that compensation may only be imposed for real and measurable losses, not as a time-based penalty like interest. However, the difference lies in the level of operationalization. AAOIFI tends to set general principles without detailing loss verification mechanisms or their integration with national legal systems. AAOIFI standards assume a relatively homogeneous institutional capacity across countries to translate these principles into practice. (Suparman & Hersi, 2024) DSN-MUI, conversely, explicitly restricts *ta'wid* to actual costs (*al-takālīf al-fi'liyyah*), as seen in Fatwa No. 129/DSN-MUI/2019 and No. 134/DSN-MUI/2020. This restriction is not only of normative value but also functions as a control mechanism against potential abuse by financial institutions. In other words, DSN-MUI integrates Sharia principles with the needs for consumer protection and operational accountability within the national banking system.

The most striking difference between DSN-MUI and AAOIFI emerges in issues of insolvency and financial crisis. AAOIFI is relatively limited in discussing troubled bank resolution or systemic restructuring, as its mandate is more focused on contractual and accounting standards. Consequently, issues of systemic risk and financial safety nets are often left to the national regulators of each country (Muna, 2024). DSN-MUI, on the other hand, explicitly enters the domain of systemic risk governance through fatwas like Fatwa No.

130/DSN-MUI/2019 on handling Islamic banks experiencing solvency problems. In this fatwa, the principle of *maṣlaḥah ‘āmmah* (public interest) is used to justify institutional interventions that may not be entirely contractually neutral but are necessary to maintain overall financial system stability. This approach shows that DSN-MUI views Islamic law not only as an instrument for contract legitimacy but as part of a financial governance framework. This aligns with the view that in the context of the modern state, religious law functions within a complex and interconnected regulatory ecosystem. (Black, 2002)

In terms of debt restructuring and the resolution of non-performing financing, DSN-MUI adopts a more flexible approach compared to AAOIFI. Fatwas on rescheduling, contract conversion, refinancing, and transfer of obligations demonstrate the use of *fiqh* instruments like *ṣulḥ*, *istihsān*, and *taghyīr al-‘aqd* to respond to debtor financial situations. AAOIFI, while acknowledging the importance of restructuring, tends to be cautious in justifying substantial changes to contracts due to concerns about cross-country standard inconsistency. As a result, AAOIFI emphasizes upfront contract clarity more than post-contract flexibility. This difference reflects two legal philosophies: AAOIFI represents a rule-centered approach, while DSN-MUI develops an outcome-centered approach. They are not contradictory but serve different purposes in global Sharia finance governance.

Another distinguishing aspect is the relationship with positive law systems. AAOIFI standards are jurisdiction-neutral and are not explicitly designed for integration with specific judicial systems or regulators. In contrast, DSN-MUI fatwas consistently stipulate compliance with OJK (Financial Services Authority) regulations and the national legal framework. In default and dispute issues, this makes DSN-MUI fatwas more easily operationalized by religious court judges, Sharia arbitrators, and mediators. The fatwas function not only as a normative source but also as an interpretive guide in the practice of resolving Sharia financial disputes in Indonesia. (Mohamed et al., 2026)

This comparison indicates that DSN-MUI and AAOIFI are not in a hierarchical or competitive relationship, but rather a complementary one. AAOIFI provides a global standard framework that maintains the normative coherence of Islam across jurisdictions, while DSN-MUI fills the contextual space by translating these principles into Indonesia’s legal, economic, and institutional realities. In issues of default and insolvency, the strength of DSN-MUI lies in its ability to develop context-sensitive Islamic remedies that are practically relevant and institutionally effective. Meanwhile, AAOIFI maintains its crucial role as the guardian of doctrinal consistency and a global reference. Thus, this research

affirms that the success of global Sharia financial governance does not depend on full standardization, but on a continuous dialogue between global standards and national legal reasoning. Default and insolvency are not merely contractual problems but strategic arenas for the evolution of contemporary Islamic law.

Fiqh al-Mukhtarah wa al-Niza': Toward a Governance-Oriented Epistemology of Islamic Law

The concept of Fiqh al-Mukhtarah wa al-Niza' is not found as a fixed doctrinal category in classical juristic literature. It is a theoretical construct derived from a systematic synthesis of recurring reasoning patterns identified in the DSN-MUI fatwa corpus issued between 2000 and 2024. Rather than merely describing a set of rulings, the framework articulates an epistemological transformation in contemporary Islamic law, in which risk management and dispute resolution are treated as structurally embedded components of contract design and financial governance.

Within this framework, Islamic law is no longer confined to determining the validity or invalidity of contracts. It functions as a governance architecture that anticipates risk, structures adaptive responses, and embeds justice-based mechanisms into the lifecycle of financial transactions. Fiqh al-Mukhtarah wa al-Niza' may therefore be defined as an epistemological framework within Islamic law that systematically integrates risk governance (mukhtarah) and dispute resolution (niza') as inherent elements of Sharia-compliant contract design, grounded in maqasid al-shari'ah—particularly hifz al-māl, justice (ʿadl), and hardship removal (rafʿ al-ḥaraj)—and operationalized through juristic instruments such as ta'wid, restructuring, hawalah, novation, and subrogation.

This framework rests upon an ontological recognition that risk and dispute are not anomalies but inherent features of economic activity. Credit default, liquidity stress, and contractual breakdown are foreseeable realities in complex financial systems. The DSN-MUI corpus consistently acknowledges this structural reality. Risk is not treated as a deviation requiring elimination, but as an exposure requiring governance. In this sense, Islamic law transitions from a paradigm of risk avoidance to one of risk regulation. Epistemologically, norm production in this corpus relies on a plural reasoning structure combining maqasid al-shari'ah, maṣlaḥah, qiyās, and istiḥsān, increasingly integrated with systemic and regulatory considerations. The invocation of maṣlaḥah ʿāmmah to justify institutional intervention in distressed Islamic banks illustrates a shift toward governance-sensitive reasoning. Islamic

legal epistemology thus becomes adaptive and system-aware, engaging with prudential policy and institutional stability rather than remaining confined to bilateral contractual logic.

Axiologically, the framework expands the normative objectives of Islamic law. Protection of wealth (*hifz al-māl*) is no longer limited to safeguarding individual property rights; it extends to systemic financial stability, protection of vulnerable actors, and continuity of financial institutions. Distributive justice becomes operational through the persistent differentiation between *al-mu‘sir* and *al-mumṭil*, while compensation mechanisms are confined to verifiable actual loss (*al-takālīf al-fi‘liyyah*), preventing punitive or speculative drift.

The conceptual distinction between prohibited uncertainty (*gharar*) and governable risk (*mukhatarah*) is central to this reconstruction. Classical *fiqh* classified *gharar* into excessive, minor, and intermediate forms, focusing on internal structural ambiguity that undermines contractual consent. By contrast, *mukhatarah* refers to external economic uncertainty—market volatility, liquidity fluctuation, counterparty behavior—that can be identified, allocated, and governed without invalidating the contract. The DSN-MUI corpus implicitly operationalizes this distinction, continuing to prohibit speculative uncertainty while legitimizing structured risk allocation through adaptive mechanisms. The analytical contrast summarized as follows:

Table 2. Conceptual Distinction Between *Gharar* and *Mukhatarah* in Classical *Fiqh* and Contemporary Operationalization

Aspect	Gharar (prohibited uncertainty)	Mukhatarah (governable risk)
Nature	Internal structural ambiguity	External economic exposure
Epistemic character	Non-quantifiable, speculative	Identifiable and measurable
Legal effect	Invalidates contract	Does not invalidate if governed
Normative response	Avoidance and prohibition	Allocation, mitigation, adaptation
Contemporary operationalization	Continued prohibition in speculative structures	Managed through <i>ta’wid</i> , restructuring, <i>hawalah</i>

Source: Author’s synthesis based on Al-Zuhayli (2003), Al-Suwailem (2013), El-Gamal (2006), and analysis of DSN-MUI fatwas (2000–2024).

Through this differentiation, Islamic law shifts from suppressing uncertainty to structuring adaptive mechanisms for uncertainty management. *Fiqh al-Nizā‘*, within this framework, does not primarily denote classical adjudication forums but refers to the normative architecture guiding modern dispute resolution. The corpus reveals that DSN-

MUI fatwas provide substantive justice parameters that can be operationalized across multiple institutional settings, including arbitration, mediation, administrative intervention, and religious courts. These parameters include proportionality of sanctions, evidentiary standards for compensation, debtor classification, mutual consent requirements, and preference for amicable settlement (*sulh*). The operational implications for contemporary dispute resolution synthesized as follows:

Table 3. Normative Contributions of DSN-MUI Fatwas to the Governance Architecture of Islamic Financial Dispute Resolution

Governance Level	Normative Contribution of Fatwa	Institutional Application
Substantive	Mu‘sir–mumṭil differentiation	Judicial and arbitral calibration of sanctions
Evidentiary	Restriction to actual loss	Objective compensation quantification
Procedural	Preference for ṣulḥ	Compatibility with ADR mechanisms
Systemic	Legitimization of institutional intervention	Hybrid regulatory-religious coordination

Source: Author’s analysis of DSN-MUI Fatwas No. 47/2005, No. 48/2005, No. 129/2019, No. 130/2019, and related literature (Herdatama et al., 2026; Warits et al., 2026).

The framework therefore operates within a hybrid legal order in which religious normativity and state regulatory authority mutually reinforce one another. Fatwas provide normative legitimacy for systemic intervention, while regulatory institutions supply operational enforceability. This circular interaction situates Islamic law within governance theory rather than solely within doctrinal jurisprudence. The reconceptualization of legal certainty constitutes another theoretical advancement. Certainty is no longer equated with contractual rigidity. Instead, it is understood as predictability of adaptive mechanisms. Parties may not predict whether default will occur, but they can predict how the normative system will respond—through debtor classification, structured restructuring pathways, evidentiary standards, and recognized resolution forums. Certainty thus resides in procedural and substantive predictability rather than immutability. At a higher level of abstraction, Fiqh al-Mukhtarah wa al-Niza’ represents an epistemological shift from transactional fiqh toward systemic governance fiqh. It expands the scope of maqasid al-shari’ah from micro-protective to macro-systemic dimensions and reconciles the longstanding tension between legal certainty and substantive justice by institutionalizing structured adaptability. The expansion of hifz al-māl summarized as follows:

Table 4. Expansion of the Maqāṣid Objective of Hifz al-Māl from Individual to Systemic Protection

Classical Orientation	Expanded Systemic Orientation
Protection of individual property	Protection of financial system stability
Focus on theft and fraud	Focus on systemic risk and contagion
Individual contractual remedy	Institutional resolution and restructuring
Static property security	Dynamic economic sustainability

Source: Author’s conceptual synthesis based on Auda (2008), Dusuki (2007), and corpus analysis of DSN-MUI fatwas (2000–2024).

Nevertheless, the framework presupposes institutional coherence and effective internalization. Its viability depends on regulatory coordination, methodological transparency in applying maṣlaḥah, and safeguards against Sharia arbitrage. Without such structural supports, governance-oriented fiqh risks remaining symbolic rather than operational. In sum, *Fiqh al-Mukhtarah wa al-Niza’* articulates a governance-sensitive epistemology of Islamic law that integrates risk and dispute as inseparable dimensions of financial architecture. It demonstrates that contemporary Islamic jurisprudence is evolving from rule-based classification toward systemic regulatory design, positioning Islamic law as an adaptive governance instrument within complex financial ecosystems.

This study is subject to several limitations. First, the analysis is confined to a normative corpus of DSN-MUI fatwas and does not empirically examine how these rulings are implemented in the operational practices of Islamic financial institutions, regulatory agencies, arbitration bodies, or religious courts. Consequently, the study cannot assess the extent to which the governance-oriented reasoning identified in the corpus is consistently internalized or effectively enforced in practice. Second, the research focuses exclusively on the Indonesian context, limiting the generalizability of its findings to other jurisdictions where Sharia advisory authorities operate under different institutional and regulatory configurations. Third, the reconstruction of *Fiqh al-Mukhtarah wa al-Niza’* as a conceptual framework relies on interpretive synthesis of textual patterns, which, while methodologically grounded in corpus analysis, remains theoretically constructed rather than doctrinally codified. Future research incorporating empirical investigation, cross-country comparison, and institutional performance assessment would be necessary to validate and refine the systemic governance claims advanced in this study.

CONCLUSION

This study demonstrates that Islamic legal reasoning in contemporary Islamic finance, as reflected in the DSN-MUI fatwa corpus (2000–2024), has evolved beyond a narrow concern with contractual validity toward a governance-oriented framework integrating risk management and dispute resolution. Through a systematic corpus analysis of fatwas on ta'wid, debt restructuring, and debt transfer, the article identifies a consistent pattern of reasoning that recognizes economic risk as an inherent reality rather than a contractual anomaly. The differentiation between al-mu'ṣir and al-mumṭil, the restriction of compensation to verifiable actual loss, and the preference for restructuring and amicable settlement collectively reveal a distributive justice logic embedded within Sharia financial governance. By distinguishing governable risk (mukhtarah) from prohibited uncertainty (gharar), the fatwa corpus shifts Islamic jurisprudence from a paradigm of risk avoidance to one of structured risk governance. This transformation also redefines legal certainty: predictability no longer derives from contractual rigidity, but from clearly structured mechanisms for adaptive response under defined justice parameters. Furthermore, the interaction between DSN-MUI fatwas and state regulatory institutions reflects the emergence of a hybrid legal order in which religious normativity and public regulatory authority mutually reinforce systemic stability. The concept of Fiqh al-Mukhtarah wa al-Niza' thus provides an epistemological lens for understanding contemporary Islamic law as a systemic governance architecture. It highlights the capacity of Islamic jurisprudence to address financial complexity while maintaining normative coherence, distributive justice, and Sharia compliance within modern regulatory environments.

REFERENCE

- Al Abiad, H., & Masadeh, A. (2024). Law Comparison as a Research Method in Legal Studies, and Its Importance in Promoting Uniformity in Legal Systems. In K. Al Marri, F. A. Mir, S. A. David, & M. Al-Emran (Eds.), *BUID Doctoral Research Conference 2023* (pp. 446–454). Springer Nature Switzerland. https://doi.org/10.1007/978-3-031-56121-4_42
- Alfarisi, M. A., Suhedi, S., Ezzerouali, S. A., & Andrianti, D. (2025). Rethinking Legal Validity and Contractual Structures of Shariah-Compliant Credit Cards: *Borneo: Journal of Islamic Studies*, 6(1), 31–43. <https://doi.org/10.37567/borneo.v6i1.4321>
- Altaf, J. (2025). *The Role of the Shari'ah Board in Islamic Institutions* (SSRN Scholarly Paper No. 5259229). Social Science Research Network. <https://doi.org/10.2139/ssrn.5259229>
- Arifin, B. (2024). Franchise in The Perspective of Islamic Contract Law. *At-Tahdzib: Jurnal Studi Islam Dan Muamalah*, 12(2), 105–118. <https://doi.org/10.61181/at-tahdzib.v12i2.361>
- Askari, H., Iqbal, Z., Krichne, N., & Mirakhor, A. (Eds.). (2012). *Risk Sharing in Finance: The Islamic Finance Alternative* (1st ed.). Wiley. <https://doi.org/10.1002/9781119199328>
- Asmoi, A., & Musadad, A. (2026). Contribution of Fiqh Maslahah Rules in the Formulation of Fatwa DSN MUI. *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan*, 20(1), 540–551. <https://doi.org/10.35931/aq.v20i1.5670>
- Auda, J. (2008). *Maqāṣid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*. IIIT.
- Awass, O. (2019). Contending with Capitalism: Fatwas and Neoliberal Ideology. *Journal of World-Systems Research*, 25(1), 145–168. <https://doi.org/10.5195/jwsr.2019.843>
- Aziem, A., Khan, M. D. A., & Hidayat, H. (2026). The Transformation of the Kafalah and Hawalah Contracts into the Mu'āwadhah Contract Maṣlahah Perspective: An Analytical Study of DSN-MUI Fatwa. *Al-Kharaj: Journal of Islamic Economic and Business*, 8(1). <https://doi.org/10.24256/kharaj.v8i1.8933>
- Bin-Armia, M. S., & Kambakov, Y. (2026). Artificial Intelligence and Shariah Governance in Islamic Finance: Institutional Design, Value Creation, and Risk Management. *SUKUK: INTERNATIONAL JOURNAL OF BANKING, FINANCE, MANAGEMENT AND BUSINESS*, 5(1), 49–61.
- Black, A. (2002). *The history of Islamic political thought: From the Prophet to the present*. Routledge.
- Budiwanti, E., & Eidhamar, L. G. (2026). The State and Religion in Indonesia: The Indonesian Ulama Council's Authority on Public Health and National Lottery. *Religions*, 17(1). <https://doi.org/10.3390/rel17010072>
- Creswell, J. W., Creswell, J. D., Creswell, J. W., & Creswell, J. D. (2018). *Research design: Qualitative, quantitative, and mixed methods approaches* (Fifth edition). SAGE.
- El-Halaby, S., Aboul-Dahab, S., & Qoud, N. B. (2021). A systematic literature review on AAOIFI standards. *Journal of Financial Reporting and Accounting*, 19(2), 133–183. (world). <https://doi.org/10.1108/JFRA-06-2020-0170>

- El-Halaby, S., & Hussainey, K. (2016). Determinants of compliance with AAOIFI standards by Islamic banks. *International Journal of Islamic and Middle Eastern Finance and Management*, 9(1), 143–168. (world). <https://doi.org/10.1108/IMEFM-06-2015-0074>
- Ezekwesiri, E., & Ayo-Odewale, V. (2025). *Taking Security over Upstream Petroleum Rights in Nigeria: Shifting Regulatory Landscape and its Implications* (SSRN Scholarly Paper No. 5251094). Social Science Research Network. <https://doi.org/10.2139/ssrn.5251094>
- Fakhruddin, F., Hidayat, H., & Firdaus, D. H. (2024). MODERATION IN DSN-MUI FATWAS: Achieving Justice and Balance in the Sharia Economic System. *Jurisdictie: Jurnal Hukum Dan Syariah*, 15(2), 477–498. <https://doi.org/10.18860/j.v15i2.26883>
- Franciosi, L. M. (2025). Islamic Finance and Sustainable Development: Key Ethical Features and Proactive Initiatives Promoting Financial Inclusion: Islamic Finance and Sustainable Development. *European Journal of Islamic Finance*, 12(2), 30–47. <https://doi.org/10.13135/2421-2172/11175>
- Hallaq, W. B. (1995). *Law and legal theory in classical and medieval Islam*. Variorum/Ashgate.
- Hallaq, W. B. (2009). *An introduction to Islamic law*. Cambridge University Press.
- Hapinra, S. I. (2025). Mitigating Lenders' Financial Risks in Public-Private Partnership Through Step-in Rights. *Journal of Financial Sector Law & Policy*, 1(2), 218–261.
- Hasibuan, F. H., Tanjung, D., & Harahap, M. Y. (2025). LEGAL IMPACT OF DEBT DEFAULT IN FATWA DSN-MUI NO. 11/2000 (CASE STUDY OF MICRO WAQF BANK MAWARIDUSSALAM). *SOSIOEDUKASI: JURNAL ILMIAH ILMU PENDIDIKAN DAN SOSIAL*, 14(4), 2556–2564. <https://doi.org/10.36526/sosioedukasi.v14i4.6463>
- Hassan, A. (2025). Financial Arbitration: Comparative Perspectives on Islamic and Common Law Approaches. *Journal of Business Management and Islamic Banking*, 199–226. <https://doi.org/10.14421/jbmib.2025.0402-06>
- Hassan, M. K., & Rabbani, M. R. (2022). Sharia governance standards and the role of AAOIFI: A comprehensive literature review and future research agenda. *Journal of Islamic Accounting and Business Research*, 14(5), 677–698. (world). <https://doi.org/10.1108/JIABR-04-2022-0111>
- Herdatama, D. M. A., Susilo, D. A. A., Isnaini, A. M., Triestanto, J., & Rasiwan, I. (2026). The Effectiveness Of Sharia Arbitration In Resolving Sharia Business Disputes. *International Journal of Health, Economics, and Social Sciences (IJHESS)*, 8(1), 526~530-526~530. <https://doi.org/10.56338/ijhess.v8i1.10013>
- Hooker, M. B. (2008). *Indonesian syariah: Defining a national school of Islamic law*. Institute of Southeast Asian Studies.
- Jonathan, F., Sugianto, F., & Michael, T. (2023). Comparative Legal Analysis on the Competence of the Indonesia's Financial Services Authority and Monetary Authority of Singapore on The Enforcement of Insider Trading Laws. *Journal of Central Banking Law and Institutions*, 2(2), 283–300. <https://doi.org/10.21098/jcli.v2i2.24>
- Khasanah, K., & Salleh, M. M. M. (2025). Legal Frameworks for Consumer Protection in Digital Sharia Banking: A Comparative Study between Indonesia and Malaysia. *El-Qist: Journal of Islamic Economics and Business (JIEB)*, 15(1), 45–65. (Indonesia, Malaysia). <https://doi.org/10.15642/elqist.2025.15.1.45-65>

- Lubis, I. F., Sudiarti, S., & Marliyah. (2024). Identifikasi Tren Kontrak Murabahah. *Jurnal Masbarif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah*, 9(2), Article 2. <https://doi.org/10.30651/jms.v9i2.22391>
- Lubis, R. A., & Sativa, A. (2026). RESTRUCTURING OF MOTORCYCLE SALE-BASED FINANCING THROUGH MEDIATION FROM THE PERSPECTIVE OF MASLAHAH MURSALAH. *Journal Analytica Islamica*, 15(1), 193–203. <https://doi.org/10.30829/jai.v15i1.28093>
- Mensah, L. (2021). Legal pluralism in practice: Critical reflections on the formalisation of artisanal and small-scale mining (ASM) and customary land tenure in Ghana. *The Extractive Industries and Society*, 8(4), 100973. <https://doi.org/10.1016/j.exis.2021.100973>
- Mirvaxidovich, K. M. (2025). THE RELEVANCE AND IMPORTANCE OF FATWAS IN MUSLIM SOCIETIES. *Web of Teachers: Inderscience Research*, 3(2), 149–159.
- Mohamed, A. H. H., Lebbee, A. R. A., & Casim, A. N. M. (2026). Assessing Shariah Compliance: An Analysis of Ijārah Financing Practices in Sri Lanka's Islamic Banking Sector against AAOIFI Standards. *Journal of Islamic Economic Laws*, 9(01), 01–18. <https://doi.org/10.23917/jisel.v9i01.13319>
- Mohd Zain, F. A., Muhamad, S. F., Abdullah, H., Sheikh Ahmad Tajuddin, S. A. F., & Wan Abdullah, W. A. (2024). Integrating environmental, social and governance (ESG) principles with Maqasid al-Shariah: A blueprint for sustainable takaful operations. *International Journal of Islamic and Middle Eastern Finance and Management*, 17(3), 461–484. <https://doi.org/10.1108/IMEFM-11-2023-0422>
- Moustafa Aldabousi, A., Awad, A., Eldin Mahmoud Hassan, H., Salah Abdullah, S., & Ghonim, A. (2025). Arbitration in Islamic banking: Exploring legal and practical implications for dispute resolution. *Banks and Bank Systems*, 20(2), 15–26. [https://doi.org/10.21511/bbs.20\(2\).2025.02](https://doi.org/10.21511/bbs.20(2).2025.02)
- Nashirudin, M., & Sa'adah, M. (2019). Reviewing shariah certificates of DSN MUI (a study on shariah certificate of DSN MUI on Paytren). *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 19(2), Article 2. <https://doi.org/10.18326/ijtihad.v19i2.169-183>
- Ngabas, I., Muhajir, M., & Nursobah, A. (2025). Batasan Masalah Fatwa Dsn-Mui Tentang Ganti Rugi (Ta'Widh): Pendekatan Batasan Masalah Pemikiran Said Ramadhan Al-Buthi. *J-CEKI: Jurnal Cendekia Ilmiah*, 4(3), 930–946. <https://doi.org/10.56799/jceki.v4i3.8555>
- Patton, M. Q. (2015). *Qualitative research & evaluation methods: Integrating theory and practice* (Fourth edition). SAGE Publications, Inc.
- Rahmawati, Juhriaty, & Jufrin. (2025). Implementasi Ta'widh dan Ta'zir dalam Perbankan Syariah: Perspektif Fatwa Majelis Ulama Indonesia. *Maqasid: Jurnal Studi Hukum Islam*, 14(1), 1–13. <https://doi.org/10.30651/mqs.v14i1.25898>
- Rusli, S., & Djajaputra, G. (2026). Judicial Assessment of Breach in Financing Agreements under Indonesian Contract Law. *JIIHK*, 7(2), 1318–1329. <https://doi.org/10.46924/jihk.v7i2.392>
- Schwartz, S. H. (2012). An Overview of the Schwartz Theory of Basic Values. *Online Readings in Psychology and Culture*, 2(1). <https://doi.org/10.9707/2307-0919.1116>

- Suaidi, S., Mun'im, Z., Astuti, S. D., Riyadi, I., Khabibah, S., & Huda, N. (2025). Harmonisation Between DSN-MUI Fatwas and OJK Regulations: Towards an Innovative and Inclusive Sharia-Compliant Fintech Ecosystem in Indonesia. *Mazahib*, 24(1), 182–197. <https://doi.org/10.21093/mj.v24i1.10032>
- Suparman, S. K., & Hersi, M. (2024). Between Strict and Flexibility: A Comparative Insight of Qawa'id al-Fiqhiyyah in Islamic Banking Practices of Saudi Arabia and Pakistan. *BANCO: Jurnal Manajemen Dan Perbankan Syariah*, 6(2), 114–126. <https://doi.org/10.35905/banco.v6i2.12799>
- Sya'bani, A. S. (2024). Transforming Conventional Banking Contracts to Sharia-Compliant Systems in Aceh: Legal and Operational Challenges. *Mababits Al-Uqud*, 1(1), 53–63. <https://doi.org/10.15575/mau.v1i1.961>
- Warits, A., Azzukhrufi, J. R., Tahirulla, N. A., & Zamawi, B. (2026). Reconceptualization of the Role of Religious Courts in Resolving Sharia Economic Disputes Following the Legal Reform of the Judicial System. *Jurnal Kajian Ilmu Hukum*, 5(1), 12–24. <https://doi.org/10.55583/jkih.v5i1.1663>
- Wazin, W., Patimah, S., Ansori, A., & Wasehudin. (2025). Optimizing AI Technology in Assessing Islamic Financing Risks: A SWOT Analysis of Challenges and Opportunities from an Islamic Legal Perspective (Fiqh). *Al-Istinbath: Jurnal Hukum Islam*, 10(1), 172–193. <https://doi.org/10.29240/jhi.v10i1.11941>
- Yasardin, Y., Rahmaniah, A., & Rachmasari, A. I. (2025). Sharia Fintech Contract Architecture: Developing a Standardization Framework Based on the Convergence of Fiqh, Fatwas, and Judicial Decisions. *Syariah: Jurnal Hukum Dan Pemikiran*, 25(2), 295–323. <https://doi.org/10.18592/sjhp.v25i2.18275>
- Zuhdi, A., Saputra, E., Hidayat, H., Umam, K., & Hayamansyah, D. (2025). Towards an Integrated Sharia Governance Model in Indonesia: Legal Pluralism and the Reconfiguration of State Religion Relations in Financial Supervision. *Al-Istinbath: Jurnal Hukum Islam*, 10(2), 873–899. <https://doi.org/10.29240/jhi.v10i2.12812>

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HARTA PERPANTANGAN SEBAGAI LIVING LAW MASYARAKAT BANJAR (Analisis Normatif-Empiris Terhadap Asal-Usul dan Praktik Pembagiannya)

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ABSTRACT

Prohibited property or *perpantangan* is a concept of joint ownership between husband and wife in the Banjar community tradition that still functions as a living law, even though it is not written in formal regulations or in the classical fiqh works of Sheikh Muhammad Arsyad al-Banjari. This study aims to trace the origins of the concept of *perpantangan* and examine the practice of its distribution through normative-empirical analysis. The research method used is normative-empirical legal research with a sociological approach. Primary data were obtained through interviews with *juryyat* (descendants of the scholar Shaykh Muhammad Arsyad), academics, and members of the Banjar community who practice the concept of *perpantangan*. Meanwhile, secondary data were collected from literature on Islamic jurisprudence, customary law, and national regulations. The results of the study indicate that *perpantangan* arose from social practices of the Banjar community since the 18th century as a response to the significant economic role of women in the household. Although no authentic manuscripts were found explaining this concept, the community legitimized the *perpantangan* to Sheikh Arsyad through cultural legitimacy mechanisms. Normatively, abstinence aligns with the principles of *'urf*, *syirkah al-abdan*, and *masalah mursalah*, so it does not conflict with *muamalah* jurisprudence or national law on joint property. Empirically, abstinence is practiced in a relatively uniform pattern, namely a 50% distribution for the surviving spouse and 50% as inheritance. This research confirms that abstinence is a form of articulation of the Banjar community's legal code of life that serves to maintain fair distribution of property within the family and represents a harmony between custom and sharia.

Keywords : *prohibited property; living law; Banjar community; Islamic law.*

ABSTRAK

Harta perpantangan merupakan konsep kepemilikan bersama suami-istri dalam tradisi masyarakat Banjar yang hingga kini berfungsi sebagai *living law*, meskipun tidak tertulis dalam peraturan formal maupun dalam karya-karya fikih klasik Syekh Muhammad Arsyad al-Banjari. Penelitian ini bertujuan menelusuri asal-usul konsep perpantangan serta mengkaji praktik pembagiannya melalui analisis normatif-empiris. Metode penelitian yang digunakan adalah penelitian hukum normatif-empiris dengan pendekatan sosiologis. Data primer diperoleh melalui wawancara dengan *juryyat* (ulama keturunan Syekh Arsyad), para akademisi, serta masyarakat Banjar yang mempraktikkan perpantangan sedangkan data sekunder dihimpun dari literatur fikih, hukum adat, dan regulasi nasional. Hasil penelitian menunjukkan bahwa perpantangan lahir dari praktik sosial masyarakat Banjar sejak abad ke-18 sebagai respon terhadap peran ekonomi perempuan yang signifikan dalam rumah tangga. Meskipun tidak ditemukan manuskrip otentik yang menjelaskan konsep ini, masyarakat memberikan legitimasi perpantangan kepada Syekh Arsyad melalui mekanisme legitimasi kultural. Secara normatif, perpantangan selaras dengan prinsip *'urf*, *syirkah al-abdan*, dan *masalah mursalah*, sehingga tidak bertentangan dengan fikih *muamalah* maupun hukum nasional tentang harta bersama. Secara empiris, perpantangan dipraktikkan dalam pola yang relatif seragam, yakni pembagian 50% untuk pasangan yang hidup dan 50% sebagai harta waris. Penelitian ini menegaskan bahwa perpantangan merupakan bentuk artikulasi hukum hidup masyarakat Banjar yang berfungsi menjaga keadilan distribusi harta dalam keluarga serta merepresentasikan harmonisasi antara adat dan syariah.

Kata Kunci : *harta perpantangan; living law; masyarakat Banjar; hukum Islam.*

PENDAHULUAN

Dalam bahasa Banjar, *perpantangan* berasal dari kata dasar *pantang* yang berarti hal (perbuatan dan sebagainya) yang terlarang menurut adat atau kepercayaan; pantangan (kamuslengkap.com, t.t.). Akan tetapi, dalam konteks tradisi masyarakat Banjar, harta perpantangan memiliki makna tradisional yang menggambarkan kerja sama dan ikatan antara suami dan istri dalam membangun kehidupan bersama, termasuk dalam hal kepemilikan harta.

Dalam konteks hukum adat, harta pencarian adalah istilah yang umum digunakan oleh berbagai masyarakat adat di Indonesia untuk merujuk harta yang diperoleh suami dan istri selama masa pernikahan. Harta ini berbeda dengan harta bawaan, yaitu harta yang dibawa oleh masing-masing pihak sebelum pernikahan atau yang diperoleh sebagai hadiah atau warisan selama pernikahan.

Pada masyarakat Jawa, harta pencarian dikenal sebagai gono-gini; di Minangkabau disebut harta suarang; di Bugis disebut cakkara; dan di Bali disebut druwe gabro. Istilah-istilah ini menunjukkan bahwa konsep harta pencarian diakui secara luas dalam berbagai budaya di Indonesia (Hadikusuma, 1992).

Di masyarakat Banjar, istilah harta perpantangan diyakini bersumber dari pemikiran Syekh Arsyad al-Banjari, yang melihat perbedaan dalam pola peran keluarga antara masyarakat Arab dan masyarakat Banjar. Dalam masyarakat Arab, perempuan umumnya tidak bekerja untuk menghasilkan harta, kebutuhan istri sepenuhnya dipenuhi oleh suami, sehingga jika suaminya meninggal dan memiliki keturunan, sang isteri hanya berhak atas seperdelapan atau seperempat dari harta warisan (Jumaidi, t.t.).

Kondisi ini sangat berbeda dengan masyarakat Banjar, di mana seorang istri juga mencari nafkah dan berkontribusi secara finansial dalam rumah tangga, sehingga harta yang mereka kumpulkan bersama dikenal sebagai harta perpantangan (Dakhoir, 2010). Oleh karena itu, dalam konsep harta perpantangan, ketika seorang suami atau isteri meninggal, pasangan yang masih hidup berhak atas 50% dari harta perpantangan, sementara sisanya menjadi harta waris dan dibagikan berdasarkan ketentuan yang sudah ada. Dengan demikian, selain memiliki hak atas setengah dari harta perpantangan, pihak yang masih hidup (janda/duda) juga berhak menerima bagian sesuai dengan ketentuan hukum waris dari setengah harta yang tersisa (Erfan dkk., 2023).

Dalam banyak penelitian, disebutkan bahwa pemikiran tentang harta perpantangan ini dituangkan oleh Syekh Arsyad dalam kitab kecil atau risalahnya yang berjudul al-Faraid.

Disebutkan bahwa dalam risalah ini Syekh Arsyad berpendapat pembagian harta waris yang ditinggalkan oleh seorang suami harus mempertimbangkan adanya harta perpantangan, yakni harta yang dihasilkan oleh suami dan istri setelah terjadinya pernikahan. Sebab menurut pandangan Syekh Arsyad, dalam harta tersebut terdapat hak isteri yang tidak boleh dianggap sebagai bagian dari warisan suami (Dakhoir, 2010).

Walaupun demikian, hingga sekarang belum ditemukan manuskrip asli maupun salinan risalah al-Faraid yang diyakini di dalamnya tertuang konsep harta perpantangan. Oleh karena itu penelitian ini bertujuan untuk mengkaji: 1) Bagaimana asal-usul konsep harta perpantangan dalam tradisi masyarakat Banjar?; 2) Bagaimana konsep harta perpantangan dijalankan oleh masyarakat Banjar?; serta 3) Bagaimana analisis konsep harta perpantangan dalam normativisme hukum Islam?

METODE PENELITIAN

Penelitian ini merupakan penelitian hukum normatif-empiris, yaitu penelitian hukum yang mengkaji norma hukum sekaligus menelaah penerapannya dalam praktik sosial masyarakat. (Efendi & Ibrahim, 2018). Adapun pendekatan yang digunakan adalah pendekatan sosiologis, yakni pendekatan yang mengkaji hukum dalam realitas sosial masyarakat (Ali, 2009). Pendekatan ini digunakan untuk menelusuri asal-usul serta praktik pembagian harta perpantangan dalam kehidupan masyarakat Banjar, sekaligus memahami bagaimana konsep tersebut diterima, dipraktikkan, dan diakui secara kultural.

Data yang digunakan dalam penelitian terdiri dari data primer dan data sekunder. Data primer adalah data yang diperoleh langsung dari sumbernya (Ali, 2009), yang menjadi sumber data primer pada penelitian ini adalah keturunan Syekh Arsyad al-Banjari, akademisi, ulama dan masyarakat asli Banjar. Adapun sumber data sekunder adalah sumber data penelitian yang diperoleh secara tidak langsung melalui media perantara seperti buku, jurnal, dan literatur yang relevan dengan objek pembahasan (Ibrahim, 2006). Di antara yang menjadi data sekunder adalah manuskrip karya Syekh Arsyad al-Banjari dan literatur lainnya terkait sejarah serta adat istiadat masyarakat Banjar. Pengumpulan data dilakukan melalui model wawancara dan studi dokumen.

TEMUAN DAN PEMBAHASAN

Dalam konteks masyarakat Banjar, istilah harta perpantangan bukanlah sekadar ungkapan populer, melainkan sebuah konsep adat yang melekat dalam kerangka sosial-

ekonomi lokal dan telah menjadi bagian dari struktur waris tradisional. Analisis wawancara dengan narasumber menunjukkan bahwa perpantangan merupakan hasil akumulasi praktik historis dan norma adat Banjar, yang kemudian diadopsi dan diharmonisasikan dengan prinsip-prinsip hukum Islam dan hukum positif.

Secara historis, pelaku adat Banjar menyatakan bahwa konsep perpantangan sudah ada jauh sebelum teks fikih atau ulama besar seperti Syekh Muhammad Arsyad al-Banjari secara eksplisit mengartikulasikannya. Ini menunjukkan bahwa akar perpantangan sangat lokal dan sosial: harta yang diperoleh bersama suami-istri dalam masa perkawinan dipahami sebagai milik bersama dan harus “ditakar” bersama, konsep yang sangat dekat dengan realitas kehidupan rumah tangga Banjar.

Pengakuan formal atas nilai adat tersebut tercermin dalam upaya positivisasi hukum Islam di Banjar. Dalam penelitian oleh Fitria dkk., dijelaskan bahwa meskipun “perpantangan” tidak sepenuhnya tertulis dalam syariah klasik, masyarakat Banjar tetap mempertahankan praktiknya dan menyusunnya agar sejalan dengan syariah modern dan hukum negara (Fitria dkk., 2024). Hal ini menandakan bahwa perpantangan bukanlah elemen residu adat semata, melainkan bagian dari identitas hukum lokal yang telah melalui proses adaptasi formal.

Lebih dalam lagi, analisis oleh Erfan, Hasan, dan Umar menegaskan bahwa nilai keadilan distributif menjadi inti dari perpantangan. Mereka menjelaskan bahwa pembagian perpantangan dalam adat Banjar mencerminkan keadilan restoratif: pasangan yang telah berkontribusi dalam bentuk kerja rumah tangga, pengasuhan anak, dan usaha ekonomi non-upah diakui secara nyata melalui hak atas sebagian harta bersama ketika terjadi kematian atau perceraian (Erfan dkk., 2023). Nilai ini memperkuat posisi perpantangan sebagai instrumen sosial untuk menghargai kerja pasangan hidup yang mungkin tidak selalu terlihat dalam laporan ekonomi formal.

Dari sisi hukum adat Banjar, penelitian Maskuri & Azri menunjukkan bahwa pola pewarisan adat Banjar sangat fleksibel dan bersifat akomodatif. Dalam sistem adat *bedamai* (damai adat), nilai-nilai Islam dan adat dilebur: keputusan pembagian warisan dapat menggunakan prinsip *as-sulh* (rekonsiliasi) yang memungkinkan para ahli waris bernegosiasi secara damai tanpa menunggu konflik besar, sambil menghargai kontribusi masing-masing individu (Sugiswati, 2014). Ini menggambarkan bagaimana perpantangan bisa mendapatkan legitimasi adat dan agama sekaligus.

Secara teoretis, hubungan antara konsep adat dan hukum Islam dalam perpantangan dapat dipahami melalui lensa pluralisme hukum: perpantangan adalah wujud nyata sinergi antara norma adat lokal Banjar dan prinsip syariah, yang kemudian dioperasionalkan dalam sistem hukum nasional. Hal ini mirip dengan bagaimana konsep harta bersama dalam hukum pernikahan diakui dalam undang-undang dan fikih. Studi normatif seperti dalam kajian Sugiswati juga menunjukkan bahwa harta bersama (dalam konteks pernikahan) diakui dalam hukum adat, hukum Islam, dan KUH Perdata, sehingga konsep-konsep lokal semacam perpantangan mungkin diakomodasi dalam kerangka hukum formal.

Namun demikian, klaim bahwa perpantangan berasal langsung dari pemikiran Syekh Arsyad al-Banjari masih lemah dari segi bukti teks. Narasumber mengungkapkan bahwa tidak ditemukan secara jelas kitab klasik yang menggunakan istilah “perpantangan” persis seperti istilah lokal Banjar. Dalam kerangka akademik, hal ini diperkuat oleh fakta bahwa meskipun Syekh Arsyad sangat berpengaruh, peneliti seperti Fitria dkk mencatat bahwa aspek perpantangan lebih dipertahankan melalui tradisi dan interpretasi lokal ketimbang naskah fiqih klasik (Fitria dkk., 2024).

Keseluruhan analisis ini menunjukkan bahwa asal-usul istilah *harta perpantangan* adalah wujud dari perjalanan sosial-hukum masyarakat Banjar: ia adalah warisan adat yang kaya nilai keadilan, kemudian dijembatani dengan hukum Islam dan akhirnya diakui dalam praktik hukum formal melalui mekanisme positivisasi. Dalam perkembangan selanjutnya, perpantangan menjadi simbol lokal dari pluralisme hukum Indonesia, di mana norma adat dan syariah dapat hidup berdampingan dan saling menghargai.

Adapun hubungannya dengan Syekh Arsyad, Syekh Muhammad Arsyad al-Banjari memiliki posisi historis yang sangat penting dalam transformasi Islam di Kesultanan Banjar. Melalui tulisan dan dakwahnya, ia membantu menata kembali praktik keagamaan lokal yang bercampur dengan adat, mengarahkan masyarakat Banjar kepada pemahaman Islam yang lebih sistematis dan ortodoks. Dalam kajian historiografi, Sabirin dan Zuhri menyatakan bahwa kehadiran al-Banjari menjadi titik balik reformasi keagamaan di Banjar, di mana ia mendirikan mahkamah syariah dan memperkenalkan hukum Islam formal sebagai instrumen moral dan sosial (Sabirin & Muhibin Zuhri, 2025).

Dalam karyanya *Sabilal Muhtadin*, Syekh Arsyad menunjukkan pemikiran fiqih yang sangat kontekstual dan sensitif terhadap tradisi lokal Banjar. Ia tidak sekadar mengimpor norma fikih Arab, tetapi justru memasukkan adat Banjar ke dalam konstruksi hukum Islam. Peneliti Syaifullah menyoroti bagaimana al-Banjari menggunakan kearifan lokal dalam

merumuskan fatwa dan hukum muamalah, sehingga perilaku adat Banjar seperti kebiasaan dalam penguburan atau penggunaan jamban mendapat legitimasi syariah.

Dari sudut pandang teologi dan fiqih, pemikiran al-Banjari juga muncul dalam risalah *Tuhfat al-Râghibîn*, di mana ia menggunakan argumentasi fiqih dalam kerangka teologis. Menurut Muhammad Iqbal, dalam risalah tersebut al-Banjari menggabungkan modalitas deontik (apa yang seharusnya) dengan struktur penetapan hukum (al-hukm al-wadh'i) untuk menjelaskan aspek keyakinan ('aqidah) sekaligus implikasi praktisnya dalam kehidupan sosial (Iqbal, 2021).

Lebih jauh lagi, pemikiran Syekh Arsyad juga dihubungkan dengan prinsip moderasi Islam. Dalam kajian Syaifullah, terlihat bahwa al-Banjari dalam *Sabilal Muhtadin* berusaha menyeimbangkan adat dan agama dengan sangat hati-hati, ia memperbolehkan praktik lokal yang lazim sepanjang tidak bertentangan prinsip syariah, sekaligus meluruskan yang menyimpang (Syaifullah, 2020). Hal ini menunjukkan bahwa perannya bukan hanya sebagai ulama normatif, tetapi sebagai jembatan antara tradisi lokal Banjar dan ajaran Islam.

Dalam wacana hukum waris Banjar, meski tidak ditemukan satu pun manuskrip klasik Syekh Arsyad yang secara eksplisit menggunakan istilah *harta perpantangan*, beberapa penelitian menunjukkan bahwa masyarakat Banjar secara kultural menghubungkan legitimasi perpantangan dengan otoritas keilmuan Syekh Arsyad, sehingga konsep ini dianggap selaras dengan semangat fiqih yang ia ajarkan.

Penelitian Tarantang et al. dalam *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* memberikan gambaran yang sangat jelas tentang fenomena ini. Mereka meneliti praktik *joint property* dalam masyarakat Banjar dan menemukan bahwa meskipun dokumen fikih Syekh Arsyad tidak mencantumkan istilah tersebut, ada keyakinan kolektif bahwa pembagian harta bersama sebelum warisan adalah bagian dari tradisi yang “sesuai” dengan ajaran yang dibawa oleh Syekh Arsyad. Tarantang et al. menjelaskan bahwa penyandaran tersebut terjadi bukan karena dasar teks, melainkan karena otoritas sosial dan moral Syekh Arsyad sebagai ulama pembaru yang membentuk struktur hukum Islam Banjar (Tarantang dkk., 2024).

Dengan kata lain, masyarakat Banjar melakukan apa yang disebut oleh sebagian antropolog sebagai atribusi legitimatif. Proses ini membuat suatu norma adat tidak hanya dipandang sebagai kebiasaan, tetapi sebagai aturan yang layak dipatuhi karena dianggap selaras dengan nilai-nilai tinggi yang dibawa seorang figur. Dalam konteks masyarakat Banjar, figur tersebut adalah Syekh Arsyad. Karena ia dikenal sebagai ulama yang mereformasi praktik keagamaan dan menegakkan syariah di Kesultanan Banjar, maka adat-adat yang

selaras dengan nilai keadilan dianggap sejalan dengan ajarannya, meskipun tidak tertulis secara formal.

Atribusi legitimatif sejalan dengan perspektif *legal pluralism*, di mana hukum tidak berdiri tunggal, tetapi terdiri dari tatanan normatif yang saling berkelindan -adat, agama, dan negara. Menurut analisis Benda-Beckmann tentang pluralisme hukum, otoritas adat sering memperoleh legitimasi dengan dikaitkan pada figur religius atau institusi agama agar norma lokal dapat berdiri sejajar dengan norma formal (Benda-Beckmann & Turner, 2018).

Dalam konteks masyarakat muslim, legitimasi adat juga dipengaruhi oleh kesesuaiannya dengan norma moral agama. Wacana filsafat hukum modern menegaskan bahwa legitimasi hukum terjadi ketika norma disandarkan pada alasan moral yang dapat diterima komunitas; dalam kerangka masyarakat religius, alasan moral tersebut sering hadir dalam bentuk otoritas ulama (Habermas, 2023).

Pengaitan ini diperkuat oleh karakter pemikiran Syekh Arsyad yang fleksibel terhadap *'urf* (adat yang hidup) selama tidak bertentangan dengan prinsip syariah. Kajian Syaifullah menunjukkan bahwa Syekh Arsyad secara eksplisit mengakomodasi kebiasaan Banjar dalam beberapa isu muamalah dan keluarga, sehingga menimbulkan pemahaman bahwa ia membenarkan adat sepanjang maslahat bagi masyarakat (Syaifullah, 2020).

Dengan demikian, meski dalam karya tulis beliau tidak ditemukan satupun pembahasan tentang harta perpantangan, masyarakat memberikan legitimasi terhadap praktik adat tersebut melalui penyandaran simbolik kepada tokoh yang dihormati. Masyarakat melihat bahwa nilai inti perpantangan, yakni keadilan bagi pasangan yang masih hidup, selaras dengan nilai Islam dan semangat pemikiran Syekh Arsyad.

Lebih jauh, wawancara lapangan menunjukkan bahwa beberapa keluarga keturunan Syekh Arsyad sendiri membenarkan bahwa dalam praktik pembagian warisan masa dulu, *harta bersama* memang dibagi terlebih dahulu sebelum masuk ke tahapan waris. Meskipun tidak ada teks tertulis, memori keluarga dan tradisi lisan ini memperkuat persepsi masyarakat bahwa praktik tersebut berasal dari arahan pemikiran Syekh Arsyad.

Dengan demikian, hubungan antara perpantangan dan Syekh Arsyad dapat dipahami sebagai hubungan normatif-kultural, bukan tekstual-doktrinal. Ia tidak bersumber dari ayat kitab, tetapi dari proses penalaran sosial masyarakat Banjar yang memadukan fikih, adat, dan otoritas ulama. Konsep ini lahir dari akar adat Banjar, kemudian dianggap selaras dengan nilai-nilai keadilan yang dibawa Syekh Arsyad, sehingga keduanya menyatu dalam praktik waris lokal yang bertahan hingga sekarang.

Berdasarkan wawancara mendalam dengan para narasumber, praktik *harta perpantangan* dalam masyarakat Banjar muncul sebagai bagian dari tradisi lokal yang telah berlangsung jauh sebelum hadirnya aturan formal negara maupun kodifikasi hukum Islam. Para informan menyampaikan bahwa masyarakat Banjar menggunakan istilah “harta perpantangan” untuk menyebut harta yang diperoleh selama perkawinan dan kemudian wajib dibagi dua ketika terjadi perceraian, baik cerai hidup maupun cerai mati. Dalam praktik sehari-hari, perpantangan dipahami sangat dekat dengan konsep harta bersama sebagaimana yang dikenal dalam Undang-Undang Perkawinan dan Kompilasi Hukum Islam, meskipun istilah perpantangan bersumber dari tradisi masyarakat lokal.

Narasumber menjelaskan bahwa fungsi utama perpantangan adalah memberikan penghargaan kepada pasangan yang masih hidup. Dalam wawancara, informan menekankan bahwa meskipun istri tidak bekerja di ruang publik, kontribusinya di ruang domestik dianggap sebagai “jasa” yang layak dihargai. Istri memasak, mencuci, mengurus anak, dan mengelola rumah tangga tanpa upah. Karena itu, ketika suami meninggal, istri berhak atas separuh harta yang dikumpulkan selama perkawinan. Salah satu narasumber bahkan mengatakan bahwa pekerjaan domestik “lebih melelahkan daripada pekerjaan publik karena tidak ada batas jam kerjanya,” sehingga pembagian ini dipandang sebagai wujud keadilan dalam keluarga.

Meski demikian, wawancara juga menunjukkan bahwa pemahaman masyarakat tidak seragam. Sebagian kelompok masyarakat beranggapan bahwa perpantangan hanya berlaku bagi perempuan, yakni hanya istri yang berhak atas separuh harta, sedangkan suami tidak. Namun narasumber yang memahami rumusan Kompilasi Hukum Islam menegaskan bahwa dalam aturan formal, baik suami maupun istri mendapatkan hak yang sama: siapa pun yang masih hidup berhak atas separuh harta bersama sebelum sisanya diwariskan. Dengan kata lain, dalam perspektif hukum, perpantangan bersifat egaliter, meski praktik sosial di tingkat akar rumput kadang menunjukkan kecenderungan berpihak pada perempuan sebagai bentuk penghargaan dominan terhadap peran domestiknya.

Kasus-kasus konkret yang disampaikan narasumber memperlihatkan keberagaman praktik. Dalam satu contoh, keluarga yang tidak memiliki anak membagi seluruh harta peninggalan secara merata kepada saudara-suami dan janda, tanpa terlebih dahulu memisahkan harta bersama dan harta warisan. Narasumber menilai hal itu keliru karena harta bersama harus dipisah terlebih dahulu. Dalam kasus lain, seorang duda yang memiliki dua anak perempuan meninggal dunia, dan ketiganya sepakat membagi rata keseluruhan harta. Narasumber menerangkan bahwa praktik tersebut merugikan janda karena seharusnya ia

mendapatkan separuh harta bersama terlebih dahulu, baru kemudian menerima bagian waris sebagai ahli waris. Narasumber lalu menyarankan agar pihak keluarga mengajukan fatwa waris ke Pengadilan Agama agar pembagian dilakukan secara benar.

Praktik lain menggambarkan persoalan harta bawaan, yaitu harta yang diperoleh sebelum pernikahan seperti warisan atau hibah dari orang tua. Dalam beberapa kasus, ahli waris mengira harta bawaan otomatis menjadi harta bersama ketika dibawa ke dalam perkawinan. Narasumber menegaskan bahwa secara hukum, harta bawaan tidak berubah menjadi harta bersama kecuali jika dibuktikan ada campur tangan atau kontribusi bersama untuk mengelola atau meningkatkannya. Kesalahpahaman inilah yang menyebabkan sengketa, termasuk kasus seorang istri yang dilaporkan ke kepolisian karena dianggap mengalihkan saham suaminya yang merupakan harta bawaan, padahal harta tersebut seharusnya tidak diperhitungkan sebagai harta bersama.

Wawancara juga mengungkap bahwa meskipun masyarakat Banjar mengenal perpantangan secara luas, referensi tertulis tentang konsep tersebut hampir tidak ditemukan. Beberapa narasumber menyebut adanya pendapat yang menghubungkan perpantangan dengan ajaran Syekh Muhammad Arsyad al-Banjari, namun keterangan itu lebih bersifat lisan. Peneliti terdahulu seperti Jaenal M. menelusuri kemungkinan adanya naskah Syekh Arsyad yang mengatur perpantangan, namun tidak menemukan bukti dokumenter. Karena itu, sebagian informan menilai bahwa perpantangan lebih tepat dipahami sebagai bagian dari hukum adat Banjar yang dipraktikkan turun-temurun dan kemudian diadopsi dalam sistem hukum negara melalui UU Perkawinan dan Kompilasi Hukum Islam.

Dari keseluruhan wawancara, tampak bahwa praktik perpantangan bertumpu kuat pada nilai keadilan yang hidup dalam masyarakat. Perpantangan dianggap sebagai mekanisme perlindungan ekonomi terhadap pasangan yang masih hidup, terutama bagi istri yang selama ini menjalankan pekerjaan domestik tanpa upah. Meski pemaknaannya berbeda-beda antara satu keluarga dan lainnya, struktur dasarnya tetap sama: sebelum membagi warisan, masyarakat Banjar memisahkan terlebih dahulu harta perpantangan sebagai hak penuh bagi suami atau istri yang ditinggalkan. Praktik tersebut tidak hanya mengisi ruang antara adat dan agama, tetapi juga membentuk pola penyelesaian harta peninggalan yang masih terus bertahan hingga kini.

Berdasarkan hasil wawancara, praktik harta perpantangan di masyarakat Banjar dapat diklasifikasi menjadi 4 tipologi, yaitu: *pertama*, Mereka yang mengetahui harta perpantangan bersumber dari pemikiran Syekh Arsyad, dan menerapkannya. Kelompok ini umumnya

adalah masyarakat yang memiliki wawasan sejarah lokal, dekat dengan tradisi keagamaan Banjar, atau sering berinteraksi dengan tokoh agama. Bagi mereka, perpantangan bukan hanya adat, tetapi bagian dari warisan ajaran Syekh Arsyad al-Banjari, sehingga penerapannya dianggap sebagai bentuk kepatuhan terhadap ajaran ulama besar tersebut. Mereka meyakini bahwa Syekh Arsyad menekankan keadilan dalam keluarga, sehingga pembagian harta secara setengah-setengah sebelum waris dipandang sesuai dengan nilai syariah. Pola ini memperlihatkan hubungan kuat antara otoritas simbolik ulama dan legitimasi adat, sehingga perpantangan dijalankan dengan penuh keyakinan religius.

Kedua, Mereka yang mengetahui harta perpantangan bersumber dari pemikiran Syekh Arsyad, namun tidak menerapkannya. Kelompok ini menarik karena menunjukkan adanya kesenjangan antara pengetahuan dan praktik. Mereka tahu asal-usul perpantangan dan menghormati figur Syekh Arsyad, tetapi dalam praktik keluarga mereka tetap membagi harta berdasarkan hukum waris klasik atau mengikuti kebiasaan keluarga besar masing-masing. Beberapa alasan yang muncul dalam wawancara adalah: adanya tekanan keluarga (terutama dari pihak pewaris), kurangnya harta yang dianggap layak untuk dibagi dua, atau anggapan bahwa pembagian faraidh harus didahulukan. Dengan kata lain, meskipun mereka menerima legitimasi religius Syekh Arsyad, faktor sosial dan ekonomi membuat perpantangan tidak selalu diamalkan.

Ketiga, Mereka yang tidak mengetahui harta perpantangan bersumber dari pemikiran Syekh Arsyad, namun menerapkan. Kelompok ini merupakan mayoritas dalam banyak temuan lapangan, dan menunjukkan bahwa fungsi adat lebih kuat daripada literatur keagamaan formal. Mereka menjalankan perpantangan sebagai tradisi orang dulu, tanpa mengetahui kaitannya dengan Syekh Arsyad atau fiqih Islam. Praktik perpantangan bagi kelompok ini adalah tradisi keluarga, bukan ajaran keagamaan. Menariknya, praktik mereka sering kali konsisten dengan prinsip keadilan dan musyawarah, yang justru sejalan dengan maqasid syariah. Ini memperlihatkan bagaimana *'urf* bekerja: adat dapat berfungsi sebagai hukum tanpa perlu legitimasi tekstual, selama ia dianggap wajar dan adil oleh kelompok masyarakat.

Keempat, Mereka yang mengetahui harta perpantangan bersumber dari pemikiran Syekh Arsyad dan tidak menerapkannya. Kelompok ini muncul dari masyarakat yang memiliki pengetahuan baik tentang literatur lokal, tetapi berpegang kuat pada hukum waris Islam secara tekstual (faraidh). Mereka menilai bahwa perpantangan tidak memiliki dasar fiqih yang eksplisit dan lebih merupakan warisan budaya. Karena itu, mereka memilih

membagi harta sesuai sistem waris Islam tanpa mendahulukan harta bersama. Beberapa narasumber menyebut bahwa perpantangan tidak ada dalam kitab, sehingga dianggap kurang kuat dasar syariahnya. Tipologi ini menunjukkan keberadaan arus purifikasi hukum, yakni kelompok yang ingin kembali pada hukum Islam murni dan kurang memberi ruang pada adat.

Dalam teori harta Islam, kepemilikan dapat bersifat individual maupun kolektif. Harta yang dihasilkan dari usaha bersama disebut *al-mal al-musyarak*. Hal ini selaras dengan pandangan bahwa pernikahan merupakan unit ekonomi dan sosial yang memproduksi nilai secara kolektif (Zuhaily, 2011).

Sudah menjadi tradisi di masyarakat Banjar bahwa perkawinan tidak hanya perkawinan antara seorang laki-laki dengan perempuan saja, tetapi juga terjadi pengawinan kerabat, termasuk perkawinan pekerjaan dan pencaharian, sehingga apa yang menjadi pekerjaan suami juga menjadi pekerjaan isteri dan sebaliknya (Al Amruzi, 2013).

Lebih lanjut dalam bukunya, Prof. Al Amruzi menjelaskan bahwa faktor geografis wilayah Banjar yang dikenal dengan seribu sungai, membuat masyarakat hidup dari kerja di atas sungai, seperti berdagang dan menjala ikan. Pekerjaan ini tidak bisa dilakukan oleh seorang suami saja, namun bersama-sama oleh suami dan istri. Demikian juga dengan mereka yang bermata pencaharian sebagai petani, dalam bercocok tanam suami selali dibantu dan ditemani oleh istrinya. Walau seiring dengan kemajuan zaman, jenis pekerjaan masyarakat Banjar pun semakin beragam, namun kongsi kerja antara suami dan istri masih tidak berubah dan kekayaan yang diperoleh merekapun tetap dipertahankan sebagai harta perpantangan.

Adat diartikan sebagai tradisi yang sudah dilakukan oleh masyarakat secara berulang kali sehingga menjadi kebiasaan dan jika ditinggalkan, akan terasa ganjil. Di antara ahli bahasa Arab, ada yang menyamakan kata adat dengan ‘urf (sinonim), namun ada juga yang membedakan, karena adat dan ‘urf berasal dari akar kata yang berbeda. Namun perbedaan antara kedua kata tersebut sifatnya tidak prinsipil, suatu perbuatan yang telah berulang kali dilakukan (adat) menjadi dikenal dan diakui orang banyak (‘urf).

Dalam kerangka hukum Islam, ‘urf menurut bahasa berasal dari kata, *‘arafa ya’rifu* (عرف يعرف) sering diartikan dengan *al-ma’ruf* (المعروف) dengan arti sesuatu yang dikenal (Syarifuddin, 2008, hlm. 410). Sedangkan secara terminologi, urf berarti:

ماعتداه الناس وساروا عليه من كل فعل شاع بينهم، او لفظ تعارفوا إطلاقاً على معنى خاص لا تألفه اللغة ولا يتبادر غيره عند سماعه.
Sesuatu yang menjadi kebiasaan manusia, dan mereka mengikutinya dalam bentuk setiap perbuatan yang populer di antara mereka, ataupun suatu kata yang biasa mereka kenal dengan pengertian tertentu, bukan

dalam pengertian etimologi, dan ketika mendengar kata itu, mereka tidak memahaminya dalam pengertian lain (Zuhaily, 2001, hlm. 830).

Muhammad Abu Zahrah dalam bukunya mengartikan ‘urf sebagai:

ما اعتاده الناس من معاملات واستقامت عليه أمورهم

Apa-apa yang dibiasakan oleh manusia dalam pergaulannya dan telah mantap dalam urusan-urusannya.

Pada hampir semua percakapan, para informan mengaitkan perpantangan dengan kaidah fikih *al-'adatu muhakkamah*—adat/kebiasaan dapat menjadi dasar hukum selama tidak bertentangan dengan nash. “Adatnya sudah... *qaidah ushul fiqih al-adatu muhakkamah, tapi kada boleh bertentangan lawan nash.*” (Tetapi tidak boleh bertentangan dengan nash) (A. Bari, komunikasi pribadi, Agustus 2025).

Landasan dalil adat atau ‘urf dapat dijadikan hukum, adalah hadits yang diriwayatkan Ibnu Mas’ud ra:

ما رآه المسلمون حسناً فهو عند الله حسنٌ

Apa-apa yang dipandang bagus menurut orang-orang muslim, maka sesuatu tersebut bagus menurut Allah.

Dari hadits di atas, ulama menganggap bahwa sesuatu yang dianggap baik itu adalah perbuatan manusia yang dilakukan berulang kali dan secara akal sehat tidak bertentangan dengan hati seseorang ataupun masyarakat di sekitarnya. Dengan demikian, adat dapat menjadi dasar hukum apabila memenuhi syarat-syarat tertentu: Bernilai maslahat dan dapat diterima akal sehat; Berlaku umum dan merata di kalangan orang-orang yang berada di lingkungan adat tersebut, atau di kalangan sebagian besar warganya; ‘Urf yang dijadikan sandaran dalam penetapan hukum telah ada (berlaku) pada saat itu; dan Adat tidak bertentangan dan melalaikan dalil syara (Syarifuddin, 2008, hlm. 424).

Dalam konteks masyarakat Banjar, perpantangan memenuhi seluruh kriteria ‘urf sah. Ia diterima luas oleh masyarakat, dilaksanakan secara praktis dalam pembagian harta keluarga, dan tidak mengandung unsur yang bertentangan dengan prinsip-prinsip fiqih muamalah, khususnya terkait kerja sama (syirkah) dan kepemilikan bersama. Bahkan narasumber menegaskan bahwa perpantangan sejatinya menjadi instrumen perlindungan: “*untuk melindungi salah satu pasangan yang masih hidup... sebagai bentuk penghargaan.*” (A. Daudi, komunikasi pribadi, Agustus 2025)

Dalam kerangka ushul fikih, *maslahah mursalah* merujuk pada kemaslahatan yang tidak disebutkan secara eksplisit dalam nash, tetapi selaras dengan tujuan umum syariah (*maqāṣid al-syarī‘ah*). Al-Syatibi menjelaskan bahwa *maslahah* bisa menjadi dasar hukum apabila membawa kebaikan nyata bagi masyarakat dan tidak bertentangan dengan prinsip syariah

(Hermawan Adinugraha & Mashudi, 2018). Dalam konteks ini, praktik harta perpantangan masyarakat Banjar dapat dibaca sebagai bentuk *maslahah mursalah* karena ia lahir dari kebutuhan sosial untuk melindungi ekonomi pasangan yang masih hidup, meskipun tidak ada teks fiqih klasik yang menyebut istilah tersebut.

Temuan lapangan menunjukkan bahwa harta perpantangan berfungsi sebagai mekanisme proteksi bagi pasangan yang masih hidup. Narasumber menegaskan bahwa setengah dari harta bersama diberikan terlebih dahulu sebelum waris dibagikan, sebagai bentuk penghargaan atas peran domestik maupun dukungan moral selama perkawinan. Perlindungan ini sejalan dengan *maqasid* dalam menjaga harta (*hifz al-māl*) dan menjaga keberlangsungan hidup keluarga (*hifz al-nafs*).

Masalah dalam perpantangan tampak jelas dalam pengakuan terhadap kerja domestik istri (atau suami) yang tidak dibayar, seperti mengurus rumah, anak, dan menopang keberlangsungan kehidupan keluarga. Tanpa kontribusi domestik tersebut, suami harus membayar pembantu atau tenaga lain.

Di sisi lain, perpantangan juga dapat dijelaskan melalui teori *syirkah abdan*, yaitu bentuk kerja sama antara dua orang atau lebih yang bersepakat untuk menggabungkan tenaga, peran, atau keahlian dalam menghasilkan harta. Artikel NU Online menegaskan bahwa harta bersama suami-istri dapat dianalogikan dengan *syirkah abdan* karena kontribusi rumah tangga tidak selalu berupa modal finansial, tetapi bisa berupa tenaga, peran domestik, dan dukungan moral yang memungkinkan tercapainya kesejahteraan keluarga (Nurhakim, t.t.). Dalam banyak keluarga Banjar, suami mungkin bekerja di ruang publik, namun keberhasilan ekonominya tidak mungkin dicapai tanpa peran domestik istri yang mengelola rumah, mengurus anak, atau bahkan ikut membantu usaha keluarga. Analogi *syirkah abdan* memandang seluruh kontribusi ini sebagai tenaga produktif sehingga hasil yang dicapai selama perkawinan dianggap sebagai harta bersama.

Ketika dua teori ini, masalah dan *syirkah* digabungkan, terlihat bahwa perpantangan bukan sekadar adat lokal, tetapi sebuah struktur sosial yang memenuhi standar syariah dan kemaslahatan. Dari perspektif masalah, perpantangan memberikan jaminan keadilan dan perlindungan; dari perspektif *syirkah*, perpantangan memberikan dasar pembagian yang logis karena harta itu adalah hasil kerja sama. Dengan demikian, perpantangan tidak sekadar adat normatif, tetapi sebuah mekanisme distribusi ekonomi yang berakar pada nilai-nilai syariah meskipun istilahnya tidak ditemukan dalam literatur klasik.

Analisis ini diperkuat oleh fakta bahwa masyarakat Banjar sendiri memahami perpantangan sebagai bentuk penghargaan terhadap kerja bersama. Hasil wawancara menunjukkan bahwa keluarga berkongsi dalam membangun harta, sehingga wajar jika harta itu dibagi dua sebelum warisan dibagikan. Pola ini sesuai dengan praktik pembubaran syirkah: ketika kerja sama berakhir (baik karena perceraian atau kematian), harta syirkah dibagi terlebih dahulu sebelum masing-masing pihak mengambil haknya.

Pada akhirnya, pendekatan integratif ini menunjukkan bahwa harta perpantangan dapat dipandang sebagai *'urf yang sah* (*'urf sahib*), yang dilegitimasi oleh dua kerangka ushul fikih besar: nilai-nilai kemaslahatan dan analogi syirkah. Adat Banjar tidak berdiri sendiri, tetapi menautkan dirinya pada semangat syariah, menjaga keadilan domestik, mengakui kontribusi non-material, dan menyediakan mekanisme penyelesaian sengketa yang efektif. Karena itu, perpantangan dapat dipahami sebagai ijtihad sosial masyarakat Banjar yang secara substansial sesuai dengan prinsip-prinsip hukum Islam kontemporer.

KESIMPULAN

Istilah harta perpantangan berasal dari tradisi lokal masyarakat Banjar, yang hidup jauh sebelum lahirnya Undang-Undang Perkawinan tahun 1974 dan Kompilasi Hukum Islam tahun 1991. Secara historis, tidak ditemukan bukti naskah klasik karya Syekh Muhammad Arsyad al-Banjari yang secara langsung menyebutkan istilah tersebut. Namun, masyarakat Banjar melakukan proses atribusi legitimatif, yaitu mengaitkan praktik adat yang dianggap adil dengan kewibawaan Syekh Arsyad sebagai ulama besar Banjar. Dengan demikian, perpantangan dapat dikategorikan sebagai *'urf sahib*, yaitu adat yang sah menurut syariat karena tidak bertentangan dengan prinsip keadilan dan kemaslahatan.

Praktik harta perpantangan dijalankan sebagai mekanisme pembagian harta suami-istri yang diperoleh selama perkawinan, di mana separuh menjadi hak pasangan yang masih hidup sebelum sisanya dijadikan objek waris. Hasil wawancara menunjukkan empat tipologi pelaku: (a) mengetahui perpantangan berasal dari Syekh Arsyad dan menerapkan, (b) mengetahui tetapi tidak menerapkan, (c) tidak mengetahui asal-usulnya tetapi menerapkan sebagai adat, dan (d) mengetahui tetapi memilih tatanan hukum waris Islam klasik. Seluruh tipologi memperlihatkan bahwa perpantangan berfungsi sebagai praktik adat yang kuat, fleksibel, dan dijalankan melalui musyawarah keluarga, serta efektif dalam mengurangi konflik waris.

Secara normatif, perpantangan sejalan dengan prinsip fiqih muamalah, terutama konsep *syirkah abdan* (kerja sama tenaga) dan nilai masalah mursalah (kemaslahatan yang tidak bertentangan dengan nash). Pembagian separuh harta dipandang sebagai bentuk penghargaan terhadap kontribusi pasangan, baik domestik maupun publik selama masa perkawinan. Dalam hukum positif Indonesia, konsep perpantangan memiliki padanan dalam harta bersama yang diatur dalam UU No. 1 Tahun 1974 dan KHI pasal 85-97. Dengan demikian, perpantangan merupakan titik temu antara adat Banjar, nilai-nilai syariah, dan sistem hukum nasional.

REFERENSI

- Al Amruzi, F. (2013). *Hukum Harta Kekayaan Perkawinan*. Aswaja Pressindo.
- Ali, Z. (2009). *Metode Penelitian Hukum*. Sinar Grafika.
- Benda-Beckmann, K. von, & Turner, B. (2018). Legal pluralism, social theory, and the state. *The Journal of Legal Pluralism and Unofficial Law*, 50(3), 255–274. <https://doi.org/10.1080/07329113.2018.1532674>
- Dakhoir, A. (2010). Pemikiran Fiqih Shaikh Muhammad Arshad Al-Banjari. *Islamica: Jurnal Studi Keislaman*, 4(2), Article 2. <https://doi.org/10.15642/islamica.2010.4.2.230-247>
- Efendi, J., & Ibrahim, J. (2018). *Metode Penelitian Hukum: Normatif dan Empiris*. Prenada Media.
- Erfan, Z., Hasan, A., & Umar, M. (2023). Menelisik Harta Perpantangan: Menggali Nilai Keadilan Distributif Dalam Adat Banjar. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 1(4), Article 4. <https://doi.org/10.62976/ijjel.v1i4.197>
- Fitria, R. A., Sukarni, S., Hanafiah, M., & Muhajir, A. (2024). Upaya Positivisasi Hukum Islam Wilayah Banjar (Telaah Eksistensi Harta Perpantangan Sebagai Ciri Khas Daerah). *Interdisciplinary Explorations in Research Journal*, 2(2), 888–912. <https://doi.org/10.62976/ierj.v2i2.581>
- Habermas, J. (2023). How is legitimacy made possible via legality? (L. H. Mac, Penerj.). *Revus. Journal for Constitutional Theory and Philosophy of Law / Revija Za Ustavno Teorijo in Filozofijo Prava*, (50). <https://doi.org/10.4000/revus.9668>
- Hadikusuma, H. (1992). *Pengantar Ilmu Hukum Adat Indonesia*. Penerbit Mandar Maju.
- Hermawan Adinugraha, H., & Mashudi, M. (2018). Al-Maslahah Al-Mursalah dalam Penentuan Hukum Islam. *Jurnal Ilmiah Ekonomi Islam*, 4(01), 63–75.
- Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Bayu Media Publishing.
- Iqbal, M. (2021). Nuansa Fiqih dalam Pemikiran Teologi Syekh Muhammad Arsyad Al-Banjari pada Risalah Tuhfat Al-Raghibin. *Khazanah: Jurnal Studi Islam Dan Humaniora*, 19(1), 21–38. <https://doi.org/10.18592/khazanah.v19i1.4938>
- Jumaidi, A. (t.t.). *Hukum Waris Adat Banjar*. Diambil <https://jdih.mahkamahagung.go.id/storage/uploads/artikel/2024/2024-Hukum%20Waris%20Adat%20Banjar.pdf>
- kamusalengkap.com. (t.t.). *Penjelasan arti kata pantang*. KamusLengkap.com Kamus Lengkap Semua Bahasa. Diambil 27 Januari 2025, dari <https://kamusalengkap.com/arti/pantang>
- Nurhakim, A. (t.t.). *Adakah Harta Gono-Gini dalam Islam?* NU Online. Diambil 30 November 2025, dari <https://nu.or.id/syariah/adakah-harta-gono-gini-dalam-islam-KvEgE>

- Sabirin, M., & Muhibin Zuhri, A. (2025). Transformasi Islam di Kesultanan Banjar: Tinjauan Historiografi Kehadiran Syekh Muhammad Arsyad al-Banjari (1710-1812 M). *Al-Isnad: Journal of Islamic Civilization History and Humanities*, 6(01), 89–101.
- Sugiswati, B. (2014). Konsepsi Harta Bersama dari Perspektif Hukum Islam, Kitab Undang-Undang Hukum Perdata dan Hukum Adat. *PERSPEKTIF: Kajian Masalah Hukum Dan Pembangunan*, 19(3), 201–211. <https://doi.org/10.30742/perspektif.v19i3.22>
- Syaifullah, A. (2020). Moderasi Islam dalam Kitab Sabilal Muhtadin: Kearifan Lokal Tanah Banjar. *Muḍsarab: Jurnal Kajian Islam Kontemporer*, 2(1), 31–44. <https://doi.org/10.18592/msr.v2i1.3676>
- Syarifuddin, A. (2008). *Ushul Fiqh*. Kencana Prenada Media Group.
- Tarantang, J., Akbar, W., Astiti, N. N. A., Rollis, R., & Ridwan, A. H. (2024). Rereading the Concept of Joint Property: Fiqh Literacy in the Book of Sabilal Muhtadin and the Genealogy of Sheikh Arsyad's Thoughts. *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(3), Article 3. <https://doi.org/10.22373/sjkh.v8i3.23016>
- Zuhaily, W. (2001). *Ushul Fiqh al-Islamiy*. Dar el-Fikr.
- Zuhaily, W. (2011). *Fiqh Islam wa Adillatuhu* (A. Hayyi al-Kattani, Penerj.). Gema Insani.

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RETHINKING ISLAMIC DIVORCE LAW IN INDONESIA THROUGH JASSER AUDA'S SYSTEMS APPROACH

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ABSTRACT

The rising rate of divorce in Indonesia reveals a widening gap between normative legal regulations and the evolving social realities of Muslim families. Islamic family law, which aims to preserve marital harmony, is often perceived as overly formalistic and insufficiently responsive to contemporary social and gender dynamics. This study examines Islamic divorce law in Indonesia through the systems theory developed by Jasser Auda within the broader framework of *maqasid al-shari'ah*. Using a normative legal approach with qualitative analysis of statutory regulations, the *Kompilasi Hukum Islam*, Supreme Court regulations, and selected judicial decisions, the study operationalizes the six features of Auda's systems theory: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness to analyze the structure and implementation of divorce law. The findings reveal several systemic weaknesses, particularly in the effectiveness of mediation, the enforcement of post-divorce financial obligations, and the legal protection of women and children. These issues indicate that divorce regulation operates within a complex interaction between legal norms, judicial practices, and changing social conditions. The study therefore argues that Islamic divorce law in Indonesia should be understood as an open and evolving legal system rather than a purely doctrinal framework. By applying Auda's systems perspective, this research contributes to extending *maqasid* analysis beyond normative interpretation toward a systemic evaluation of contemporary Islamic family law.

Keywords : *Divorce Law, maqasid, systems approach*

ABSTRAK

Meningkatnya angka perceraian di Indonesia menunjukkan adanya kesenjangan yang semakin melebar antara regulasi hukum normatif dan realitas sosial yang berkembang dalam kehidupan keluarga Muslim. Hukum keluarga Islam yang pada dasarnya bertujuan untuk menjaga keharmonisan rumah tangga sering kali dipersepsikan terlalu formalistik dan kurang responsif terhadap dinamika sosial dan gender kontemporer. Penelitian ini mengkaji hukum perceraian Islam di Indonesia melalui teori sistem yang dikembangkan oleh Jasser Auda dalam kerangka *maqasid al-shari'ah*. Dengan menggunakan pendekatan hukum normatif melalui analisis kualitatif terhadap peraturan perundang-undangan, *Kompilasi Hukum Islam*, peraturan Mahkamah Agung, serta sejumlah putusan pengadilan terkait perceraian, penelitian ini mengoperasionalkan enam fitur teori sistem Auda: *cognitive nature*, *wholeness*, *openness*, *interrelated hierarchy*, *multidimensionality*, dan *purposefulness* untuk menganalisis struktur dan implementasi hukum perceraian. Hasil penelitian menunjukkan adanya sejumlah kelemahan sistemik, terutama dalam efektivitas mekanisme mediasi, penegakan kewajiban nafkah pasca perceraian, serta perlindungan hukum terhadap perempuan dan anak. Temuan ini menunjukkan bahwa regulasi perceraian beroperasi dalam interaksi yang kompleks antara norma hukum, praktik peradilan, dan perubahan kondisi sosial. Oleh karena itu, hukum perceraian Islam di Indonesia perlu dipahami sebagai sistem hukum yang terbuka dan terus berkembang, bukan sekadar kerangka normatif yang bersifat doktrinal. Dengan menerapkan perspektif sistem dari Auda, penelitian ini berkontribusi memperluas analisis *maqasid* dari sekadar interpretasi normatif menuju evaluasi sistemik terhadap praktik hukum keluarga Islam kontemporer.

Kata Kunci: *hukum perceraian, maqasid, pendekatan sistem*

INTRODUCTION

Over the past two decades, the increasing rate of divorce in Indonesia has become a significant socio-legal concern, exposing the growing gap between normative marital regulations and the changing realities of Muslim family life. Data from the Central Bureau of Statistics (Badan Pusat Statistik/BPS) indicate that in 2023 the number of divorce cases filed before the Religious Courts reached a significant level, with the upward trend continuing into 2024 and 2025 across most provinces in Indonesia. (Statistik, 2025) This tendency not only reflects a growing rate of marital dissolution but also deeper social challenges, including fragile family resilience, limited public understanding of marital values, and structural weaknesses within the marriage law system. Divorce can no longer be viewed merely as a private matter between husband and wife; rather, it has evolved into a social problem with far-reaching implications for children, household economic stability, and even national development.

This issue cannot be assessed solely through statistical indicators, but must also be understood through the broader social dynamics that accompany it. Reports from the Central Bureau of Statistics (BPS) demonstrate a consistent increase in divorce over the last two decades, with causes ranging from economic hardship and incompatibility of character to domestic violence. Badan Pusat Statistik, Jumlah Perceraian Menurut Provinsi These data signal a crisis within the family institution, which ideally functions as the foundation of social harmony. From a legal perspective, the regulatory framework governing divorce under Law Number 1 of 1974 on Marriage and the *Kompilasi Hukum Islam* (KHI) appears to remain predominantly oriented toward formal and procedural aspects, rather than addressing the substantive problems experienced by the parties involved.

Normative issues within Indonesia's divorce law therefore warrant serious attention. Law Number 1 of 1974 on Marriage and the *Kompilasi Hukum Islam* (KHI) are frequently regarded as insufficient in ensuring adequate protection for women and children. In the context of post-divorce maintenance, for instance, judicial practice reveals that many court rulings are not consistently implemented by former husbands. Rohayati and her colleagues emphasize that weak law enforcement against former husbands who fail to comply with court orders constitutes a primary factor contributing to women's vulnerability after divorce. (Rohayati et al., 2025) This situation is further aggravated by the limited range of positive legal instruments available to compel compliance.

In addition, divorce practice in Indonesia reveals a noticeable gap between statutory texts and judicial implementation. Supreme Court Decision Number 137/K/AG/2007, (*Yurisprudensi Mahkamah Agung Republik Indonesia No. 137/K/AG/2007*, 2007) for example, represents an important precedent concerning nafkah iddah; however, its application has often been inconsistent. Julia's analysis of this decision demonstrates that judicial reasoning has not fully incorporated a maqasid al-shari'ah approach, thereby leaving unresolved gaps in the protection of women's rights. (Julia, 2020) Zulkifli further notes that although the Supreme Court has provided interpretative guidance through this ruling, lower-court judges frequently construe it in a narrow and strictly normative manner. **Ritonga Zulkifli, "Pemberian Nafkah Iddah Cerai Gugat Menurut Mazhab Syafi'i (Analisis terhadap Putusan Mahkamah Agung No. 137/K/Ag/2007)," Jurnal Landraad: Jurnal Hukum Keluarga Islam dan Hukum Muamalah 1 (2022): 23–34.**

A further weakness can be observed in the mediation mechanism as an instrument of dispute resolution. Supreme Court Regulation Number 1 of 2016 formally establishes a clear mediation framework; Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan (2016). However, in practice mediation often becomes a procedural formality and has not significantly reduced divorce rates. A study by I Gede Satya Bala Putra Dewa and colleagues at the Badung Religious Court demonstrates that many cerai talak cases ultimately proceed to full adjudication despite having undergone mediation, indicating that mediation has not functioned effectively as a final safeguard for marital preservation (Dewa et al., 2019). These conditions illustrate that Indonesia's divorce regulations frequently remain normative and partial, failing to fully address the complexity of contemporary Muslim family life.

Beyond legal and procedural issues, divorce also produces significant social consequences. As Mendoza, Tolba, and Saleh observe in their study of Egypt, divorce consistently generates economic and psychological vulnerability among women and children (Mendoza et al., 2019). Although Egypt and Indonesia differ in cultural context and legal structure, similar patterns of vulnerability are evident in Indonesian divorce cases, particularly when former husbands fail to fulfill their obligations concerning nafkah iddah and mut'ah as determined by court decisions. This suggests that divorce in Indonesia cannot be understood solely within a legal-formal framework but requires a broader analysis encompassing social, economic, and legal dimensions.

From the standpoint of academic literature, numerous studies have examined divorce from diverse perspectives within Islamic family law. Achmad, Supardin, and Asni highlight judicial efforts to resolve divorce disputes through amicable judgments by drawing upon a *maqasid al-shari'ah* framework (Achmad et al., 2022). Kartini and her colleagues emphasize a *maqasid* approach in addressing early divorce resulting from underage marriage (Kartini, 2022). Fauzi, Hermanto, and Taqwa analyze divorce in relation to Lampung Pepadun customary law within the framework of *maqasid al-shari'ah* (Fauzi et al., 2022), while Firdawaty and co-authors explore the dominance of wives over marital property within the Lampung Sai Batin customary community using a similar perspective (Firdawaty et al., 2024). These studies demonstrate a growing scholarly interest in employing *maqasid al-shari'ah* as an analytical framework for understanding divorce in Muslim societies. However, these studies generally focus on specific legal issues or case-based discussions and do not examine how divorce law operates as a broader legal system interacting with social and institutional realities.

Other studies have begun to apply Jasser Auda's systems theory within broader discussions of Islamic law. Budiyanto and Andika Mubarak analyze marriage registration through the lens of Auda's *maqasid*-based systems perspective (Budiyanto & Mubarak, 2023). Similarly, Muchamad Toif Chasani examines the application of Auda's systems theory within Islamic legal philosophy (Muchamad Toif Chasani, 2022), while Nabilah, Putri, and Rizal discuss the implementation of the systems approach in the regulation of marriage dispensation in Indonesia. Wardatun Nabilah, Dewi Putri, and Deri Rizal, "Jasser Auda's System Approach in the Rules of Marriage Dispensation in Indonesia (Review of *Maqashid Syariah*)" (2024): 265–281. Although these studies illustrate the growing relevance of Auda's framework, they do not specifically address the dynamics of divorce law in Indonesia. Consequently, the application of Auda's six systemic features to analyze divorce law as an integrated legal system in Indonesia remains largely unexplored. Recent bibliometric studies also indicate that Islamic family law scholarship in Indonesia remains largely dominated by normative approaches, with limited engagement in multidisciplinary frameworks, highlighting the relevance of systemic perspectives such as Jasser Auda's theory (Maimun et al., 2024)(Mohammed, 2024).

Based on the author's review of existing scholarship, no study has systematically analyzed Indonesian divorce law through a comprehensive application of the six features of Jasser Auda's systems theory. Most existing studies rely on textual interpretation or partial

maqasid-based analysis and therefore do not fully capture how divorce law operates as a complex legal system interacting with social realities. This gap indicates the need for a more integrative analytical framework capable of examining divorce law not merely as a normative regulation but as a dynamic system shaped by multiple interacting factors. A systemic analysis based on the six features of Jasser Auda's theory therefore provides an important analytical perspective for understanding the interaction between legal norms, judicial practices, and social realities in Indonesian divorce law.

Jasser Auda's systems theory offers such a framework through six principal features: cognition, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness (Jasser Auda, 2008). These features provide a dynamic analytical framework that allows Islamic law to be understood not only through textual interpretation but also through its interaction with social and institutional contexts. Through this perspective, divorce law can be examined as part of a broader legal system that continuously interacts with social realities and institutional structures.

Building upon this theoretical perspective, the present study approaches divorce law in Indonesia not merely as a set of normative regulations but as a living legal system shaped by multiple interacting factors. By linking the empirical phenomenon of rising divorce rates, the normative weaknesses of existing regulations, and the analytical potential of systems theory, this study seeks to address an important gap in the literature on Islamic family law.

Accordingly, this research pursues two principal objectives. First, it examines Islamic divorce law in Indonesia through a systemic analytical approach grounded in the six features of Jasser Auda's theory. Second, it contributes theoretically to Islamic family law by demonstrating how systems-based maqasid analysis explains the interaction between legal norms, judicial practices, and social realities in contemporary Muslim societies.

RESEARCH METHOD

This research employs a normative doctrinal legal research design using a qualitative descriptive–analytical approach. The normative approach is employed because the inquiry focuses on law as a system of norms expressed in statutory regulations, legal doctrines, and judicial reasoning, rather than merely as observable social behavior. Within Islamic legal research, this approach enables the analytical examination of legal texts and judicial interpretations in order to understand how legal norms are constructed and applied in practice. As emphasized by Maylissabet in her discussion of normative methodology in

Islamic legal studies, normative analysis remains central for examining the interaction between legal doctrines and institutional legal practices (Maylissabet, 2022).

Islamic divorce law in Indonesia is examined by analyzing both its regulatory framework and judicial interpretation. The analysis focuses on how legal norms concerning divorce are formulated within statutory regulations and how they are interpreted and applied by courts. Through this perspective, divorce law is treated not merely as a collection of legal provisions but as part of a broader legal system that interacts with institutional practices and socio-legal contexts.

Primary data consist of authoritative legal sources regulating divorce in Indonesia, including Law Number 1 of 1974 on Marriage, the Kompilasi Hukum Islam (KHI), and selected Supreme Court decisions concerning divorce cases. The Marriage Law functions as the principal normative foundation of marital regulation in Indonesia and operates as a harmonizing instrument between religious law, customary law, and state law. The Kompilasi Hukum Islam represents a codification of fiqh-based norms adapted to Indonesia's legal context and is widely used by judges of the Religious Courts in adjudicating divorce disputes. In addition, Supreme Court decisions provide interpretative guidance on statutory provisions contained in both the Marriage Law and the KHI, enabling the identification of patterns of judicial reasoning as well as variations in legal interpretation.

In addition to primary legal sources, secondary data are derived from academic literature, including scholarly books and peer-reviewed journal articles. These sources encompass prior research on divorce law in Indonesia, studies on *maqasid al-shari'ah*, and methodological discussions concerning the application of systems theory in Islamic legal analysis. The inclusion of secondary literature allows the analysis to situate Indonesian divorce law within broader academic debates and theoretical developments in contemporary Islamic legal scholarship.

The analytical framework is grounded in Jasser Auda's systems theory as elaborated in *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. The framework is operationalized through six analytical features: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. These features function as analytical lenses for examining how divorce law operates within the Indonesian legal system.

The cognitive dimension is used to analyze how divorce is conceptualized within statutory regulations and judicial reasoning. This examination considers whether divorce is framed primarily as an individual right, a religious obligation, or a procedural legal

mechanism, as well as how judges justify their decisions through references to religious norms, statutory provisions, and judicial precedents.

The feature of wholeness enables a comprehensive examination of divorce law as part of an integrated legal system rather than as isolated legal provisions. Through this perspective, divorce regulation is analyzed in relation to broader social, economic, and institutional contexts that influence the operation of family law in Indonesia.

Openness is employed to assess the extent to which divorce law remains responsive to legal and social change. Particular attention is given to debates surrounding amendments to marriage regulations as well as developments in constitutional and judicial interpretation that illustrate the evolving character of family law.

The feature of interrelated hierarchy is applied to analyze the relationship among legal norms operating at different levels of the legal system. In this structure, the Marriage Law functions as a general legal framework, the Kompilasi Hukum Islam operates as a more specific normative reference within Islamic family law, and Supreme Court decisions serve as interpretative authorities shaping judicial practice.

Multidimensionality enables the analysis of divorce beyond its strictly legal dimension by considering psychological, social, and gender-related aspects. Through this perspective, divorce law is examined in relation to broader questions of gender justice, economic vulnerability, and social welfare.

Finally, the feature of purposefulness is used to evaluate whether the regulation and judicial implementation of divorce law reflect the objectives of *maqasid al-shari'ah*. This evaluation focuses on whether divorce law contributes to the protection of individual rights, the prevention of harm, and the realization of justice within family relations.

Analytically, the research proceeds through three stages: identifying relevant legal norms within statutory regulations and judicial decisions, interpreting these norms through the six analytical features of Auda's systems theory, and synthesizing the findings to evaluate how divorce law operates as a systemic legal framework within the Indonesian context.

Through this analytical procedure, divorce law in Indonesia is examined as a dynamic legal system shaped by the interaction of legal norms, judicial interpretation, and broader social realities.

FINDINGS AND DISCUSSION

Re-Examining the Regulation and Practice of Divorce in Indonesia

Divorce law in Indonesia represents one of the most complex and contested domains within Islamic family law. Formally, the regulation of divorce is governed by Law No. 1 of 1974 on Marriage and the *Kompilasi Hukum Islam* (KHI) for Muslim citizens, complemented by several Supreme Court regulations, including PERMA No. 1 of 2016 on mediation procedures and PERMA No. 3 of 2017 concerning guidelines for adjudicating cases involving women in conflict with the law. These legal instruments collectively reflect a normative commitment to preserving family stability and protecting the welfare of family members, particularly women and children. Nevertheless, a closer examination of legal practice reveals a persistent tension between the formal design of the regulatory framework and the social realities encountered in divorce cases.

Over the past two decades, divorce in Indonesia has demonstrated a consistent upward trajectory. Data published by the Central Bureau of Statistics (Badan Pusat Statistik/BPS) in 2024 and 2025 indicate that divorce cases are triggered by diverse factors, including economic hardship, domestic violence, incompatibility of character, and changing marital expectations (Statistik, 2025). While such statistical data illustrate the magnitude of the phenomenon, they do not fully explain how divorce law operates within judicial institutions. The courtroom dynamics of the Religious Courts often reveal that the implementation of divorce regulations depends not only on legal norms but also on institutional capacity, judicial discretion, and the socio-cultural background of the parties involved.

One regulatory mechanism intended to prevent divorce is mediation. PERMA No. 1 of 2016 requires judges to facilitate mediation before proceeding to adjudication, reflecting the legal system's attempt to prioritize reconciliation. However, empirical findings from the Badung Religious Court indicate that the effectiveness of mediation is largely contingent upon the initiative of the presiding judge and the willingness of the disputing parties. Dewa, "Penerapan PERMA," 131. In practice, mediation frequently becomes a procedural formality rather than a substantive effort to restore marital harmony, as many marital conflicts have already escalated beyond reconciliation by the time divorce cases reach the Religious Courts (Nurlaelawati, 2010). This condition illustrates a structural limitation within the mediation framework: although reconciliation is normatively mandated, its implementation remains

situational and dependent on individual judicial initiative rather than on a robust institutional design.

Judicial interpretation also plays a significant role in shaping the practical application of divorce law. Supreme Court Decision No. 137/K/AG/2007, for instance, addresses the obligation of husbands to provide *nafkah iddab* and *mut'ab* following divorce. Julia's analysis demonstrates that despite the existence of clear normative provisions, **Julia, "Maqasid Analysis," 95.** the enforcement of these financial obligations frequently encounters obstacles in judicial practice, particularly when former husbands refuse to comply with court decisions. Such situations reveal a paradox within the legal system: although statutory and jurisprudential norms affirm the protection of women's rights, the absence of effective enforcement mechanisms limits the realization of those rights in practice.

Tensions between normative regulation and social reality are also visible in the structure of the *Kompilasi Hukum Islam*. Azizah argues that several provisions of the KHI retain a predominantly doctrinal orientation derived from classical fiqh and do not fully accommodate contemporary marital dynamics, such as divorce caused by psychological incompatibility or economic stress (Azizah, 2012). This observation challenges the assumption that the KHI has fully adapted to modern social conditions. Nurhadi further notes that informal practices of *cerai talak* continue to occur in certain regions despite contradicting formal legal procedures (Nurhadi, 2019). These practices demonstrate that legal norms formulated at the national level do not always correspond to the lived realities of Muslim communities, thereby exposing a gap between legal regulation and social practice.

The role of judges in mediating divorce disputes also reflects the complex interaction between legal norms and judicial discretion. Research conducted by Achmad, Supardin, and Asni at the Polewali Religious Court indicates that judges can actively formulate solutions grounded in the principles of *maqasid al-shari'ah*, particularly in encouraging reconciliation and safeguarding family welfare (Achmad et al., 2022). This finding suggests that even within a rigid normative framework, judicial reasoning can introduce elements of flexibility when guided by considerations of *maslahah*. However, such flexibility remains uneven across different courts. Variations in judicial competence, institutional resources, and local legal culture contribute to disparities in the effectiveness of mediation practices throughout Indonesia.

The interaction between formal law and customary norms further illustrates the complexity of divorce regulation. Fauzi and his colleagues highlight the Lampung Pepadun

community, where adat traditions continue to influence divorce practices, particularly with regard to property distribution and maintenance obligations (Fauzi et al., 2022). The persistence of these customary norms indicates that state law does not operate in isolation but rather interacts continuously with social and cultural frameworks. Consequently, divorce law cannot be understood solely as a statutory arrangement; it constitutes part of a broader socio-legal system in which state regulation, religious doctrine, and customary practices intersect.

Concerns regarding the protection of women's and children's rights remain particularly significant in this context. Rohayati and her colleagues document instances in which former husbands fail to fulfill their obligations to provide *nafkah iddah* and *mut'ah*, revealing weaknesses in the supervision and enforcement of judicial decisions (Rohayati et al., 2025). These findings raise an important normative question: whether the current legal framework is sufficiently capable of safeguarding vulnerable parties, or whether deeper structural reform is necessary to align legal practice with the objectives of *maqasid al-shari'ah*.

At the same time, academic scholarship on Islamic family law in Indonesia has tended to emphasize normative legal analysis while giving comparatively limited attention to empirical, social, and gender dimensions. Through bibliometric analysis, Maimun et al. demonstrate that although divorce has become an increasingly prominent topic in Indonesian legal scholarship, most studies still concentrate on textual interpretation rather than on systemic analysis (Maimun et al., 2024). This tendency underscores the need for a broader analytical framework capable of examining divorce law not only as a normative construct but also as a dynamic system that interacts with social realities.

A closer examination of the regulatory framework and judicial practice therefore reveals several structural paradoxes. First, although legal regulations emphasize the protection of rights, their implementation frequently encounters institutional and cultural obstacles. Second, while mediation is formally mandated, its effectiveness remains dependent on individual judicial initiative rather than institutional consistency. Third, the continued influence of customary norms demonstrates that formal law does not fully govern social behavior. These contradictions indicate that divorce law in Indonesia cannot be adequately understood through a purely doctrinal approach.

From the perspective of Jasser Auda's systems theory, these dynamics illustrate the multidimensional nature of divorce law. The cognitive dimension highlights the divergence between formal legal norms and the perceptions of society regarding divorce. The principle

of wholeness becomes evident in the interaction between statutory regulation, judicial practice, social norms, and customary traditions. Openness emphasizes the necessity for legal adaptability in response to social change, while interrelated hierarchy reflects the complex relationship between religious norms, state legislation, and customary law. Viewed through this systemic lens, divorce law emerges not merely as a collection of statutory provisions but as a dynamic legal system shaped by institutional practice and social context.

In light of these observations, a critical reassessment of divorce regulation in Indonesia becomes necessary. The increasing prevalence of divorce cases challenges the assumption that existing legal frameworks are fully responsive to contemporary family realities. A systemic perspective therefore offers an alternative analytical approach capable of integrating regulatory structures, judicial interpretation, and socio-cultural dynamics within a unified framework oriented toward the objectives of *maqasid al-shari'ah*. This reflection serves as the foundation for the subsequent analysis employing the six features of Jasser Auda's systems theory in the following sections.

Applying Jasser Auda's Systems Theory as an Analytical Framework

This section analyzes divorce law in Indonesia through the analytical framework developed in Jasser Auda's systems approach to Islamic law. Auda conceptualizes Islamic law as a dynamic and interconnected system characterized by six principal features: cognitive nature, wholeness, interrelated hierarchy, openness, purposefulness, and multidimensionality (Jasser Auda, 2008). These features are not intended to operate as isolated analytical categories; rather, they function as mutually reinforcing dimensions that allow Islamic law to be interpreted within a broader social, institutional, and normative context.

Within Auda's framework, legal norms cannot be understood solely as textual prescriptions. Instead, they must be examined as part of a complex system involving interpretation, institutional structures, and social realities. Consequently, the analysis of divorce law requires more than a doctrinal reading of statutory provisions such as Law No. 1 of 1974 and the *Kompilasi Hukum Islam* (KHI). It also requires an examination of how legal norms interact with judicial practice, social dynamics, and the broader objectives of Islamic law (*maqasid al-shari'ah*) (Jasser Auda, 2008).

For analytical clarity, this study organizes the six features of Auda's systems theory into three broader thematic classifications that guide the analysis of divorce law in Indonesia. This grouping does not alter the conceptual integrity of the theory; rather, it provides a

structured analytical pathway that facilitates a more coherent examination of divorce law. Each classification reflects a distinct stage in understanding how legal norms are constructed, adapted, and experienced within the broader socio-legal system.

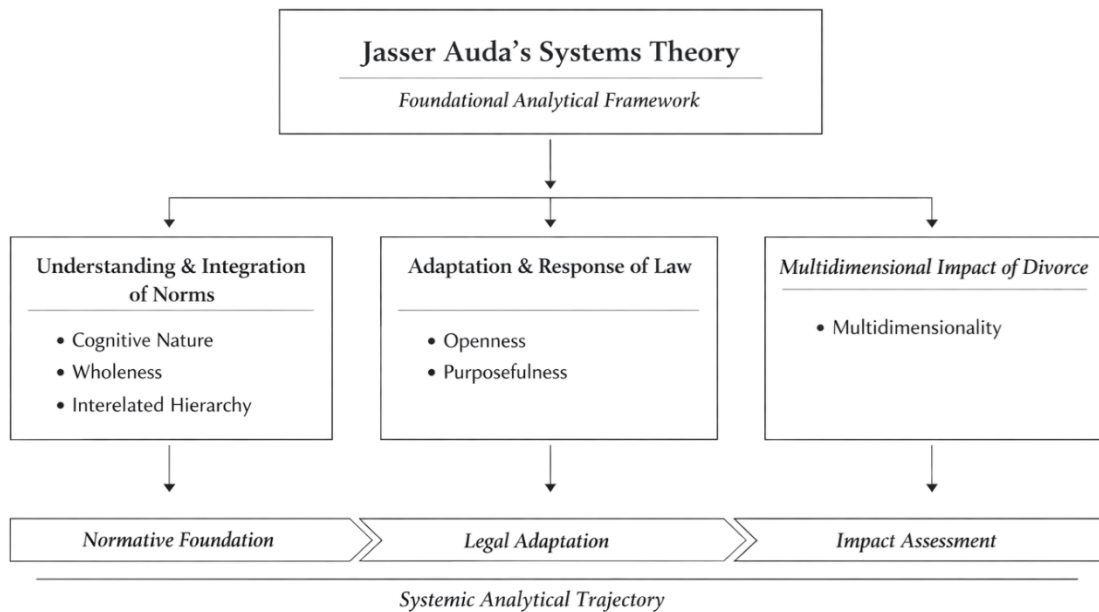


Figure 1. Systemic Analytical Framework of Divorce Law in Indonesia Based on Jasser Auda's Systems Approach

The diagram shows how Auda's systems theory functions as the overarching analytical framework from which three interconnected classifications are derived: Understanding and Integration of Norms, Legal Adaptation and Normative Orientation, and Multidimensional Consequences of Divorce. These classifications organize the six systemic features of Auda's theory and establish the analytical structure used to examine divorce law in Indonesia.

Through this framework, the analysis proceeds sequentially. It begins with the interpretation and integration of legal norms, continues with an examination of how law adapts to social change while pursuing the objectives of *maqasid al-shari'ah*, and concludes with an evaluation of the multidimensional consequences of divorce within society. This structure enables divorce law to be analyzed not merely as a set of statutory provisions but as a dynamic legal system shaped by institutional practice and social realities.

The subsequent discussion elaborates these three classifications in detail. The analysis begins with Understanding and Integration of Norms, followed by Legal Adaptation and Normative Orientation, and concludes with Multidimensional Consequences of Divorce.

Understanding and Integration of Norms (Cognitive Nature + Wholeness + Interrelated Hierarchy)

Understanding and integration of norms constitute a central analytical dimension within the systems approach to Islamic law proposed by Jasser Auda. In this framework, legal norms cannot be interpreted as isolated textual prescriptions; rather, they must be understood within a broader network of institutional practices, social realities, and normative objectives. Islamic law therefore operates not merely as a fixed collection of legal rules but as a dynamic system that continuously interacts with changing human conditions while remaining oriented toward the higher objectives of the law (*maqasid al-shari'ah*) (Jasser Auda, 2008).

Within this systemic perspective, the cognitive nature of law refers to the interpretive processes through which legal actors legislators, judges, and legal scholars construct meaning from normative texts. Law does not function mechanically; instead, it is mediated through human reasoning, institutional procedures, and social expectations. Consequently, the interpretation of divorce law in Indonesia cannot be reduced to a literal reading of statutory provisions such as Law No. 1 of 1974 on Marriage or the *Kompilasi Hukum Islam* (KHI). Rather, these legal instruments operate within a broader interpretive environment shaped by judicial reasoning, doctrinal traditions, and social dynamics (Lukito, 2005).

Empirical developments in Indonesia illustrate the significance of this interpretive dimension. Data from the Religious Courts show that divorce cases have increased significantly over the past two decades, with the majority of petitions submitted as *cerai gugat* (divorce initiated by wives) (Indonesia, n.d.). Scholars have observed that this trend reflects not only demographic change but also shifting interpretations of marital rights and obligations within Indonesian Islamic family law (Cammack et al., 1996). The increasing use of *cerai gugat* demonstrates how legal norms are interpreted and mobilized by social actors to respond to marital conflict, economic hardship, and changing gender relations in contemporary Indonesian society.

From a systemic perspective, this phenomenon indicates that divorce law is shaped by a complex interaction between textual norms and social realities. Judges in the Religious

Courts frequently exercise interpretive discretion when assessing legal grounds for divorce, particularly in cases involving persistent marital conflict (*perselisihan dan pertengkaran terus-menerus*). In such cases, judicial reasoning often incorporates broader considerations of justice and social welfare, reflecting an engagement with the ethical objectives of Islamic law rather than a purely formal application of statutory provisions (Nurlaelawati, 2013).

The second element of this analytical cluster wholeness emphasizes that legal norms must be understood as components of an integrated legal system. In Indonesia, divorce law operates within a multilayered legal framework that includes statutory legislation, Islamic legal doctrine, judicial interpretation, and social practice. The Marriage Law provides the primary statutory foundation for regulating marital dissolution, while the *Kompilasi Hukum Islam* offers doctrinal guidance for Religious Court judges. At the same time, judicial decisions and institutional practices continue to shape how these legal norms are implemented in everyday legal practice (Salim, 2008).

This systemic interdependence becomes particularly visible in disputes concerning post-divorce financial obligations such as *nafkah iddah*, child support, and marital property distribution. Although statutory provisions establish the formal legal framework, judicial decisions often reflect broader considerations of fairness and social protection. As several studies on Religious Court practice demonstrate, judges frequently attempt to reconcile doctrinal provisions with practical concerns relating to family welfare and economic justice.

The third feature of this analytical cluster interrelated hierarchy further clarifies how normative integration operates within the Indonesian legal system. Islamic family law exists within a hierarchical structure in which constitutional principles, statutory legislation, and Islamic legal doctrine interact in complex ways. The 1945 Constitution establishes fundamental commitments to justice, human dignity, and equality before the law, while the Marriage Law provides the statutory basis for regulating marital relations. Within this hierarchy, the *Kompilasi Hukum Islam* functions as an interpretive bridge between classical Islamic jurisprudence and the national legal system applied by the Religious Courts (Lukito, 2005).

Nevertheless, this hierarchical structure is not free from tension. Scholars have noted that the *Kompilasi Hukum Islam* often reflects a relatively limited jurisprudential orientation, drawing predominantly on classical Shafi'i doctrine (Salim & Azra, 2003). As a result, the integration of Islamic legal principles into the national legal system sometimes produces

normative rigidity, particularly when judicial interpretation remains closely tied to traditional doctrinal formulations rather than broader *maqasid* considerations.

A concrete illustration of this dynamic can be observed in judicial practice concerning post-divorce financial rights. Studies of Religious Court decisions indicate that judges increasingly interpret existing legal provisions in ways that enhance the economic protection of divorced women, particularly in cases involving *nafkah iddah* and child support (Nurlaelawati, 2013). Such judicial reasoning demonstrates how hierarchical legal norms are mediated through interpretive engagement rather than applied as rigid commands.

Viewed through the perspective of *maqasid al-shari'ah*, the integration of these normative layers plays a crucial role in safeguarding fundamental human interests within family law. Divorce regulation is not intended merely to formalize the dissolution of marriage; it also aims to protect broader social objectives, including family stability, the protection of women and children, and the promotion of justice within marital relations (Kamali, 2011). The systemic integration of legal norms therefore becomes essential to ensuring that divorce law functions not merely as a procedural mechanism but as an instrument for realizing the ethical purposes of Islamic law.

Taken together, these dynamics demonstrate that the understanding and integration of norms within Indonesian divorce law cannot be reduced to a linear process of legal interpretation. Rather, it represents a continuous interaction between textual authority, institutional practice, and evolving social realities. In this sense, divorce law functions as a living legal system one that constantly negotiates the relationship between Islamic principles, state regulation, and social transformation.

Adaptation and Response of Law (Openness + Purposefulness)

One of the defining characteristics of Islamic law, as articulated in the systems approach developed by Jasser Auda, lies in its adaptive capacity. Within this framework, Islamic law is not conceived as a closed legal structure confined to textual prescriptions; rather, it functions as an open normative system that continuously interacts with evolving social realities. The feature of openness refers to the ability of the legal system to absorb new institutional arrangements, social expectations, and interpretive developments, while purposefulness ensures that legal responses remain directed toward the realization of the higher objectives of the law (*maqasid al-shari'ah*), particularly justice, welfare, and the protection of human dignity (Jasser Auda, 2008).

In the Indonesian context, these features are visible in the evolution of regulatory mechanisms governing divorce and family disputes in the Religious Courts. One notable example is Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Court, which institutionalizes mediation as a mandatory stage in civil litigation, including divorce cases. Rather than functioning merely as a procedural formality, mediation is designed to create an institutional space for reconciliation and negotiated settlement between spouses. From a systemic perspective, this mechanism reflects a preventive orientation within Islamic family law, where the legal system seeks to preserve family stability before resorting to formal dissolution of marriage (Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan, 2016).

Empirical research on the implementation of mediation in Religious Courts, however, reveals the limits of this adaptive mechanism. Studies examining the application of PERMA No. 1 of 2016 show that mediation frequently fails to prevent divorce because marital conflict has already escalated beyond reconciliation when litigation begins (Dewa et al., 2019). This finding suggests that the effectiveness of mediation is shaped not only by procedural design but also by broader social dynamics surrounding marriage and family conflict. Nevertheless, the institutionalization of mediation remains a meaningful indicator of systemic openness, demonstrating that the legal system has incorporated restorative approaches into the formal adjudication process even when practical outcomes remain constrained.

Openness is also reflected in the judiciary's growing attention to gender justice within family law disputes. Supreme Court Regulation (PERMA) No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law represents an effort to address structural inequalities faced by women during legal proceedings. By instructing judges to avoid gender bias and to consider the social vulnerabilities experienced by women in litigation, this regulation introduces a normative framework that aligns judicial practice with broader commitments to substantive equality. In the context of divorce cases, such guidelines encourage courts to scrutinize issues of economic dependency, domestic violence, and unequal power relations within marital relationships (Peraturan Mahkamah Agung Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum, 2017).

The principle of purposefulness becomes particularly evident in judicial reasoning when judges interpret divorce-related provisions in light of broader considerations of justice

and social welfare. Studies of Religious Court practice indicate that judges often move beyond strict textual adherence to statutory provisions and instead interpret legal norms in ways that better reflect the ethical objectives of Islamic law. Nurlaelawati's analysis of Religious Court decisions, for example, demonstrates that judicial reasoning increasingly emphasizes the protection of women's post-divorce rights, particularly in matters concerning *nafkah iddah*, child support, and marital property distribution (Nurlaelawati, 2013). This interpretive tendency suggests that the practical application of Islamic family law in Indonesia is shaped not only by doctrinal provisions but also by a purposive orientation toward safeguarding vulnerable family members.

Yet the adaptive responsiveness of the legal system remains uneven. One of the most persistent challenges concerns the enforcement of court decisions in post-divorce disputes. Empirical studies show that many former husbands fail to comply with court orders regarding maintenance and child support, creating a significant gap between normative protection and practical enforcement (Cammack et al., 1996). This enforcement deficit illustrates a structural limitation within the legal system: while judicial reasoning may reflect maqasid-oriented considerations of justice, the realization of those objectives ultimately depends on institutional capacity and societal compliance.

From the perspective of Auda's systems theory, this tension should not be interpreted simply as a failure of legal reform. Rather, it reflects the dynamic character of an open legal system that continuously negotiates between normative aspirations and social realities. Islamic law, in this sense, does not function as a static body of rules but as a responsive normative framework that evolves through regulatory reform, judicial interpretation, and societal engagement. The adaptive development of divorce law in Indonesia therefore illustrates how openness and purposefulness operate as complementary features within a living legal system.

At the same time, this dynamic raises an important question concerning the broader consequences of divorce. Legal adaptation acquires its full meaning only when examined in relation to the social effects of marital dissolution. Divorce does not end with a judicial decree; it generates profound social and economic repercussions within families and communities. Assessing whether the legal system truly fulfills its maqasid-oriented objectives therefore requires an examination of these wider consequences. For this reason, the following section analyzes the multidimensional impact of divorce in Indonesian society.

Multidimensional Impact Of Divorce (Multidimensionality)

One of the central features of the systems approach developed by Jasser Auda is multidimensionality, which emphasizes that legal issues must be understood through interconnected social, economic, psychological, and institutional dimensions. Within this framework, Islamic law cannot address social problems through a single doctrinal perspective. Instead, legal analysis must consider the broader consequences of legal decisions across multiple spheres of human life. When applied to divorce in Indonesia, this perspective reveals that marital dissolution cannot be understood merely as a procedural legal event but as a complex phenomenon that generates far-reaching consequences for individuals, families, and society.

Recent statistical data confirm that divorce has become a significant social phenomenon in Indonesia. Reports published by Badan Pusat Statistik show a continuing rise in divorce cases, with persistent conflict, economic pressure, and marital disharmony emerging as dominant causes (Statistik, 2025). These figures suggest that divorce is not simply an episodic family matter but reflects structural transformations within Indonesian society, including economic instability, changing gender roles, and evolving expectations regarding marital relationships.

From a multidimensional perspective, the psychological consequences of divorce represent one of its most immediate effects. Research on post-divorce family dynamics indicates that marital dissolution often generates emotional distress, social stigma, and a diminished sense of security, particularly for women and children (Nurlaelawati, 2013). Children exposed to prolonged parental conflict may experience disruptions in emotional development and educational stability. Within the framework of *maqasid al-shari'ah*, these consequences directly implicate the protection of life (*hifz al-nafs*) and intellect (*hifz al-'aql*). Islamic law therefore cannot limit its concern to the legality of divorce procedures; it must also consider how legal outcomes affect the psychological welfare of those involved.

The economic dimension of divorce constitutes another critical aspect of its multidimensional impact. Studies of divorce litigation in Indonesian Religious Courts demonstrate that women frequently face economic vulnerability following marital dissolution, particularly when enforcement of post-divorce maintenance obligations remains inconsistent (Cammack et al., 1996). Disputes concerning *nafkah iddah*, child support, and the division of marital property illustrate how divorce generates new forms of economic insecurity for former spouses and their children. In this regard, the multidimensional

perspective highlights the close relationship between legal enforcement mechanisms and the maqasid objective of protecting property (*hifz al-mal*) and family welfare.

Gender inequality represents an additional dimension that shapes the social consequences of divorce. Scholars have noted that women often experience a disproportionate burden after divorce, including economic marginalization and social stigma (Mulia, 2010). This imbalance partly reflects structural inequalities within marital relations as well as limitations in the enforcement of family law judgments. From the standpoint of maqasid, the protection of dignity (*hifz al-'ird*) and family integrity (*hifz al-nasl*) requires legal institutions to ensure that divorce procedures do not result in systemic injustice toward vulnerable parties.

Legal disputes frequently continue even after the formal dissolution of marriage. Conflicts over child custody, maintenance payments, and the division of marital assets often generate prolonged litigation within the Religious Courts. Research on Islamic family law practice in Indonesia indicates that post-divorce disputes can become a recurring source of legal and social tension, illustrating that divorce does not necessarily resolve family conflict but may instead transform it into new legal challenges (Nurlaelawati, 2010). From a systemic perspective, this pattern demonstrates how divorce functions as a node within a broader network of legal, economic, and social relations.

Cultural dimensions also shape the experience of divorce within Indonesian society. In many communities, divorce continues to carry social stigma, particularly for women, which may affect their economic opportunities and social integration after marital dissolution. At the same time, changing social attitudes toward marriage and gender roles have contributed to the growing number of divorce cases initiated by women through the Religious Courts. This development illustrates how legal institutions have become an important arena for negotiating gender justice and family rights in contemporary Indonesian society.

Taken together, these psychological, economic, legal, and socio-cultural dimensions demonstrate that divorce constitutes a genuinely multidimensional phenomenon. The systems perspective advanced by Auda underscores that Islamic law must address these interrelated consequences through a holistic legal framework. If divorce regulation focuses solely on procedural legality while neglecting its broader social implications, the legal system risks producing partial solutions that fail to protect the welfare of those most affected by marital dissolution.

From the standpoint of *maqasid al-shari'ah*, the multidimensional consequences of divorce highlight the need for a legal system capable of integrating the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), property (*hifz al-mal*), lineage (*hifz al-nasl*), and dignity (*hifz al-'ird*). In this sense, the effectiveness of divorce law should not be evaluated solely through its procedural efficiency but through its ability to safeguard human welfare in the aftermath of marital breakdown.

Ultimately, the multidimensional impact of divorce demonstrates that Islamic family law operates within a complex social environment. Legal regulation, judicial interpretation, and social realities interact continuously in shaping how divorce affects individuals and families. By recognizing these interconnected dimensions, the systems approach provides an analytical framework that allows Islamic law to respond more effectively to the real human consequences of marital dissolution.

CONCLUSION

This study demonstrates that Islamic divorce law in Indonesia cannot be adequately understood through fragmented or purely doctrinal approaches. Instead, it requires a systemic analytical framework such as that proposed by Jasser Auda. By applying the six key features of the systems approach cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. This study reveals that divorce regulation in Indonesia operates within a dynamic interaction between normative texts, judicial practice, and evolving social realities, all oriented toward the broader objective of *maslahah*.

At the normative level, Indonesian divorce law appears to possess relatively comprehensive legal instruments, including the Marriage Law, the *Kompilasi Hukum Islam* (KHI), and various Supreme Court regulations. However, the analysis shows that significant gaps persist between regulatory design and practical implementation. These gaps are particularly visible in the limited effectiveness of mediation, weak enforcement of post-divorce maintenance obligations, and the continuing vulnerability of women and children after marital dissolution. Such conditions confirm that legal norms cannot function effectively in isolation from the broader social, economic, and cultural environment in which they operate.

The socio-legal consequences of divorce further demonstrate its multidimensional character. Divorce not only alters the legal status of marriage but also produces psychological

distress, economic vulnerability, custody disputes, and social stigma. Within the framework of *maqasid al-shari'ah*, these consequences directly relate to the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), property (*hifz al-mal*), lineage (*hifz al-nasl*), and dignity (*hifz al-'ird*). The findings therefore indicate that a reductionist legal approach focusing solely on procedural legality is insufficient; what is required is an integrative perspective capable of addressing the broader social implications of divorce.

This study contributes theoretically by demonstrating the relevance of Auda's systems approach as an analytical framework for examining contemporary Islamic family law in Indonesia. Methodologically, it illustrates how the integration of socio-legal analysis and maqasid-oriented reasoning can reveal structural tensions between legal norms and social realities in the regulation of divorce.

In light of these findings, several policy implications emerge. First, mediation mechanisms within Religious Courts should be strengthened so that they function not merely as procedural requirements but also as meaningful platforms for conflict resolution and family counseling. Second, enforcement mechanisms for post-divorce financial obligations must be improved in order to provide effective protection for women and children. Third, regulations concerning marriage and divorce registration should be reinforced to prevent informal divorce practices that create legal uncertainty. Finally, maqasid principles should be more explicitly integrated into judicial interpretation and *ijtihad* so that legal reasoning moves beyond formal legality toward substantive justice.

Ultimately, when viewed through Auda's systems perspective, Islamic divorce law in Indonesia emerges as an open and evolving legal system. The principal challenge lies not in the absence of normative provisions but in the capacity of legal institutions to translate those norms into socially effective practices. Recognizing the multidimensional nature of divorce and strengthening maqasid-oriented legal reasoning are therefore essential steps toward developing a family law system that is not only normatively sound but also socially responsive and just.

REFERENCES

- Achmad, Z., Supardin, & Asni. (2022). The Effort of Judges in Finding the Solution of Divorce Case with Reconciliation Verdict Refers to Maqashid al-Sharia Perspective (Case Study at the Religious Court of Polewali Class 1 B). *IJIS: International Journal of Islamic Studies*, 2(2), 179–190. <https://doi.org/10.24252/ijis.v2i2.35050>
- Azizah, L. (2012). Analisis Perceraian dalam Kompilasi Hukum Islam. *Al-Adalah*, 10(4), 415–422. <https://doi.org/10.24042/adalah.v10i2.295>
- Budiyanto, & Mubarak, A. (2023). Pencatatan Pernikahan Perspektif Maqashid Syariah Jasser Auda. *An-Natiq: Jurnal Kajian Islam Interdisipliner*, 3(2), 143–152. <https://doi.org/10.33474/an-natiq.v3i2.20220>
- Cammack, M., Young, L. A., & Heaton, T. B. (1996). Legislating Social Change in an Islamic Society: Indonesia's Marriage Law. *The American Journal of Comparative Law*, 44(1), 45–73. <https://doi.org/10.2307/840514>
- Dewa, I. G. S. B. P., Budiarta, I. N. P., & Dewi, A. A. S. L. (2019). Penerapan PERMA No. 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan Agama Badung dalam Pencabutan Perkara Cerai Talak. *Jurnal Analogi Hukum*, 1(1), 130–136. <https://doi.org/10.22225/.1.1.1450.130-136>
- Fauzi, M. Y., Hermanto, A., & Taqwa, S. U. (2022). Divorce in the View of Lampung Pepadun Customary Law: A Maqasid Sharia Perspective. *Justicia Islamica*, 19(2), 351–370. <https://doi.org/10.21154/justicia.v19i2.3920>
- Firdawaty, L., Asnawi, H. S., & Mahmudah, S. (2024). Semanda Lekok in the Sai Batin Community, Lampung: Wife's Domination of Marital Assets from Maqāṣid al-Sharī'ah Perspective. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(3), 1734–1762. <https://doi.org/10.22373/sjkh.v8i3.19894>
- Indonesia, M. A. R. (n.d.). *Laporan Tahunan Peradilan Agama*. Mahkamah Agung RI.
- Jasser Auda. (2008). *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. The International Institute of Islamic Thought.
- Julia. (2020). The Maqasid Analysis on the Nafkah Iddah of Divorce Lawsuit in the Compilation of Islamic Law (KHI) Article 149(b) and the Supreme Court Verdict Number 137/K/AG/2007. *Ulumuddin: Journal of Islamic Legal Studies*, 1(1), 91–108. <https://doi.org/10.22219/ulumuddin.v1i1.12866>
- Kamali, M. H. (2011). Maqasid al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal. *Islam and Civilisational Renewal*, 2(2), 245–271.
- Kartini. (2022). Maqasid al-Shari'ah Perspectives in Solution of Divorce Cases for Early Marriage. *International Journal of Health Sciences*, 6, 8685–8697. <https://doi.org/10.53730/ijhs.v6nS5.11775>
- Lukito, R. (2005). The Islamic Legal System in Indonesia. *Journal of Legal Pluralism and Unofficial Law*, 37(53–54), 57–75. <https://doi.org/10.1080/07329113.2005.10756569>

- Maimun, M., Anggriani, J., Harlina, I., & Suhendar, S. (2024). The Dynamics of Family Law in Indonesia: Bibliometric Analysis of Past and Future Trends. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(1), 518–537. <https://doi.org/10.22373/sjhk.v8i1.21890>
- Maylissabet. (2022). Analysis Of Legal Functions And Maqashid Sharia On Islamic Marriage Law In Indonesia. *As-Shahifah : Journal of Constitutional Law and Governance*, 2(1), 76–90. <https://doi.org/10.19105/asshahifah.v2i1.6987>
- Mendoza, J. E., Tolba, M., & Saleh, Y. (2019). Strengthening marriages in Egypt: Impact of divorce on women. *Behavioral Sciences*, 10(1), 1–8. <https://doi.org/10.3390/bs10010014>
- Mohammed, T. A. S. (2024). A scientometric study of Maqasid al-shariah research: trending issues, hotspot research, and co-citation analysis. *Frontiers in Research Metrics and Analytics*, 9. <https://doi.org/10.3389/frma.2024.1439407>
- Muchamad Toif Chasani. (2022). Analysis of a System Approach in Islamic Law Philosophy (Jasserauda's Perspective). *Journal of Social Interactions and Humanities*, 1(2), 141–156. <https://doi.org/10.55927/jsih.v1i2.1118>
- Mulia, S. M. (2010). *Islam and Gender Justice*. Gramedia.
- Nabilah, W., Putri, D., & Rizal, D. (2024). *Jasser Auda's System Approach in The Rules of Marriage Dispensation in Indonesia (Review of Maqashid Syariah)*. 265–281.
- Nurhadi, N. (2019). Illegal Divorce in Perspective of Islamic Law and Indonesian Law. *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)*, 1(2), 179–201. <https://doi.org/10.20885/mawarid.vol1.iss2.art5>
- Nurlaelawati, E. (2010). *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*. Amsterdam University Press.
- Nurlaelawati, E. (2013). Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce. *Islamic Law and Society*, 20(3), 242–271. <https://doi.org/10.1163/15685195-0010A0003>
- Peraturan Mahkamah Agung Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum (2017).
- Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Peosedur Mediasi Di Pengadilan, Mahkamah Agung (2016). <https://doi.org/10.1093/aristotelian/84.1.31>
- Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan (2016).
- Rohayati, D., Mohammad Ridwan, Arifin, T., Suhaila Zulkifli, Ramdani Wahyu Sururie, Edy Saputra, & Abdulah Pakarti, M. H. (2025). Legal Enforcement Against Non-Compliance by Ex-Husbands with Court Orders on Iddah and Mut'ah Support. *Nurani: Jurnal Kajian Syariah Dan Masyarakat*, 25(1), 157–170. <https://doi.org/10.19109/nurani.v25i1.26653>

- Salim, A. (2008). The Shift in the Implementation of Islamic Law in Indonesia. *Studia Islamika*, 15(1), 1–36. <https://doi.org/10.15408/sdi.v15i1.541>
- Salim, A., & Azra, A. (2003). *Shari'a and Politics in Modern Indonesia*. Institute of Southeast Asian Studies.
- Statistik, B. P. (2025). *Jumlah Perceraian Menurut Provinsi dan Faktor Penyebab Perceraian (Perkara), 2024*. Badan Pusat Statistik.
- Yurisprudensi Mahkamah Agung Republik Indonesia No. 137/K/AG/2007 (2007).
- Zulkifli, R. (2022). Pemberian Nafkah Iddah Cerai Gugat Menurut Mazhab Syafi'i (Analisis terhadap Putusan Mahkamah Agung No. 137/K/Ag/2007). *Jurnal Landraad: Jurnal Hukum Keluarga Islam Dan Hukum Muamalah*, 23–34.

THE EVOLUTION OF THE *MAQASID AL-SYARI'AH* PARADIGM: FROM A CONCEPT IN *USHUL AL-FIQH* TO A METHODOLOGICAL APPROACH IN ISLAMIC LAW

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ABSTRACT

Maqasid al-Syari'ah has not only been understood as a normative concept within *ushul al-fiqh*, but has also undergone a paradigmatic evolution into a methodological approach for addressing contemporary legal and social issues. This article aims to examine the evolution of the *Maqasid al-Syari'ah* paradigm from both historical and systematic perspectives, beginning with its conceptual roots in the classical tradition of *ushul al-fiqh*, its emergence as an independent scholarly discipline, and its subsequent transformation into a methodological framework in the development of modern Islamic law. This study employed a qualitative method using a library research approach, drawing upon primary and secondary sources from both classical and contemporary literature. Data analysis was conducted through descriptive-analytical, historical, and conceptual methods. The findings indicate that *Maqasid al-Syari'ah* has developed gradually, reaching its peak of systematic formulation in the thought of Imam al-Shatibi, and later expanding significantly in the modern era through the contributions of contemporary scholars. The paradigmatic evolution of *Maqasid al-Syari'ah* has proceeded through four principal stages: its implicit presence in scriptural texts (*nusus*) and in the understanding of the early Muslim generations (*al-salaf*); its integration into the studies of *fiqh* and *ushul al-fiqh*; its establishment as an independent scholarly discipline; and its application as an approach to addressing various contemporary issues. The conclusion of this article affirms that the transformation of *Maqasid al-Syari'ah* from a concept within *ushul al-fiqh* into a methodological approach strengthens its relevance as an instrument for the renewal of Islamic law, making it responsive to contemporary challenges.

Keywords: *Maqasid al-Syari'ah*, *Paradigm Evolution*, *Ushul al-Fiqh*, *Methodological Approach*, *Contemporary Islamic Law*.

ABSTRAK

Maqasid al-Syari'ah tidak hanya dipahami sebagai konsep normatif dalam ushul fikih, tetapi mengalami evolusi paradigma menjadi pendekatan metodologis dalam merespons problematika hukum dan sosial kontemporer. Artikel ini bertujuan mengkaji evolusi paradigma *Maqasid al-Syari'ah* secara historis dan sistematis, mulai dari akar konseptualnya dalam tradisi klasik ushul fikih, proses kemunculannya sebagai disiplin ilmu tersendiri, hingga pergeserannya menjadi pendekatan metodologis dalam pengembangan hukum Islam modern. Penelitian ini menggunakan metode kualitatif dengan pendekatan studi kepustakaan, memanfaatkan sumber-sumber primer dan sekunder dari literatur klasik dan kontemporer. Analisis data dilakukan melalui metode deskriptif-analitis, historis, dan konseptual. Hasil kajian menunjukkan bahwa *Maqasid al-Syari'ah* mengalami perkembangan secara gradual, yang mencapai puncak sistematisasinya pada pemikiran Imam al-Syatibi, kemudian berkembang secara signifikan pada era modern melalui kontribusi para cendekiawan kontemporer. Evolusi paradigma *Maqasid al-Syari'ah* berlangsung melalui empat tahapan utama, yaitu: keberadaan *Maqasid al-Syari'ah* secara implisit dalam teks-teks nash dan pemahaman para salaf; integrasinya dalam kajian fikih dan ushul fikih; pembentukannya sebagai disiplin ilmu yang mandiri; serta penerapannya sebagai pendekatan untuk menjawab berbagai problematika kontemporer. Simpulan artikel ini menegaskan bahwa transformasi *Maqasid al-Syari'ah* dari konsep dalam ushul fikih menuju pendekatan metodologis memperkuat relevansinya sebagai instrumen pembaruan hukum Islam yang responsif terhadap tantangan zaman.

Kata Kunci: *Maqasid al-Syari'ah*, *Evolusi Paradigma*, *Ushul Fikih*, *Pendekatan Metodologis*, *Hukum Islam Kontemporer*.

INTRODUCTION

Maqasid al-Syari'ah represents one of the fundamental concepts in the corpus of Islamic law, functioning to explain the objectives, wisdom, underlying rationale, and foundational values of legal enactment (Al-Yubi, 1430, p. 37). Initially, *Maqasid al-Syari'ah* appeared implicitly in the Qur'an, the Sunnah, and the practices of the early Muslim generations (*al-salaf*) (Al-Khadimy, 2021, pp. 53–55), and subsequently developed within the discourse of *ushul al-fiqh* as part of discussions on *maṣlahah* (public interest), legal causation (*'illah*), and *munāsabah* (correlation between legal rulings and their underlying purposes) (Al-Raisuni, 1995, p. 36). With the progression of time and the increasing complexity of societal challenges, *Maqasid al-Syari'ah* is no longer understood merely as a theoretical concept within *ushul al-fiqh*, but has evolved into a methodological approach employed to address contemporary legal and social issues (Sahidin et al., 2025).

This development indicates the evolution of the *Maqasid al-Syari'ah* paradigm, from a normative concept dispersed throughout classical scholarly works into an independent discipline possessing a systematic conceptual framework, methodology, and application. This transformation reached a significant milestone during the era of Imam al-Shatibi through his work *al-Muwāfaqāt*, which later became the foundation for the development of *maqāṣid* in the modern and contemporary periods (Al-Yubi, 1430, p. 71). This evolution is indeed reflected in the intellectual contributions of modern and contemporary scholars such as Ibn 'Ashur (Ibnu Asyur, 2004), Allal Al-Fasi (Al-Fasi, 1993), Thaha Jabir al-Alwani (Al-Alwani, 2001), Jamaluddin Athiyyah (Athiyah, 2001), Yusuf al-Qardhawi (Al-Qardhawi, 2008), Abdullah bin Bayyah (Ibnu Bayyah, 2006), Abdul Majid al-Najjar (Al-Najjar, 2008), Ahmad al-Raisuni (Al-Raisuni, 2013), and Jasser Auda (Auda, 2012, 2021), each of whom introduced distinctive approaches and perspectives.

This paradigmatic evolution was further explicitly articulated by Ahmad Imam Mawardi in his dissertation entitled "*Fiqh al-Aqalliyāt and the Evolution of Maqasid al-Syari'ah from Concept to Approach*", which demonstrates the shift of *maqāṣid* from a normative concept to a methodological approach in the development of minority jurisprudence (Mawardi, 2010). A similar assertion was presented by M. Amin Abdullah, who highlighted the transformation of *maqāṣid* thought from a traditional framework toward a systemic-contemporary approach in his work "*The New Construction of the Epistemology of Islamic Legal Studies in Responding to Globalization*" (Abdullah, 2012). Based on this background, this article

aims to examine the evolution of the *Maqasid al-Syari'ah* paradigm, beginning with its conceptual roots in *ushul al-fiqh*, its historical emergence as an independent scholarly discipline, and its transformation into a methodological approach in the development of contemporary Islamic law. This study is expected to provide a more comprehensive understanding of the strategic position of *Maqasid al-Syari'ah* within the dynamics of Islamic legal thought, while reaffirming its relevance in responding to modern challenges.

With regard to previous studies, several scholarly works are relevant to the theme of this article. *First*, studies that emphasize the shift of *Maqasid al-Syari'ah* from a conceptual framework toward a methodological approach, such as Ahmad Imam Mawardi's research on minority jurisprudence, which explicitly discusses the evolution of *maqāṣid* within an applicative framework (Mawardi, 2010, 2014). *Second*, studies that highlight the evolution of *maqāṣid* thought from traditional to contemporary systemic perspectives, such as M. Amin Abdullah's research on the development of *maqāṣid* through Jasser Auda's intellectual framework, emphasize the integration of historical and philosophical approaches. The historical approach examines changes in Islamic legal concepts and interpretations from the traditional, modern, and postmodern periods, while the philosophical approach employs systems theory with six principal characteristics: cognition, holism, openness, interconnectivity, multidimensionality, and purpose-oriented analysis (Abdullah, 2012, p. 316). Although these studies affirm the evolution of *Maqasid al-Syari'ah* from a conceptual notion toward a methodological approach, they have not systematically elaborated the historical dynamics of its development from its early emergence, conceptual formulation, and subsequent methodological application. Therefore, this article seeks to examine the evolution of *Maqasid al-Syari'ah* from historical, systematic, and comprehensive perspectives.

Third, several other studies have also implemented *Maqasid al-Syari'ah* as an approach to addressing various contemporary issues. Among these studies is the dissertation of Ryan Arief Rahman, which aimed to apply Imam al-Shatibi's concept of *maṣlaḥah* in the process of the Islamization of technology (Rahman, 2019, p. 6). Within a similar framework, Nabila Zatadini and Syamsuri emphasized the contribution of *Maqasid al-Syari'ah* to fiscal policy (Zatani & Syamsuri, 2019), while M. Faishal Fadhli attempted to apply the *maqāṣid* concepts of al-Ghazali and al-Shatibi in contemporary Islamic legal inference (Fadhli, 2023). Furthermore, numerous modern studies have linked *Maqasid al-Syari'ah* to the fields of Islamic bioethics, biotechnology, and artificial intelligence, as demonstrated in the works of Muhammad Wildan Arif Amrulloh and Mehdar Badrus Zaman (Amrulloh & Zaman, 2024),

Zainal Habib (Habib, 2025, p. 105), Muhammad Syahmi Aqeel Shahridzuan (Shahridzuan, 2024, p. 42), and Abdul Halim Ibrahim et al. (Ibrahim et al., 2019, p. 333). These studies collectively demonstrate that *Maqasid al-Syari'ah* has developed beyond a purely normative theory, evolving into a methodological approach in the development of Islamic law.

Within the same context, the author, in several previous studies, has also examined the application of the *Maqasid al-Syari'ah* approach to various contemporary issues, including the legal ruling on women traveling without a mahram (Nazahah & Sahidin, 2021), the contextualization of *ijtihad* (Sahidin, 2023; Sahidin et al., 2025), the phenomenon of Islamic solidarity demonstrations (Rahman et al., 2021), the utilization of zakat and waqf (Sahidin, 2021a), the implementation of *Maqasid al-Syari'ah* in minority jurisprudence (Sahidin, 2022b; Sahidin & Rahmadi, 2021), the values of *Maqasid al-Syari'ah* in leadership concepts (Pramono & Sahidin, 2021; Sahidin, 2021b), *wasatiyyah*-based reasoning in relation to *Maqasid al-Syari'ah* (Sahidin, 2022a; Sahidin & Kamaluddin, 2024), and the development of science oriented toward *Maqasid al-Syari'ah* (Sahidin & Muslih, 2025). Nevertheless, these studies have not explicitly articulated the paradigmatic evolution of *Maqasid al-Syari'ah* from a conceptual framework into a methodological approach in Islamic legal theory. Therefore, this article seeks to strengthen and complement previous studies by focusing on the paradigmatic evolution of *Maqasid al-Syari'ah*, particularly its shift from a concept within *ushul al-fiqh* into a methodological approach in the development of Islamic law.

RESEARCH METHOD

This study employed a qualitative research design using a library research approach (Tavakoli, 2012, p. 573). The data were obtained from primary and secondary sources relevant to the study of *Maqasid al-Syari'ah*, encompassing both classical and contemporary literature. The primary sources included the works of prominent scholars of *ushul al-fiqh* and *Maqasid al-Syari'ah*, such as al-Juwayni, al-Ghazali, al-'Izz ibn 'Abd al-Salam, al-Shatibi, and Ibn 'Ashur, as well as the works of contemporary *maqāṣid scholars*. The secondary sources comprised books, journal articles, dissertations, and academic studies that discuss the development and application of *Maqasid al-Syari'ah*. Data analysis was conducted using descriptive-analytical, historical, and conceptual methods. The descriptive-analytical method was employed to elaborate the definitions, classifications, and conceptual frameworks of *Maqasid al-Syari'ah* as presented by classical and contemporary scholars, as discussed in the subsection on the paradigm of *Maqasid al-Syari'ah* (Al-Mahmudi, 1441, pp. 46–47). The

historical method was used to trace the phases of development of *Maqasid al-Syari'ah* until it emerged as an independent scholarly discipline, as elaborated in the subsection on *Maqasid al-Syari'ah* as a distinct field of study. Meanwhile, the conceptual approach was applied to analyze the transformation of *Maqasid al-Syari'ah* from a concept within *ushul al-fiqh* into a methodological approach in contemporary Islamic legal studies, as discussed in the final subsection preceding the conclusion. All data were analyzed critically and systematically to obtain a comprehensive understanding of the paradigmatic evolution of *Maqasid al-Syari'ah* (Afifuddin & Saebani, 2009, p. 145).

FINDINGS AND DISCUSSION

The Paradigm of *Maqasid al-Syari'ah*

Essentially, the definition of *Maqasid al-Syari'ah* involves two important aspects that must be explained proportionally: its meaning as a compound construct (*murakkab idāfi*) (Al-Mishri, 2000, p. 131) and its essence as a distinct field of knowledge (*'ilm mu'ayyan*). As a *murakkab idāfi*, *Maqasid al-Syari'ah* consists of two words: *maqāṣid* and *al-shari'ah*. Etymologically, *maqāṣid* is the plural form of *al-maqṣad*. It is a *maṣdar mimī* (Ibnu Hisyam, N.Y, p. 526), derived from the *fi'il* (verb) “*qaṣada*”, namely: *qaṣada-yaqṣidu-qaṣdan-maqṣadan* (Al-Razi, 1979, vol. 5, p. 95; Al-'Arabiyah, N.Y, vol. 2, p. 738; Al-Bashri, N.Y, vol. 5, p. 54). Thus, *al-maqṣad* and *al-qaṣd* share similar meanings, as explained by linguists. These meanings include: *first*, intention, purpose, direction, and objective; *second*, steadfastness on a path; *third*, moderation, justice, and balance; and *fourth*, fragmentation from various aspects (Al-Azdi, 1987, vol. 2, p. 656; Al-Yubi, 1430, pp. 27–30). Among these meanings, the most relevant to the discussion of *maqāṣid* is the *first*, namely intention and purpose (Al-Raisuni, 2010, p. 9). Nevertheless, the second and third meanings also fall within the scope of *maqāṣid*, as the *Shari'ah* emphasizes uprightness, the straight path, justice, and moderation. The fourth meaning, however, is not relevant in this context (Al-Yubi, 1430, p. 30).

Meanwhile, the term *al-shari'ah*, etymologically derived from *shara'a*, denotes a source of water, establishment, pathway, entry, and submission (Ibnu Manzur, 1414, vol. 8, p. 175; Al-Razi, 1999, p. 163). Terminologically, it carries two meanings. The first refers to the entirety of religion, encompassing creed (*'aqidah*), worship (*'ibadah*), etiquette (*adab*), morality (*akhlāq*), law, and social transactions (*mu'āmalāt*). In other words, *al-shari'ah* includes both foundational principles (*uṣūl*) and subsidiary rulings (*furū'*), belief and practice, as well as

theory and application. The second meaning refers specifically to the practical legal aspects of religion, such as acts of worship and social transactions, which govern both human interactions and the relationship between humans and God (Al-Qardhawi, 2008, p. 19). Of these two meanings, the first is more appropriate within the present discussion. In a more concise expression, Ahmad al-Raisuni defines *al-shari'ah* as the legal rulings contained in the Noble Qur'an and the Sunnah of the Prophet (Al-Raisuni, 2010, p. 9).

Furthermore, *Maqasid al-Syari'ah* as a distinct scholarly discipline requires a separate explanation. Initially, a comprehensive definition of *Maqasid al-Syari'ah* was not explicitly formulated by early scholars who demonstrated significant concern for this field (Al-Raisuni, 1995, p. 17; Al-Yubi, 1430, p. 38). Imam al-Juwaini, for instance, merely emphasized that one who fails to understand that divine commands and prohibitions contain various intended objectives (*maqasid*) lacks intellectual discernment in the application of the *Shari'ah* (Al-Juwaini, 1997, p. 101). Similarly, al-Ghazali referred to the preservation of five essential values within *Maqasid al-Syari'ah*, asserting that safeguarding them constitutes *maṣlahah* (public benefit), while neglecting them results in *mafsadah* (harm) (Al-Ghazali, 1993, p. 174). Meanwhile, al-Amidi, al-'Izz ibn 'Abd al-Salam, and Imam al-Shatibi emphasized that all legal enactments aim to promote benefit and prevent harm, both in this world and the hereafter (Abdussalam, 1991, vol. 2, p. 189; Al-Amidi, N.Y, vol. 3, p. 271; Al-Syatibi, 1997, vol. 2, p. 9).

Therefore, comprehensive definitions of *Maqasid al-Syari'ah* are primarily derived from later contemporary scholarship. Ibn 'Ashur stated that the general (*'amm*) *Maqasid al-Syari'ah* refers to the meanings and wisdom intended by the Lawgiver (al-Shāri', i.e., God), which are discerned through inductive observation of the overall or predominant patterns of legal enactment, rather than being confined to a particular category of legal rulings (Ibnu Asyur, 2004, vol. 3, p. 165). The specific (*khāṣ*) *Maqasid al-Syari'ah*, according to him, refers to the particular methods intended by the Lawgiver to realize beneficial human objectives or to preserve public welfare within specific human conduct (Ibnu Asyur, 2004, vol. 3, p. 302). Subsequently, Allal al-Fasi provided a more concise definition that encompasses both the general and specific objectives identified by Ibn 'Ashur. He defined *Maqasid al-Syari'ah* as the overall objectives of legal enactment and the underlying wisdom embedded within each individual legal ruling (Al-Fasi, 1993, p. 7).

Furthermore, al-Raisuni defined *Maqasid al-Syari'ah* as the meanings (values), objectives, implications, and outcomes associated with scriptural legal discourse (*al-ḥabīṭ al-*

shar'ī) and legal accountability (*al-taklīf al-shar'ī*), which are intended to be pursued and realized by every legally responsible individual (*mukallaḥ*) (Al-Raisuni, 2013, p. 90). In another work, al-Raisuni defined it as the objectives for which the *Shari'ah* was established to realize human welfare (Al-Raisuni, 1995, p. 19). This definition, in essence, aligns with that of *Allal al-Fasi* but places stronger emphasis on the ultimate purpose of *maqāṣid*, namely the realization of human welfare. Similarly, Wahbah al-Zuhayli offered a comprehensive definition that synthesizes the perspectives of earlier scholars. He defined *Maqasid al-Syari'ah* as the meanings and objectives considered in the entirety or the majority of legal rulings, or the purposes and underlying wisdom established by God in each of His legal enactments (Zuhaili, 1999, p. 217).

From the aforementioned definitions, it can be concluded that *Maqasid al-Syari'ah* refers to the objectives, meanings, wisdom, underlying rationales, and similar elements considered by the Lawgiver (*al-Shāri'*, i.e., God) in the enactment of legal rulings, whether general or specific, with the aim of realizing human welfare. To clarify this conclusion, Muhammad Sa'ad al-Yubi explained that the term “meanings” (*al-ma'ānī*) refers to legal causes (*'illah*) or meanings that are appropriate for the enactment of legal rulings. Meanwhile, “wisdoms” (*al-ḥikam*) refer to the outcomes produced by legal enactment in the form of the realization and enhancement of welfare (*maṣlahah*), or the prevention and reduction of harm (*mafsadah*). The expression “and similar elements” refers to notions such as aims, objectives, benefits, and outcomes intended by the Lawgiver. Then, the phrase “considered by the Lawgiver in the enactment of legal rulings” refers to what is taken into consideration, intended, and desired in the formulation of particular legal rulings. This also indicates that the legal rulings of God possess underlying legal causes (*'illah*), and that the welfare resulting from them constitutes the intended purpose of the Lawgiver (Al-Yubi, 1430, p. 38).

Moreover, the terms “general and specific” are intended to encompass both the general and particular dimensions of *maqāṣid*. General *maqāṣid* refer to the overarching considerations of the Lawgiver in the totality of *Shari'ah* rulings, including the wisdom and objectives derived from the entirety or the majority of legal evidence. Specific *maqāṣid*, on the other hand, refer to what the Lawgiver intends in particular legal rulings, including specific wisdoms and legal causes. Ultimately, the phrase “with the aim of realizing human welfare” represents an explicit attribute intended to clarify the essential purpose of *Shari'ah*. This is because the meanings (*al-ma'ānī*) considered by the Lawgiver in the enactment of

particular legal rulings ultimately serve no other purpose than the realization of human welfare, both in this world and in the hereafter (Al-Yubi, 1430, p. 39).

***Maqasid al-Syari'ah* as an Independent Scholarly Discipline**

Maqasid al-Syari'ah, similar to other fields of knowledge, did not emerge at a single point in time. Rather, it underwent several phases of development before becoming an independent scholarly discipline. These phases can be classified into three principal stages. **The first phase**, in substance, corresponds historically with the development of Islamic law itself. Muhammad Nuruddin al-Khadimi explained that *maqasid* initially existed alongside the revelation of divine texts, as *maqasid* values were embedded in the Qur'an, the Sunnah, and the understanding of the early Muslim generations (*al-salaf*) (Al-Khadimy, 2021, pp. 53–55). For instance, the Qur'an states in Surah al-Baqarah (2:185), “*Allah intends ease for you and does not intend hardship for you*”. This verse reflects a noble *maqṣad*, indicating that God intends facilitation for His servants. This is further supported by the Prophet's statement, “*Indeed, you have been sent to bring ease and not to bring hardship*” (Al-Bukhari, 1422, p. 54). Regarding the understanding of the early Muslim generations, Imam al-Shatibi emphasized that the Companions of the Prophet served as exemplary models in comprehending the *Shari'ah* and the *maqasid* embedded within it (Al-Syatibi, 1997, vol. 5, p. 76). Similarly, the *tabi'un* recognized the significance of *Maqasid al-Syari'ah* in every legal ruling established by God. Ibrahim al-Nakha'i, for instance, stated, “*Indeed, the rulings of God possess objectives, namely wisdoms and benefits that ultimately return to us*” (Al-Khadimy, 2021, p. 55). This first phase extended from the period of revelation until approximately the third century Hijri, during which *Maqasid al-Syari'ah* remained embedded in the Qur'an and the Sunnah and was understood by the early Muslim generations.

The second phase marks the emergence of the term *Maqasid al-Syari'ah* within classical Islamic scholarship (*turāth*), particularly in the fields of *fiqh* and *ushul al-fiqh*, from the third to the eighth century Hijri. According to Ahmad al-Raisuni, the term *maqasid* was first explicitly employed by Imam al-Tirmidhi (d. 279 AH) in several of his works, including *al-Ṣalāh wa Maqasiduhā*, *al-Ḥajj wa Asrāruh*, *al-'Ilal*, *'Ilal al-'Ubūdiyyah*, and *al-Furuq* (Al-Raisuni, 1995, pp. 26–36). Subsequently, the term appeared in the works of Abu Mansur al-Maturidi (d. 333 AH), particularly in *Ma'ākhidh al-Sharā'i'*. It was later developed by Abu Bakr al-Qaffal (d. 365 AH) through his works “*Uṣūl al-Fiqh* and *Maḥāsīn al-Sharī'ah*”. The discussion of *maqasid* was further elaborated by Abu Bakr al-Abbahari (d. 375 AH) in works such as *Kitāb*

al-Uṣūl, Ijā' Abl al-Madīnah, and Mas'alah al-Jawāb wa al-Dalā'il wa al-'Ilal. Similarly, Abu Bakr al-Baqillani (d. 403 AH) contributed to this discourse through his works *al-Taqrīb wa al-Irshād fī Tartīb Turuq al-Ijtihād, al-Muqni' fī Uṣūl al-Fiqh, and Kitāb al-Bayān 'an Farā'id al-Dīn wa Sharā'i' al-Islām* (Al-Raisuni, 1995, p. 36).

As researched by al-Baqillani, Abu al-Ma'ali al-Juwayni (d. 478 AH) also made significant contributions through his work *al-Burhān fī Uṣūl al-Fiqh*, in which he initiated the classification of *Maqasid al-Syari'ah* into three hierarchical levels: *ḍarūriyyāt* (essentials), *ḥājīyyāt* (complementary needs), and *tahsīniyyāt* (embellishments) (Al-Juwaini, 1997, p. 101). In addition, al-Juwayni introduced several foundational principles of *maqāṣid* and identified the objectives underlying particular legal rulings, including the objectives of acts of worship, *qiṣaṣ* and *ḥudūd* punishments, *takbīr*, commercial transactions such as sales and leasing, and the objectives of *tayammum* (Al-Yubi, 1430, p. 51). The next prominent figure after al-Juwayni was his disciple, Abu Hamid al-Ghazali (d. 505 AH). Under al-Ghazali, the science of *maqāṣid* became more clearly articulated, particularly through his major works such as *Iḥyā' 'Ulūm al-Dīn, Shifā' al-Ghalīl, and al-Mustaṣfā*. His contributions can be summarized as follows. *First*, al-Ghazali maintained the tripartite classification of *Maqasid al-Syari'ah* introduced by his teacher, but elaborated upon it in greater detail (Al-Ghazali, 1971, p. 161, 1993, p. 174). *Second*, he identified the five essential necessities (*al-ḍarūriyyāt al-khams*) as the primary objectives of the *Shari'ah* (Al-Ghazali, 1993, p. 174). *Third*, he asserted that *maqāṣid* can be derived from the Qur'an, the Sunnah, and scholarly consensus (*ijmā'*) (Al-Ghazali, 1993, p. 179). *Fourth*, he formulated several legal maxims related to *Maqasid al-Syari'ah* (Al-Ghazali, 1971, p. 251). *Fifth*, he elaborated various dimensions of *maqāṣid*, including their wisdom, benefits, and objectives, which are extensively discussed in his work *Iḥyā' 'Ulūm al-Dīn* (Al-Ghazali, N.Y).

After al-Ghazali, further elaborations were provided by Fakhr al-Din al-Razi (d. 606 AH) and Abu al-Hasan al-Amidi (d. 631 AH). Both scholars reiterated al-Ghazali's framework of the three hierarchical levels of *Maqasid al-Syari'ah* and the five essential necessities, while introducing additional analytical refinements (Al-Amidi, N.Y, vol. 3, p. 274; Al-Razi, 1997, vol. 5, p. 160). Al-Razi, for instance, divided *tahsīniyyāt* into two categories: those that contradict established legal principles and those that do not (Al-Razi, 1997, vol. 5, p. 161). He also incorporated the concept of *maqāṣid* into the chapter of *tarjih* (legal preference between competing evidences), whereas it had previously been discussed

primarily within the context of *munāsabah* and *maṣlahah mursalah* (Al-Razi, 1997, vol. 5, p. 458). Meanwhile, al-Amidi elaborated extensively on the prioritization of the five essential necessities in the process of legal preference, providing detailed discussions on this matter (Al-Amidi, N.Y, vol. 4, p. 275).

Subsequently, a disciple of al-Āmidī, namely *al-ʿIzz ibn ʿAbd al-Salām* (d. 660 AH), emerged. During his time, the discussion of *maqāṣid al-sharīʿah* became broader and more profound through his work “*Qawāʿid al-Aḥkām fī Maṣāliḥ al-Anām*”. This book was rich in discussions of *maṣlahah* (public interest), which constituted the primary objective of *maqāṣid al-sharīʿah*. It encompassed discussions on the nature and classification of *maṣlahah* and *mafsadah* (harm), the regulation and prioritization of benefits and harms, the process of weighing one benefit against another or against harm, and various other aspects of *maṣlahah* that had not been systematically addressed by earlier scholars (Abdussalam, 1991). Therefore, al-Yūbī emphasized that the work of *al-ʿIzz ibn ʿAbd al-Salām* served as a pioneering contribution to the study of *maṣlahah*, making it a foundational reference in this field (Al-Yubi, 1430, p. 56).

In addition, Aḥmad ibn Idrīs al-Qarāfī (d. 684 AH), through his work *al-Furūq, al-Qarāfī* formulated several legal maxims related to *maqāṣid*, drawing upon the teachings of his teacher. These included the principles concerning *al-maqāṣid* (objectives) and *al-wasāʾil* (means) (Al-Qarafi, 1424, vol. 2, p. 32), as well as the legal maxim regarding *mashaqqab* (hardship), which distinguished between hardship that nullified religious obligations and hardship that did not (Al-Qarafi, 1424, p. 118). In another of his works, *Sharḥ Tanqīḥ al-Fuṣūl, al-Qarāfī* discussed the concept of *darūriyyāt*, the five essential objectives of the *Shariʿah*, and scholarly disagreements regarding the preservation of *al-ʿird* (honor) (Al-Qarafi, 1973, p. 391). Furthermore, his concern for *maqāṣid al-sharīʿah* was also reflected in his work *Nafāʾis al-Uṣūl fī Sharḥ al-Maḥṣūl*, in which he elaborated on various principles and insights related to the science of *maqāṣid* (Al-Qarafi, 1995, pp. 324–401). He also asserted that the *al-kulliyāt al-khams* (religion, life, intellect, lineage, and property) could not be subject to abrogation (*naskh*) (Al-Qarafi, 1995, vol. 4, p. 1932).

Following *al-Qarāfī*, another scholar who demonstrated significant attention to *maqāṣid al-sharīʿah*, particularly in relation to the concept of public interest, was *Najm al-Dīn al-Ṭūfī* (d. 716 AH). Al-Ṭūfī expanded the discussion of *maṣlahah* in his commentary on the thirty-second hadith of the Prophetic traditions. He introduced a view that provoked

considerable opposition (Al-Yubi, 1430, p. 67), namely, prioritizing *maṣlaḥah* over *naṣṣ* (scriptural text) and *ijmāʿ* (scholarly consensus) (Al-Thufi, 1998, p. 238). In evaluating this view, Yūsuf al-Qaraḍāwī explained that *al-Tūfī* intended to prioritize *qaṭʿī* (definitive and certain) *maṣlaḥah* over *ẓannī naṣṣ* (texts that allow probabilistic interpretation either in meaning or transmission), rather than over *qaṭʿī naṣṣ* (texts with definitive meaning and *mutawātir* transmission). Therefore, *al-Tūfī*'s position did not fundamentally contradict the views of other scholars (Al-Qardhawi, 2008, p. 110). Moreover, his attention to the concept of *maṣlaḥah* was also evident in his work *Sharḥ Mukhtaṣar al-Rawḍah*. After discussing matters categorized as necessities and the five primary objectives of the *Shariʿah*, he stated, “I have explained the reasons why these matters are considered primary necessities in detail in *al-Qawāʿid al-Ṣughrā*; thus, these are referred to as *maṣlaḥah ḍarūriyyah* (essential public interest)” (Al-Thufi, 1987, vol. 3, p. 209).

Subsequently, following these scholars, Imām Ibn Taymiyyah (d. 728 AH) and his disciple, Ibn Qayyim al-Jawziyyah (d. 751 AH) emerged. Imām Ibn Taymiyyah demonstrated significant attention to *maqāṣid al-shariʿah*, as reflected in the extensive discussions of *maqāṣid* throughout his works. *First*, he regarded the knowledge of *maqāṣid al-shariʿah* as a distinct component of religious understanding (*al-fiqh fī al-dīn*) (Ibnu Taimiyah, 1995, vol. 3, p. 354). *Second*, he discussed the five essential objectives commonly proposed by *uṣūl scholars* and provided additional observations on them (Ibnu Taimiyah, 1995, vol. 3, p. 343). *Third*, he examined several critical issues within *maqāṣid al-shariʿah*, including *ḥiyal* (legal stratagems), *sadd al-dharāʿi* (blocking the means to harm), and *taʿlīl al-aḥkām* (the identification of legal causation or rationale behind rulings) (Ibnu Taimiyah, 1995, vol. 8, p. 82). *Fourth*, he frequently employed the concept of *al-maṣlaḥah* (public interest) in his legal discussions and in formulating major legal principles related to it (Ibnu Taimiyah, 1403, vol. 2, p. 216). *Fifth*, he elaborated on several objectives behind the legislation of Islamic law and their underlying wisdom, such as the objectives of governance (*al-wilāyah*), the objective of distinguishing Muslims from polytheists, the objectives of *jihād*, and other profound legislative wisdoms (Ibnu Taimiyah, 1999, p. 204).

Similarly, his disciple, Ibn Qayyim al-Jawziyyah, followed his teacher's intellectual trajectory in emphasizing the wisdom and objectives behind legal legislation (*maqāṣid*). This concern was reflected in several aspects. *First*, he paid considerable attention to formulating *maqāṣid al-shariʿah*, providing legal rationales for rulings, and explaining methodological

approaches for identifying legal causes (*'illab*) and understanding the wisdom underlying legal rulings (Al-Jauziyah, 1978, p. 205). This effort contributed new insights to the discipline of *maqāṣid*, facilitating and broadening scholarly understanding of the fundamental objectives of Islamic law. *Second*, he addressed various key issues in *maqāṣid*, including more extensive discussions on *ta'ḥlil and sadd al-dharā'i'* than those of his teacher, as these issues had significant implications for understanding *maqāṣid al-sharī'ah* (Al-Jauziyah, 1991b, 1991a). *Third*, Ibn Qayyim elaborated extensively on the wisdom underlying legal rulings and their objectives across numerous works, such as "*Zād al-Ma'ād*" (Al-Jauziyah, 1996), "*Syifā' al-'Alīl*", "*Miftāḥ Dār al-Sa'ādah*", "*Tabdīḥ al-Sunan*" (Al-Jauziyah, 2019), and others.

The third phase marks the emergence of *maqāṣid al-sharī'ah* as an independent academic discipline, which later developed into a contemporary multidimensional approach in Islamic studies. This phase began in the late eighth century of the Hijri era and continues to the present day. It was pioneered by Imām Abū Ishāq al-Shāṭibī (d. 790 AH), who devoted a distinct and comprehensive section of his work, *al-Muwāfaqāt* (Al-Syatibi, 1997), specifically to the study of *maqāṣid al-sharī'ah*. Scholars and academics who have examined his intellectual contributions through the lens of *maqāṣid al-sharī'ah* generally agree that *Imām al-Shāṭibī* made a profound contribution to the development of this discipline (Al-Raisuni, 1995; Al-Ubaidy, 1992). Al-Yubi emphasized that *al-Shāṭibī* not only popularized the concept of *maqāṣid* but also systematized it through well-defined principles, classifications, and legal frameworks. He even dedicated a special section of his work to discussing *maqāṣid*, which had previously appeared only implicitly within discussions of *qiyās* or *maṣlaḥah* among earlier scholars and was often difficult to discern except by those deeply versed in *uṣūl al-fiqh* (Al-Yubi, 1430, p. 68).

Hammadi al-Ubaidy further explained that when Imām al-Shāṭibī presented and articulated the concept of *maqāṣid al-sharī'ah* in such a systematic manner, scholars of *uṣūl al-fiqh* as well as those outside the discipline began to recognize and engage with it more clearly. Some even assumed that *al-Shāṭibī* had originated the discipline and introduced it independently (Al-Ubaidy, 1992, p. 131). This perception illustrates the magnitude of *al-Shāṭibī's* intellectual breakthrough, which simultaneously marked the beginning of a new phase in the development of *maqāṣid al-sharī'ah* as an independent field of study, whereas previously it had been dispersed implicitly throughout the works of earlier scholars (Al-Yubi, 1430, p. 68).

Among the notable additional contributions presented by Imām al-Shāṭibī in his work are the following. *First*, he organized and systematized *maqāṣid*, dividing them into two primary categories: those related to the objectives of the Lawgiver (*al-Sharīʿ*, i.e., Allah) and those related to the objectives of the legally accountable individual (*mukallaḥ*). The first category is further subdivided into four aspects: (1) the objective of the Lawgiver in establishing the *Shariʿah* from its very inception; (2) the objective of the Lawgiver in establishing it; thus, it may be properly understood; (3) the objective of the Lawgiver in establishing it based on the requirements of legal responsibility (*taklīf*); and (4) the objective of the Lawgiver in incorporating the *mukallaḥ* into the rulings of the *Shariʿah* (Al-Syatibi, 1997, vol. 2, pp. 7–8). Through this classification, *maqāṣid* became clearer, more systematically arranged, and more comprehensive than in earlier scholarly formulations.

Second, Imām al-Shāṭibī introduced several significant discussions within *maqāṣid al-shariʿah*, such as the objective of the Lawgiver in establishing the *Shariʿah* to ensure its intelligibility, as well as the relationship between *maqāṣid al-shariʿah* and the actions of the *mukallaḥ* (Al-Syatibi, 1997, vol. 2, p. 289). Although such ideas had appeared in the works of Ibn al-Qayyim and other scholars, *al-Shāṭibī* presented them in a more systematic and comprehensive manner (Al-Yubi, 1430, p. 70). Similarly, with regard to the methodology for identifying *maqāṣid*, Imām al-Shāṭibī proposed additional methods not mentioned by al-Ghazālī (Al-Ghazali, 1993, p. 179). These additions constituted valuable contributions to the further development of *maqāṣid al-shariʿah* studies (Al-Syatibi, 1997, vol. 3, pp. 134–165). *Third*, he expanded the discussion of *maqāṣid al-shariʿah* by elaborating on its various dimensions and classifications, thereby offering a clearer and more comprehensive conceptual framework (Al-Syatibi, 1997). *Fourth*, Imām al-Shāṭibī closely integrated *maqāṣid* with numerous issues in *ushul al-fiqh*. Although he devoted the second section of *al-Muwāfaqāt* specifically to *maqāṣid*, discussions of *maqāṣid* also appear throughout other sections of the work (Al-Yubi, 1430, p. 70). Indeed, it is rare to find a topic addressed by al-Shāṭibī without reference to *maqāṣid*, particularly in his discussions on *ijtihād* (Al-Syatibi, 1997).

***Maqāṣid al-Shariʿah* from the *Ushul al-Fiqh* Concept to a Methodological Approach**

Following Imām al-Shāṭibī, the development of *maqāṣid al-shariʿah* experienced a period of stagnation until the fourteenth century AH/twentieth century CE, marked by the emergence of Imām Ṭāhir Ibn ʿĀshūr (d. 1393 AH/1973 CE). Aḥmad al-Raysūnī explains that although Imām al-Shāṭibī composed *al-Muwāfaqāt* at the end of the eighth century AH,

the work did not gain immediate scholarly attention due to the broader intellectual and political decline experienced by the Muslim world at that time, including in Spain, al-Shāṭibī's homeland (Al-Raisuni, 2010, p. 91). The book was first printed in Tunisia in the early thirteenth century AH (1302 AH), which marked the revival of al-Shāṭibī's thought and the beginning of the resurgence of modern and contemporary *maqāṣid*-oriented scholarship. Following its publication, the work spread widely across both eastern and western regions of the Muslim world. In the eastern regions, for example, the text was taught by Shaykh Muḥammad 'Abduh, who visited Tunisia during that period, and later by his disciples, including Shaykh 'Abdullāh Darrāz in Egypt (Al-Raisuni, 2010, pp. 91–92). Consequently, it is unsurprising that subsequent scholars of *maqāṣid* emerged with a considerable chronological gap after Imām al-Shāṭibī.

Al-Yūbī notes that he did not observe the emergence of an independent *maqāṣid* scholar following Imām al-Shāṭibī until the appearance of Imām Ibn 'Āshūr, particularly through his work *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Al-Yubi, 1430, p. 71). This view is reinforced by Aḥmad al-Raysūnī, who regarded Ibn 'Āshūr as the foremost *maqāṣid* scholar after Imām al-Shāṭibī, even describing him as the “*second al-Shāṭibī*” due to his role in advancing and complementing *al-Shāṭibī's* intellectual legacy (Al-Raisuni, 2010, pp. 94–98). Among the novel contributions found in Ibn 'Āshūr's work is his elaboration on *maqāṣid 'āmmah* (general objectives), under which he included *maqāṣid kullīyyah* (universal objectives of the *Sharī'ah*) (Ibnu Asyur, 2004, vol. 3, p. 165). He also introduced *maqāṣid kbāṣṣah* (specific objectives), encompassing objectives related to particular areas of jurisprudence, such as the objectives of family law, the objectives underlying charitable giving and endowments, the objectives of judicial procedures, the objectives of expediting the transfer of rights to their rightful owners, and the objectives underlying legal punishments (Ibnu Asyur, 2004, vol. 3, pp. 397–549). Therefore, *al-Yūbī* emphasized that Ibn 'Āshūr's work contains numerous original principles and discussions and should not be regarded merely as a summary of *al-Muwāfaqāt*, as has sometimes been alleged, since it reflects a distinctive methodological approach to presenting *maqāṣid*-related issues (Al-Yubi, 1430, p. 72).

In addition to Ibn 'Āshūr, another scholar from the same generation who wrote on *maqāṣid al-sharī'ah* was 'Allāl al-Fāsī (d. 1394 AH/1974 CE) through his work *Maqāṣid al-Sharī'ah al-Islāmiyyah wa Makārimuhā* (Al-Fasī, 1993). Although the title of the work explicitly focuses on *maqāṣid al-sharī'ah*, much of its content does not directly examine the theoretical

structure of *maqāṣid*. Instead, the primary discussions revolve around contemporary issues, such as comparisons between Islamic law and modern legal systems as well as Western intellectual thought (Al-Raisuni, 2010, p. 106). This orientation positions the work more as a defense of the superiority and ethical excellence of Islamic law rather than as a systematic and in-depth study of the theory and application of *maqāṣid al-sharī‘ah* (Al-Yubi, 1430, p. 72). Consequently, the book is more closely aligned with discussions concerning the virtues and moral excellence of the *Sharī‘ah* than with a comprehensive theoretical investigation of *maqāṣid al-sharī‘ah*.

Following the period of Ibn ‘Āshūr and ‘Allāl al-Fāsī, several prominent scholars of *maqāṣid al-sharī‘ah* emerged in the contemporary era, each contributing distinctive approaches and methodological orientations. Among these scholars are Ṭābā Jabir al-‘Alwānī (d. 1437 AH/2016 CE), Jamāl al-Dīn ‘Aṭīyyah (d. 1438 AH/2017 CE), Yūsuf al-Qaraḍāwī (d. 1444 AH/2022 CE), ‘Abdullāh bin Bayyah, ‘Abd al-Majīd al-Najjār, Aḥmad al-Raysūnī, and Jasser Auda. These figures represent key contemporary contributors to the study and development of *maqāṣid al-sharī‘ah*. Ṭābā Jabir al-‘Alwānī, for instance, is widely recognized for advocating the integration of religious sciences and modern disciplines, as well as for emphasizing the role of *maqāṣid*-based reasoning as a foundation for the renewal of Islamic legal thought (Al-Alwani, 2001). Meanwhile, Jamāl al-Dīn ‘Aṭīyyah emphasized that *maqāṣid* should not merely function as a tool of *istinbāṭ* (legal derivation), but also as a comprehensive value framework guiding Islamic civilization as a whole (Athiyah, 2001).

Similarly, Yūsuf al-Qaraḍāwī expanded the application of *maqāṣid* across various dimensions of contemporary life, including economics, politics, and international relations. He also promoted the concept of *wasatīyyah* (moderation) as a methodological approach to understanding *maqāṣid* in response to global challenges (Al-Qardhawi, 2008). In addition, ‘Abdullāh bin Bayyah and ‘Abd al-Majīd al-Najjār developed the institutional and social dimensions of *maqāṣid*. Bin Bayyah particularly focused on themes of reconciliation and peacebuilding (Ibnu Bayyah, 2006), whereas *al-Najjār* expanded the scope of *maqāṣid* by proposing eight principal objectives, including environmental preservation and the maintenance of social existence (Al-Najjar, 2008). Furthermore, Aḥmad al-Raysūnī emphasized the importance of positioning *maqāṣid* as the primary methodology in contemporary *ijtihād* and integrating it comprehensively within the framework of Islamic law (Al-Raisuni, 1995, 2010, 2013). Jasser Auda, on the other hand, introduced a systemic

approach through systems theory, emphasizing flexibility, interconnectivity, and global realities in understanding *maqāṣid* (Auda, 2011, 2012, 2013). Through the contributions of these scholars, *maqāṣid al-sharī'ah* has undergone significant development and has become increasingly relevant in addressing the challenges faced by Muslim societies in the modern era.

Beyond these prominent scholars, contemporary intellectuals have also contributed significantly to enriching and expanding the study of *maqāṣid al-sharī'ah*. For instance, al-Yūbī, in his dissertation entitled *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'Alāqatuhā bi al-Adillah al-Sharī'yyah*, examined the relationship between *maqāṣid al-sharī'ah* and the sources of Islamic legal evidence (*al-adillah al-sharī'yyah*), including the Qur'an, *Sunnah*, *ijmā'*, *qiyās*, *al-maṣāliḥ al-mursalah*, *istiḥsān*, *sadd al-dharā'i'*, *fath al-dharā'i'*, *qawl al-ṣaḥābī*, *'urf*, *shar' man qablana*, and *istiḥāb*. His study demonstrates the close and intrinsic relationship between *maqāṣid al-sharī'ah* and the foundational evidences of Islamic law itself (Al-Yubi, 1430). Similarly, Aḥmad Imām Mawardī, in his dissertation entitled “*Fiqh Minorities: Fiqh al-Aqallīyyāt and the Evolution of Maqāṣid al-Sharī'ah from Concept to Approach*”, identified a transformation of *maqāṣid al-sharī'ah* from a purely theoretical construct into a methodological approach, as reflected in the development of contemporary minority jurisprudence (*fiqh al-aqallīyyāt*) (Mawardi, 2010).

Meanwhile, Ryan Arif Rahman, in his dissertation “*Naẓariyyat al-Maṣlahah 'Inda al-Imām al-Shāṭibī wa Taṭbiqātuhā fī Aslamah al-Tiknūlūjiyyā al-Ḥadīthah*”, employed *al-Shāṭibī's* theory of *maṣlahah* as an analytical framework for the Islamization of knowledge, particularly in relation to modern technology (Rahman, 2019). Likewise, Ḥusāmuddīn MZ, in his dissertation “*Reconstruction of Maqāṣid al-Sharī'ah in Modern Social Needs: A Study of al-Kullīyyāt al-Khamsah*”, highlighted the central importance of *maqāṣid al-sharī'ah*, particularly the five universal essentials (*al-kullīyyāt al-khamsah*), in the process of *ijtihād* addressing contemporary social challenges (Husamuddin MZ, 2023). Accordingly, the historical development of *maqāṣid al-sharī'ah* continues to evolve dynamically, reflecting ongoing scholarly efforts to establish it as a comprehensive framework for addressing contemporary issues. This evolution of *maqāṣid al-sharī'ah* into a methodological approach further affirms its relevance as a crucial instrument in the reform and renewal of Islamic law.

CONCLUSION

This study demonstrates that *maqāṣid al-sharīʿah* has developed gradually and dynamically alongside the development of Islamic law. In its early phase, *maqāṣid al-sharīʿah* existed substantively within the Qurʿan, Sunnah, and the understanding of the early Muslim generations (*al-salaf*), although it had not yet been formulated as an independent scholarly discipline. In the subsequent phase, the concept of *maqāṣid* began to be systematically articulated in the works of classical *ushul al-fiqh* scholars, particularly through discussions on *maṣlaḥah*, legal causation (*ʿillah*), and the classification of human needs. A significant milestone in the development of *maqāṣid al-sharīʿah* occurred during the time of Imām al-Shāṭibī, who successfully systematized *maqāṣid al-sharīʿah* as a comprehensive conceptual framework and established it as a fundamental basis for *ijtihād*. This development continued into the modern and contemporary periods, during which *maqāṣid al-sharīʿah* came to be understood not merely as a normative concept but also as a flexible and applicable methodological approach for responding to social, legal, and civilizational challenges of the modern era. Accordingly, the evolution of *maqāṣid al-sharīʿah* from a concept within *ushul al-fiqh* into a methodological approach affirms its relevance as a primary instrument in the renewal of Islamic law. The *maqāṣid*-based approach enables Islamic law to remain rooted in scriptural sources while simultaneously responding to social realities and human needs, thereby fulfilling the ultimate objective of the *Sharīʿah*—namely, the realization of human welfare in both this world and the hereafter.

As a recommendation for future research, studies on *maqāṣid al-sharīʿah* should be directed toward its development as a methodological approach within Islamic legal studies, rather than remaining limited to conceptual or historical analysis. Further research is necessary to formulate a more operational framework for *maqāṣid*-based methodology, including its principles, procedural stages, and limitations in contemporary *ijtihād*. This is particularly relevant in light of the growing complexity of modern legal issues—such as social justice, human rights, economics, and technology—which require an Islamic legal approach capable of systematically integrating scriptural sources with empirical realities. Through such development, *maqāṣid al-sharīʿah* is expected to function as an accountable scientific methodology that maintains a balance between fidelity to normative sources and responsiveness to the needs of modern society.

REFERENCES

- Abdullah, M. A. (2012). Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam dalam Merespon Globalisasi. *Asy-Syir'ab: Jurnal Ilmu Syari'ah Dan Hukum*, 46(2). <https://doi.org/10.14421/ajish.v46i2.42>
- Abdussalam, I. bin. (1991). *Qawā'id al-Aḥkām fī Maṣālib al-Anām*. Dar al-Kutub al-'Ilmiyyah.
- Afifuddin, A., & Saebani, B. A. (2009). *Metodologi Penelitian Kualitatif*. Pustaka Setia.
- Al-Alwani, T. J. (2001). *Maqasid al-Syari'ah*. Dar al-Hadi.
- Al-Amidi, A. H. (N.Y). *Al-Iḥkām fī Uṣūl al-Aḥkām*. Al-Maktabah al-Islamy.
- Al-'Arabiyah, M. al-Lughah. (N.Y). *Al-Mu'jam al-Wasiṭ*. Dar al-Dakwah.
- Al-Azdi, M. bin H. (1987). *Jamharah al-Lughah*. Dar al-'Ilmi li al-Malayin.
- Al-Bashri, K. bin A. (N.Y). *Kitāb al-'Ain*. Maktabah al-Hilal.
- Al-Bukhari, M. bin I. (1422). *Ṣahih al-Bukhārī*. Dar Thuq al-Najah.
- Al-Fasi, A. (1993). *Maqasid al-Syari'ah al-Islāmiyyah wa Makārimuhā*. Dar al-Gharb al-Islamy.
- Al-Ghazali, A. H. (1971). *Syifā' al-Ghalīl*. Mathba'ah al-Irsyad.
- Al-Ghazali, A. H. (1993). *Al-Mustaṣfā*. Dar al-Kutub al-'Ilmiyyah.
- Al-Ghazali, A. H. (N.Y). *Ihyā' 'Ulūm al-Dīn*. Dar al-Ma'rifah.
- Al-Jauziyah, I. Q. (1978). *Syifā' al-'Alīl fī Masā'il al-Qaḍā' wa al-Qadar wa al-Hikmah wa al-Ta'līl*. Dar al-Ma'rifah.
- Al-Jauziyah, I. Q. (1991a). *I'lām al-Muwāqī'in 'An Rabb al-'Ālamīn*. Dar al-Kutub al-'Ilmiyyah.
- Al-Jauziyah, I. Q. (1991b). *Miftāḥ Dār al-Sa'ādah*. Dar al-Kutub al-'Ilmiyyah.
- Al-Jauziyah, I. Q. (1996). *Zād al-Ma'ād fī Hady Khair al-'Ibād*. Muassasah al-Risalah.
- Al-Jauziyah, I. Q. (2019). *Tabḍīḥ Sunan Abī Dāwūd wa Iḍāḥ 'Ilalīh wa Musykilātīh*. Dar Ibnu Hazm.
- Al-Juwaini, A. M. (1997). *Al-Burhān fī Uṣūl al-Fiqh*. Dar al-Kutub al-'Ilmiyyah.
- Al-Khadimy, M. N. (2021). *Ilm al-Maqāṣid al-Syar'iyyah*. Maktabah al-'Abikan.
- Al-Mahmudi, M. S. A. (1441). *Manābij al-Baḥs al-'Ilmī*. Dar al-Kutub.
- Al-Mishri, Z. (2000). *Syarḥ al-Taṣrīḥ 'alā al-Taḍīb*. Dar al-Kutub al-'Ilmiyyah.
- Al-Najjar, A. M. (2008). *Maqasid al-Syari'ah bi Ab'ād al-Jadīdah*. Dar al-Gharb al-Islamy.

- Al-Qarafi, S. (1424). *Al-Furūq*. Muassasah al-Risalah.
- Al-Qarafi, S. (1973). *Syarḥ Tanqīḥ al-Fuṣūl*. Syirkah al-Thaba'ah al-Faniyah al-Muttahidah.
- Al-Qarafi, S. (1995). *Nafāis al-Uṣūl fī Syarḥ al-Maḥs*. Maktabah Nizar Mushthafa al-Baz.
- Al-Qardhawi, Y. (2008). *Dirāsah fī Fiqh Maqāṣid al-Syari'ah*. Dar al-Syuruq.
- Al-Raisuni, A. (1995). *Naẓariyah al-Maqāṣid 'Inda al-Imām al-Syaṭibi*. Al-Ma'had al-Ali li al-Fikr al-Islamy.
- Al-Raisuni, A. (2010). *Mubāḍarāt fī Maqasid al-Syari'ah*. Dar al-Kalimah.
- Al-Raisuni, A. (2013). *Al-Madkhal ilā Maqāṣid al-Syari'ah*. Dar al-Kalimah.
- Al-Razi, A. bin F. (1979). *Mu'jam Maqāyīs al-Lughah*. Dar al-Fikr.
- Al-Razi, F. (1997). *Al-Maḥsūl*. Muassasah al-Risalah.
- Al-Razi, M. (1999). *Mukhtār al-Shibāh*. Dar an-Namudzajiyah.
- Al-Syatibi, A. I. (1997). *Al-Muwāfaqāt fī Uṣūl al-Syari'ah*. Dar Ibnu 'Affan.
- Al-Thufi, N. S. (1987). *Syarḥ Mukhtaṣar al-Rawḍah*. Muassasah al-Risalah.
- Al-Thufi, N. S. (1998). *Al-Ta'yīn fī Syarḥ al-Arba'in*. Muassasah al-Rayan.
- Al-Ubaidy, H. (1992). *Al-Syaṭibi wa Maqasid al-Syari'ah*. Dar Qutaibah.
- Al-Yubi, M. S. (1430). *Maqāṣid al-Syari'ah Al-Islāmiyyah Wa 'Alāqatuhā Bi al-Adillah al-Syar'iyyah*. Dar Ibnu Jauzi.
- Amrulloh, M. W. A., & Zaman, M. B. (2024). Kontribusi Maqāshid al-Syari'ah dalam Pengembangan Bioetika Islam. *Journal of Islamic and Occidental Studies*, 2(1), 22–46. <https://doi.org/10.21111/jios.v2i1.36>
- Athiyah, J. (2001). *Naḥw Taḥḍīr Maqasid al-Syari'ah*. Dar al-Fikr.
- Auda, J. (2011). *Maqasid al-Syari'ah Dalīl li al-Mubtadi'in*. Al-Ma'had al-'Aly li al-Fikr al-Islamy.
- Auda, J. (2012). *Maqasid al-Syari'ah ka Falsafah al-Tasyri' al-Islāmy, Ru'yah Manzūmah*. Trans: *Abdul Lathif al-Khayyath*. Al-Ma'had al-'Aly li al-Fikr al-Islamy.
- Auda, J. (2013). *Al-Ijtibād al-Maqāṣidi: Min al-Taṣawwur al-Uṣūli ilā Tanzīl al-'Amali*. Al-Syabakah al-'Arabiyah li al-Abhas wa al-Nasr.
- Auda, J. (2021). *Al-Minbajiyah al-Maqāṣidiyyah: Naḥw I'ādah Ṣiyāghah Mu'aṣirah li al-Ijtibād al-Islāmi*. Dar al-Maqashid.

- Fadhli, M. F. (2023). The Application of the Maqāshid al-Syarī'ah Concept according to Imam al-Ghazali and Imam al-Syathibi in Contemporary Islamic Law Inferences. *JIOS: Journal of Islamic and Occidental Studies*, 1(1), 63–91. <https://doi.org/10.21111/jios.v1i1.5>
- Habib, Z. (2025). Ethics of Artificial Intelligence in Maqāshid Al-Sharī'a's Perspective. *Karsa: Jurnal Sosial Dan Budaya Keislaman*, 33(1). <https://ejournal.uinmadura.ac.id/index.php/karsa/article/view/19617>
- Husamuddin MZ, H. M. (2023). *Rekonstruksi Maqāshid al-Syarī'ah dalam Kebutuhan Sosial Modern (Kajian Terhadap Al-Kulliyat Al-Khamsah)* [Disertasi]. UIN Ar-Raniry.
- Ibnu Asyur, M. T. (2004). *Maqasid al-Syarī'ah al-Islāmiyyah*. Wizarah al-Awqaf wa al-Syu'un al-Islamiyah.
- Ibnu Bayyah, A. (2006). *'Alāqab Maqāshid al-Syarī'ah bi Uṣūl al-Fiqh*. Muassasah al-Furqan li al-Turats al-Islamy.
- Ibnu Hisyam, J. (N.Y). *Syarb Syudzūr al-Dzāhab fī Ma'rifah Kalām al-'Arab*. Al-Syirkah al-Muttahidah.
- Ibnu Manzur, J. (1414). *Lisān al-'Arab*. Dar al-Shadir.
- Ibnu Taimiyah, T. (1403). *Al-Istiqāmah*. Universitas Imam Muhammad bin Sa'ud.
- Ibnu Taimiyah, T. (1995). *Majmū' al-Fatāwā*. Majma' al-Mulk Fahd li Thaba'ah.
- Ibnu Taimiyah, T. (1999). *Iqtidā' al-Ṣirāṭ al-Mustaqīm li Mukhālafah Aṣḥāb al-Jahīm*. Dar al-'Alam al-Kutub.
- Ibrahim, A. H., Rahman, N. N. A., Saifuddeen, S. M., & Baharuddin, M. (2019). Maqasid al-Shariah Based Islamic Bioethics: A Comprehensive Approach. *Journal of Bioethical Inquiry*, 16(3). <https://doi.org/10.1007/s11673-019-09902-8>
- Mawardi, A. I. (2010). *Fiqh Minoritas: Fiqh Al-Aqalliyāt dan Evolusi Maqāshid asy-Syarī'ah dari Konsep ke Pendekatan*. Lkis.
- Mawardi, A. I. (2014). Fiqh Aqalliyat: Pergeseran Makna Fiqh dan Usul Fiqh. *Ash-Syarī'ah: Jurnal Ilmu Syarī'ah Dan Hukum*, 48(2), 315–332. <https://doi.org/10.14421/ajish.v48i2.119>
- Nazahah, I., & Sahidin, A. (2021). Hukum Safar Wanita Tanpa Mahram Menurut Pandangan Para Ulama. *JPMA: Jurnal Penelitian Medan Agama*, 12(2), 82–89. <http://dx.doi.org/10.58836/jpma.v12i2.11240>
- Pramono, M. F., & Sahidin, A. (2021). Maqāshid al-Sharī'ah Values in al-Māwardī's Concept of the Caliphate. *Al-Ahkam*, 31(2), 203–222. <https://doi.org/10.21580/ahkam.2021.31.2.8612>

- Rahman, R. A. (2019). *Nazariyyah al-Maṣlahah Inda al-Imām al-Syaṭibi wa Taṭbīqātuhā fī Aslamah al-Tiknūlijīyah al-Hadītsab* [Disertasi]. Universitas Darussalam Gontor.
- Rahman, R. A., Sahidin, A., & Nazahah, I. (2021). Aksi Unjuk Rasa Bela Islam di Indonesia Pada Kasus Ahok Dalam Perspektif Maqashid al-Syari'ah. *Istinbath*, 20(2), 349–371. <https://doi.org/10.20414/ijhi.v20i2.391>
- Sahidin, A. (2021a). Pendayagunaan Zakat dan Wakaf untuk Mencapai Maqashid Al-Syari'ah. *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam*, 14(2), 97–106. <https://doi.org/10.47411/al-awqaf.v14i2.148>
- Sahidin, A. (2021b). Telaah Atas Konsep Khilafah Al-Mawardi (Studi Deskriptif Analisis). *JPMA: Jurnal Penelitian Medan Agama*, 12(2), 72–81. <http://dx.doi.org/10.58836/jpma.v12i2.11112>
- Sahidin, A. (2022a). Framework Studi Maqashid Al-Syari'ah; Antara Penalaran Tekstual Dan Kontekstual. *Al-Jabiri: Jurnal Ilmiah Studi Islam*, 1(2), 87–110.
- Sahidin, A. (2022b). Telaah Atas Fiqh Al-Aqalliyat Syekh Yusuf Al-Qardhawi. *An-Natiq: Jurnal Kajian Islam Interdisipliner*, 2(2). <https://doi.org/10.33474/an-natiq.v2i2.15774>
- Sahidin, A. (2023). Telaah Atas Ijtihad Umar Bin Khaṭṭab Perspektif Maqāṣid Al-Syari'ah. *Jurnal Penelitian Medan Agama*, 14(1), 25–34. <http://dx.doi.org/10.58836/jpma.v14i1.16553>
- Sahidin, A., & Kamaluddin, I. (2024). An Examination of Maqashid al-Shari'ah between Textual and Contextual Reasoning (Descriptive Analysis Study). *Istinbath: Jurnal Hukum*, 20(2), 1–25. <https://doi.org/10.32332/istinbath.v20i02.4830>
- Sahidin, A., & Muslih, M. (2025). Pengembangan Sains Berorientasi Maqashid Syariah. *Prosiding Integrasi Interkoneksi Islam Dan Sains*, 6, 223–231. <https://ejournal.uin-suka.ac.id/saintek/kiis/article/view/4786>
- Sahidin, A., Muslih, M., Lahuri, S. bin, Fata, Z., & Sandisi, Z. R. binte M. (2025). The Contextual Ijtihād of Umar ibn Khattāb: Between Legal Reform and Local Wisdom in Early Islamic Society. *Madania: Jurnal Kajian Keislaman*, 29(2), 217–228. <http://dx.doi.org/10.29300/madania.v29i2.9141>
- Sahidin, A., & Rahmadi, M. A. (2021). The Implementation of Maqasid Al-Shari'ah in Shaykh Yusuf Al-Qardhawi's Fiqh Al-Aqalliyat. *Jurnal Hukum Islam*, 19(2). <https://doi.org/10.28918/jhi.v19i2.4724>
- Shahridzuan, M. S. A. (2024). CRISPR-Cas9 Gene Editing According to Maqasid al-Shariah: Ethical Concerns and Applications. *Al-Maqasid: The International Journal of Maqasid Studies and Advanced Islamic Research*, 5(1). <https://doi.org/10.55265/al-maqasid.v5i1.129>
- Tavakoli, H. (2012). *A Dictionary of Research Methodology and Statistics in Applied Linguistics*. Rahma Press.

Zatani, N., & Syamsuri, S. (2019). Konsep Maqashid Syariah Menurut Al-Syatibi Dan Kontribusinya Dalam Kebijakan Fiskal. *Jurnal Masharif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah*, 4(1), 1–14. <https://doi.org/10.30651/jms.v4i1.2111>

Zuhaili, W. (1999). *Al-Wajiz fi Uṣūl al-Fiqh*. Dar al-Fikr al-Mu'ashir.

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REGULASI WAKAF UANG DIGITAL PADA PLATFORM FINTECH SYARIAH DI INDONESIA (Analisis Yuridis dan Kekosongan Hukum)

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ABSTRACT

The rapid growth of Islamic fintech in Indonesia has propelled digital cash waqf collection from Rp61.2 billion in 2019 to Rp571.8 billion in 2024 (CAGR 56.4%), exposing a fundamental structural mismatch: Law No. 41 of 2004 on Waqf — the *lex specialis* — was designed for face-to-face transactions with no digital provisions, creating legal uncertainty as this study's central problem. This normative legal study employs statute, conceptual, and comparative approaches, applying a regulatory harmonization framework to map normative gaps across Law No. 41 of 2004, Government Regulation No. 42 of 2006, BWI Regulation No. 1 of 2020, UU ITE, and OJK fintech regulations, using Malaysian waqf instruments as reference. Three legal vacuums are identified: first, Article 17's physical presence requirement before PPAIW renders electronic waqf contracts legally uncertain, as UU ITE — *lex generalis* — cannot override the Waqf Law's *lex specialis* formality; second, no dedicated consumer protection exists for waqf funds on non-bank fintech platforms outside banking-grade deposit protection; and third, absent interoperability standards between national payment infrastructure (GPN/QRIS/BI-FAST) and digital waqf platforms produce data fragmentation impeding oversight. Comparative analysis shows proactive inter-institutional coordination between JAWHAR and Bank Negara Malaysia produces measurably superior outcomes in platform integration, fund security, and public trust. Grounded in *maqasid al-shari'ah*, closing these vacuums constitutes a substantive Islamic obligation rooted in *hifzh al-mal* and *maslahah*. Three normative recommendations: amendment of Article 17 of Law No. 41 of 2004 to recognize digital waqf; joint OJK-BWI regulation on fintech waqf; and a standardized Digital Waqf API Framework by Bank Indonesia.

Keywords: *Digital Waqf; Fintech Syariah; Waqf Regulation; Legal Vacuum; Maqasid Al-Shari'ah.*

ABSTRAK

Pertumbuhan pesat *fintech* syariah di Indonesia mendorong penghimpunan wakaf uang digital dari Rp61,2 miliar pada 2019 menjadi Rp571,8 miliar pada 2024 (CAGR 56,4%), mengungkap ketidaksesuaian struktural mendasar: UU Nomor 41 Tahun 2004 tentang Wakaf — *lex specialis* perwakafan Indonesia — dirancang untuk transaksi tatap muka tanpa ketentuan digital, menimbulkan ketidakpastian hukum sebagai pokok permasalahan penelitian ini. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan, konseptual, dan komparatif, menerapkan *harmonization framework* untuk memetakan kekosongan normatif pada UU Nomor 41 Tahun 2004, PP Nomor 42 Tahun 2006, Peraturan BWI Nomor 1 Tahun 2020, UU ITE, dan regulasi OJK fintech, menggunakan instrumen regulasi wakaf Malaysia sebagai bahan komparatif. Tiga kekosongan hukum spesifik teridentifikasi: pertama, Pasal 17 UU Wakaf mensyaratkan kehadiran fisik di hadapan PPAIW sehingga akad wakaf elektronik mengandung ketidakpastian hukum, karena UU ITE sebagai *lex generalis* tidak dapat mengesampingkan persyaratan formil UU Wakaf sebagai *lex specialis*; kedua, tidak ada perlindungan konsumen khusus bagi dana *wakif* pada platform *fintech non-bank* di luar perlindungan deposito perbankan; dan ketiga, ketiadaan standar interoperabilitas antara infrastruktur pembayaran nasional (GPN/QRIS/BI-FAST) dengan platform wakaf digital menghasilkan fragmentasi data dan menghambat pengawasan. Analisis komparatif menunjukkan koordinasi antarkelembagaan proaktif antara JAWHAR dan Bank Negara Malaysia menghasilkan capaian terukur lebih unggul dalam integrasi platform, keamanan dana, dan kepercayaan publik. Berlandaskan *maqasid al-shari'ah*, menutup kekosongan ini merupakan kewajiban Islam substantif berakar pada *hifzh al-mal* dan *maslahah*. Tiga rekomendasi normatif diajukan: amandemen Pasal 17 UU Nomor 41 Tahun 2004 untuk mengakui wakaf digital; regulasi bersama OJK-BWI tentang fintech wakaf; dan Kerangka API Wakaf Digital Standar oleh Bank Indonesia.

Kata Kunci: *Wakaf Digital; Fintech Syariah; Regulasi Wakaf; Kekosongan Hukum; Maqasid Al-Shari'ah.*

PENDAHULUAN

Bayangkan seseorang yang tinggal di pelosok Sulawesi, tanpa rekening bank syariah di dekatnya, namun ingin mewakafkan sebagian penghasilannya untuk pembangunan madrasah. Kini, dengan sebuah ponsel pintar dan koneksi internet, orang yang sama dapat mewakafkan dana dalam hitungan menit melalui aplikasi seperti Kitabisa, Tokopedia (fitur Wakaf), atau Rumah Zakat Digital. Namun di balik kemudahan ini tersimpan persoalan hukum yang belum terjawab: apakah ikrar wakaf yang dilakukan lewat klik tombol di layar ponsel itu sah secara hukum positif? Siapa yang melindungi dananya jika platform tersebut bangkrut? Inilah persoalan yang menjadi inti penelitian ini — sebuah kekosongan normatif yang timbul karena Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf dirancang untuk transaksi tatap muka, jauh sebelum ekosistem *fintech* syariah ada. Sebelum melangkah lebih jauh, perlu ditegaskan bahwa istilah “wakaf uang digital” yang digunakan dalam penelitian ini merupakan istilah operasional, bukan terminologi hukum positif yang berdiri sendiri. Undang-Undang Nomor 41 Tahun 2004 hanya mengenal istilah “wakaf uang” sebagai objek wakaf berupa uang yang sah secara hukum. Istilah “wakaf uang digital” dalam penelitian ini merujuk pada praktik wakaf uang sebagaimana diatur UU tersebut yang pelaksanaannya dilakukan melalui platform teknologi digital — mencakup proses ikrar, penerimaan, dan pengelolaan dana secara elektronik. Dengan demikian, istilah ini merupakan derivasi konseptual operasional dari “wakaf uang”, bukan instrumen hukum baru yang terpisah dari kerangka UU No.41/2004.

Wakaf uang (*cash waqf*) sejatinya bukan instrumen baru dalam khazanah fikih Islam. Para fuqaha klasik seperti Imam al-Zuhri dan Imam al-Bulqini telah memperdebatkan keabsahannya sejak abad ke-8 Masehi, dan praktiknya tercatat dalam sejarah Kesultanan Utsmaniyah dalam bentuk awqaf al-nuqud yang digunakan untuk membiayai layanan publik (Cizakca, 2000). Di Indonesia, legitimasi hukum positif wakaf uang baru hadir melalui Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf, yang secara eksplisit mengakui uang sebagai objek wakaf yang sah dan menetapkan Lembaga Keuangan Syariah Penerima Wakaf Uang (LKS-PWU) sebagai kanal penerimaan resmi (Indonesia 2004). Pengakuan ini merupakan terobosan legislatif yang penting, sebab sebelumnya praktik wakaf uang di Indonesia beroperasi di zona abu-abu hukum.

Namun, Undang-Undang Nomor 41 Tahun 2004 lahir di era yang berbeda - era di mana “transaksi digital” masih berupa hal yang eksotis dan ekosistem *fintech* belum terbayangkan. Kini, lebih dari dua dekade kemudian, lanskap keuangan syariah Indonesia

telah berubah secara fundamental. Otoritas Jasa Keuangan (OJK) mencatat bahwa per akhir 2023, terdapat 102 perusahaan *fintech peer-to-peer* (P2P) lending berizin, dengan aset kelolaan mencapai Rp 67,4 triliun (OJK 2023). Di dalam ekosistem yang lebih luas ini, platform-platform penghimpunan dana sosial berbasis syariah - yang sebagian besar beroperasi sebagai agregator wakaf - tumbuh dengan kecepatan yang mengejutkan. Data Badan Wakaf Indonesia (BWI) menunjukkan bahwa per 2024 terdapat 35 platform digital aktif yang berwenang menghimpun wakaf uang, meningkat dari hanya 3 platform pada tahun 2019 (BWI, 2024).

Pertumbuhan ekosistem ini menyimpan sebuah paradoks yang mengusik: semakin besar skalanya, semakin besar pula potensi risikonya. Ketika seseorang mewakafkan dana melalui platform digital non-bank, siapa yang menjamin keamanannya jika platform tersebut mengalami kesulitan keuangan? Apakah ikrar wakaf yang dilakukan melalui klik tombol “Konfirmasi” di layar ponsel memiliki kekuatan hukum yang sama dengan ikrar di hadapan Pejabat Pembuat Akta Ikrar Wakaf (PPAIW)? Bagaimana data perwakafan digital yang tersebar di puluhan platform dapat dikonsolidasi dalam satu sistem nasional yang terpercaya? Pertanyaan-pertanyaan inilah yang menjadi inti dari masalah penelitian yang dihadapi.

Telaah literatur menunjukkan bahwa studi tentang wakaf uang di Indonesia telah berkembang pesat dalam satu dasawarsa terakhir. (Fauzia 2017) memberikan fondasi sejarah yang komprehensif tentang filantropi Islam di Indonesia, sementara (Amalia & Mahalli 2020) mengkaji potensi wakaf produktif dalam pengentasan kemiskinan. Dari perspektif tata kelola, (Noordin, Haron, & Kassim 2017) mengembangkan kerangka pengukuran kinerja lembaga wakaf, dan (Siswanto, Rosdiana, & Fatimah 2018) membahas rekonstruksi akuntabilitas lembaga wakaf uang di Indonesia. (Arif, Choiruzzad, & Wicaksono 2023) telah menyentuh dimensi tata kelola platform wakaf digital, namun analisis yuridis normatifnya masih bersifat parsial dan belum memetakan kekosongan normatif secara sistematis. *Research gap* yang belum tertangani adalah analisis harmonisasi regulasi - yakni sejauh mana UU Wakaf, regulasi *fintech* OJK, dan infrastruktur pembayaran Bank Indonesia saling melengkapi atau justru meninggalkan celah normatif dalam mengatur wakaf uang berbasis platform digital. Di sinilah penelitian ini berupaya memberikan kontribusi yang lebih komprehensif, sekaligus menegaskan implikasi kebijakan yang konkret bagi BWI, OJK, dan Bank Indonesia.

Penelitian ini bertujuan untuk: pertama, menganalisis secara kritis kecukupan kerangka regulasi wakaf uang digital yang ada di Indonesia; kedua, mengidentifikasi

kekosongan hukum yang kritis dalam regulasi tersebut dengan dukungan data empiris terkini; ketiga, melakukan analisis komparatif dengan Malaysia sebagai yurisdiksi yang lebih maju dalam mengintegrasikan teknologi ke dalam sistem wakaf nasional; keempat, menganalisis implikasi kekosongan regulasi dari perspektif *maqasid al-shari'ah*; dan kelima, merumuskan rekomendasi kebijakan yang konkret, terukur, dan dapat segera diimplementasikan. Melalui tujuan-tujuan ini, penelitian diharapkan tidak hanya berkontribusi pada pengembangan teori hukum ekonomi Islam, tetapi juga memberikan panduan praktis bagi pembuat kebijakan, regulator, dan pelaku industri *fintech* syariah Indonesia. Secara lebih spesifik, penelitian ini menjawab tiga pertanyaan penelitian: (1) Kekosongan normatif apa saja yang terdapat dalam kerangka regulasi wakaf uang berbasis platform digital di Indonesia ditinjau dari aspek keabsahan akad, perlindungan dana, dan interoperabilitas sistem? (2) Bagaimana kerangka regulasi Malaysia dapat menjadi referensi komparatif dalam merumuskan solusi atas kekosongan tersebut? (3) Rekomendasi normatif apa yang paling tepat untuk memperkuat kepastian hukum wakaf uang digital di Indonesia? Ruang lingkup analisis bersifat yuridis-normatif dan komparatif, terbatas pada regulasi yang berlaku di Indonesia dan Malaysia dengan periode kajian 2019–2024. Adapun batasan penelitian ini adalah tidak mencakup data empiris lapangan berupa survei atau wawancara langsung dengan pelaku industri maupun regulator.

METODE PENELITIAN

Penelitian ini merupakan penelitian hukum normatif (*normative legal research*), yakni penelitian yang bertumpu pada bahan pustaka dan data sekunder sebagai sumber utama. Pilihan metode ini didasarkan pada sifat permasalahan yang diteliti — yakni kekosongan dan ketidakpastian dalam norma hukum positif — yang paling tepat dikaji melalui analisis teks peraturan perundang-undangan, doktrin hukum, dan putusan otoritatif, bukan melalui pengumpulan data lapangan (Soekanto & Mamudji 2015). Sebagaimana diungkapkan oleh (Marzuki 2017), penelitian hukum normatif tidak mengenal istilah data, melainkan bahan hukum, karena yang menjadi objek telaahnya adalah norma, bukan fakta sosial.

Tiga pendekatan digunakan secara komplementer dalam penelitian ini. Pendekatan perundang-undangan (*statute approach*) dilakukan dengan inventarisasi dan analisis sistematis terhadap seluruh peraturan perundang-undangan yang membentuk kerangka hukum wakaf uang digital di Indonesia, mulai dari level undang-undang hingga peraturan lembaga. Pendekatan konseptual (*conceptual approach*) digunakan untuk mengkaji konsep-konsep hukum

Islam yang relevan — terutama konsep wakaf, sahnya akad, perlindungan harta (*hifzh al-mal*), dan *maqasid al-shari'ah* — guna membangun argumentasi normatif yang berlandaskan pada teori hukum Islam yang koheren (Jasser Auda 2008). Pendekatan komparatif (*comparative approach*) dilakukan dengan membandingkan kerangka regulasi wakaf digital Indonesia dengan Malaysia, dipilih karena kedua negara memiliki karakteristik sistem hukum Islam yang serupa namun dengan tingkat perkembangan regulasi digital yang berbeda, sehingga memberikan konteks komparatif yang bermakna (Alias 2012).

Bahan hukum primer yang digunakan mencakup: Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf; Peraturan Pemerintah Nomor 42 Tahun 2006 tentang Pelaksanaan UU Wakaf; Peraturan BWI Nomor 1 Tahun 2020 tentang Pedoman Pengelolaan dan Pengembangan Wakaf; Undang-Undang Nomor 11 Tahun 2008 jo. UU Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik; POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek melalui Layanan Urun Dana; serta fatwa-fatwa relevan Dewan Syariah Nasional-MUI, khususnya Fatwa DSN-MUI Nomor 86/DSN-MUI/XII/2012 tentang Hadiah dalam Penghimpunan Dana Lembaga Keuangan Syariah. Bahan hukum sekunder terdiri dari buku-buku hukum, artikel jurnal terindeks Scopus dan SINTA, laporan resmi lembaga pemerintah (BWI, Kemenag, OJK, Bank Indonesia), serta prosiding konferensi internasional. Teknik pengumpulan bahan hukum dilakukan melalui studi kepustakaan sistematis dengan penelusuran database Scopus, SINTA, dan Google Scholar menggunakan kata kunci yang telah ditentukan. Seluruh bahan hukum dianalisis menggunakan metode analisis isi (*content analysis*) dan analisis preskriptif untuk mengidentifikasi kekosongan norma dan merumuskan rekomendasi. Untuk mengoperasionalkan identifikasi kekosongan hukum secara sistematis, penelitian ini menggunakan *harmonization framework* sebagai instrumen analisis. Kerangka ini menguji apakah seluruh instrumen regulasi yang mengatur wakaf uang digital bersifat saling melengkapi (*complementary*), tidak tumpang tindih (*non-overlapping*), dan tidak meninggalkan celah normatif (*gap-free*) dalam tiga dimensi: (1) keabsahan akad elektronik, (2) perlindungan dana pihak yang lemah, dan (3) integritas sistem pengawasan. Pemetaan regulasi dilakukan secara sistematis dalam bentuk matriks yang menempatkan setiap instrumen regulasi pada sumbunya dan mengidentifikasi celah (*gap*) pada setiap persinggungan antar-instrumen. Pendekatan ini memungkinkan klasifikasi jenis kekosongan hukum — yakni apakah bersifat substantif, prosedural, atau koordinatif — yang menjadi dasar perumusan rekomendasi normatif yang tepat sasaran.

TEMUAN DAN PEMBAHASAN

Arsitektur Hukum Wakaf Uang Digital di Indonesia

Untuk memahami kekosongan hukum yang ada, kita perlu terlebih dahulu memahami arsitektur regulasi wakaf uang digital Indonesia sebagai sebuah keseluruhan sistem. Dalam penelitian ini, “arsitektur hukum” didefinisikan sebagai keseluruhan susunan instrumen regulasi — dari level undang-undang hingga peraturan lembaga — yang secara bersama-sama membentuk kerangka normatif suatu bidang hukum, beserta relasi hierarkis dan fungsional antar-instrumen tersebut. Arsitektur hukum dikatakan utuh apabila setiap instrumen saling melengkapi tanpa meninggalkan celah normatif; dan dikatakan tidak harmonis apabila terdapat kekosongan (*gap*), tumpang tindih (*overlap*), atau kontradiksi antar-instrumen (Jasser Auda 2008). Analoginya memang seperti membangun sebuah gedung: fondasinya ada (UU No.41/2004), rangka strukturnya telah diperkuat (PP No.42/2006), dan beberapa dinding telah dipasang (Peraturan BWI No.1/2020) — namun atap, instalasi listrik, dan sistem keamanan gedung tersebut masih belum selesai dikerjakan. Namun tidak seperti metafora, analisis arsitektur hukum harus bersifat sistematis dan terukur.

Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf hadir sebagai *lex specialis* yang mengatur seluruh dimensi perwakafan di Indonesia. Dari perspektif historis, kelahiran undang-undang ini merupakan buah dari perjuangan panjang para ulama dan akademisi hukum Islam yang menginginkan wakaf tidak sekadar diakui secara fikih, tetapi juga memiliki kepastian hukum positif yang kokoh (Fauzia 2017). Dalam konteks wakaf uang, Pasal 28 menegaskan bahwa wakif dapat mewakafkan benda bergerak berupa uang, sementara Pasal 29 mengatur bahwa wakaf uang harus melalui Lembaga Keuangan Syariah yang ditunjuk oleh Menteri — yang dalam praktiknya adalah bank-bank syariah yang berstatus LKS-PWU. Ketentuan prosedural ikrar wakaf dalam Pasal 17 mensyaratkan kehadiran fisik di hadapan PPAIW dan dua orang saksi — suatu ketentuan yang, sebagaimana akan dianalisis lebih lanjut, menjadi sumber ketidakpastian hukum yang serius dalam konteks wakaf digital.

Peraturan Pemerintah Nomor 42 Tahun 2006 kemudian mengoperasionalkan ketentuan undang-undang dengan mengatur tata cara pelaksanaan yang lebih teknis. PP ini memperluas cakupan nazir yang dapat mengelola wakaf uang — tidak hanya lembaga keuangan, tetapi juga organisasi kemasyarakatan yang memenuhi syarat. Perkembangan ini penting karena membuka jalan bagi lembaga-lembaga seperti Dompot Dhuafa, Rumah Zakat, dan LAZISMU untuk menjadi nazir wakaf uang yang legitim, yang kemudian menjadi pelopor dalam pengembangan platform digital (Siswanto et al., 2018).

Lompatan regulatoris yang paling signifikan dalam konteks digital datang melalui Peraturan BWI Nomor 1 Tahun 2020. Untuk pertama kalinya, peraturan ini secara eksplisit mengakui platform teknologi digital sebagai kanal yang sah bagi penerimaan wakaf uang. Pasal-pasal kunci dalam peraturan ini mengizinkan nazir untuk bermitra dengan platform digital dalam menghimpun dana dari wākif, asalkan terdapat mekanisme verifikasi dan pelaporan yang memadai. Ini merupakan langkah maju yang patut diapresiasi — namun analisis terhadap substansi peraturan ini mengungkap bahwa ia lebih bersifat mengizinkan daripada mengatur secara komprehensif. Ia membuka pintu, tetapi tidak membangun seluruh infrastruktur yang diperlukan agar pintu itu aman untuk dilalui.

Di luar kerangka spesifik perwakafan, terdapat lapisan regulasi tambahan yang secara tidak langsung membentuk ekosistem wakaf digital. Undang-Undang ITE dan turunannya memberikan pengakuan umum terhadap transaksi elektronik, namun tidak secara khusus mengintegrasikan dirinya dengan rezim hukum perwakafan. Berbagai POJK yang mengatur *fintech* — dari POJK tentang layanan keuangan tanpa kantor (Laku Pandai) hingga POJK tentang layanan urun dana (*equity crowdfunding*) — memberikan kerangka pengawasan bagi platform, namun kembali tidak menyentuh dimensi spesifik wakaf. Hasil dari lapisan-lapisan regulasi yang tidak terkoordinasi ini adalah sebuah *landscape* hukum yang fragmentatif, di mana pelaku usaha *fintech* wakaf harus menavigasi beragam ketentuan dari berbagai otoritas yang belum memiliki koordinasi formal. Kondisi ini dirangkum dalam Tabel 1 berikut.

Tabel 1: Matriks Regulasi Wakaf Uang Digital di Indonesia: Perbandingan dan *Gap*

Aspek	UU No.41/2004	PP No.42/2006	Peraturan BWI No.1/2020	Gap Teridentifikasi
Definisi Wakaf Uang	Diakui; hanya via LKS-PWU (bank syariah)	Diperluas ke nazir non-bank bersertifikat	Mencakup platform digital sebagai kanal penerimaan	Belum ada definisi akad wakaf elektronik yang eksplisit
Mekanisme Penerimaan	Transfer ke rekening LKS-PWU	Rekening khusus per nazir	Dompet digital, QRIS, transfer online	Tidak ada standar interoperabilitas dengan GPN/QRIS
Ikrar Wakaf	Wajib di hadapan PPAIW + 2 saksi (tatap muka)	Idem; belum mengatur ikrar digital	Mengizinkan ikrar via form online namun tanpa payung hukum spesifik	Ketidakpastian keabsahan akad elektronik dalam rezim perwakafan

Aspek	UU No.41/2004	PP No.42/2006	Peraturan BWI No.1/2020	Gap Teridentifikasi
Perlindungan Dana Wakif	Dijamin oleh regulasi perbankan (LPS, OJK)	Idem untuk nazir lembaga keuangan	Tidak diatur secara spesifik untuk <i>fintech</i> non-bank	Tidak ada kewajiban escrow syariah atau pemisahan dana
Pengawasan	BWI + Kemenag	BWI + audit internal	BWI + OJK (<i>fintech</i>), belum terkoordinasi formal	<i>Overlapping</i> <i>jurisdiksi</i> BWI-OJK tanpa MoU formal
Sanksi	Pidana (Psl 67–68) & perdata	Administrasi	Belum ada ketentuan sanksi khusus untuk pelanggaran di platform digital	<i>Vacuum</i> hukum penegakan sanksi di ranah digital

Sumber: Analisis penulis berdasarkan UU No.41/2004, PP No.42/2006, Peraturan BWI No.1/2020, dan UU ITE (2025).

Dari Tabel 1 terlihat bahwa setiap instrumen regulasi mengisi sebagian dari kebutuhan pengaturan, namun tidak ada satu pun yang memberikan kerangka komprehensif. Kekosongan-kekosongan yang teridentifikasi bersifat saling terkait — kelemahan dalam pengaturan akad elektronik berimplikasi pada lemahnya kepastian tentang saat berlakunya perlindungan dana, yang kemudian mempersulit penetapan yurisdiksi pengawasan. Berdasarkan uji harmonisasi menggunakan kerangka analisis yang diuraikan dalam Metode, kekosongan dalam arsitektur hukum wakaf uang digital Indonesia dapat diklasifikasikan ke dalam tiga jenis: (1) kekosongan substantif, yakni ketiadaan norma eksplisit yang mengatur materi tertentu — dalam hal ini keabsahan akad wakaf elektronik dan kewajiban pemisahan dana; (2) kekosongan koordinatif, yakni tidak adanya mekanisme formal yang mengintegrasikan kewenangan antar-otoritas — dalam hal ini antara BWI, OJK, dan Bank Indonesia; dan (3) kekosongan teknis-regulatoris, yakni tidak adanya standar operasional yang menghubungkan sistem digital antar-lembaga — dalam hal ini interoperabilitas SISWAS dengan infrastruktur pembayaran nasional. Ketiga jenis kekosongan ini bukan bersifat administratif atau prosedural semata, melainkan menyentuh inti dari kepastian hukum perwakafan digital, dan masing-masing memerlukan instrumen hukum yang berbeda untuk mengatasinya.

Dinamika dan Akselerasi Ekosistem Wakaf Uang Digital di Indonesia

Untuk memahami urgensi penguatan regulasi, kita perlu melihat seberapa besar dan seberapa cepat ekosistem wakaf digital Indonesia berkembang. Data yang tersaji dalam Tabel 2 memberikan gambaran yang sangat jelas tentang laju transformasi ini.

Tabel 2: Perkembangan Penghimpunan Wakaf Uang Digital di Indonesia 2019-2024

Tahun	Dana Terhimpun (Rp Miliar)	Jml Platform Digital Aktif	Nazir Digital Tersertifikasi	Jml Transaksi (Ribu)	Pertumbuhan YoY (%)
2019	61,2	3	178	42,1	—
2020	112,4	7	312	89,7	+83,7
2021	189,7	12	398	167,3	+68,8
2022	287,3	19	501	284,6	+51,4
2023	412,6	27	634	421,8	+43,6
2024	571,8	35	789	598,4	+38,6
CAGR 5 Th	+56,4%	+63,9%	+34,7%	+70,3%	—

Sumber: Badan Wakaf Indonesia (2024); Kementerian Agama RI (2023). Data diolah oleh penulis.

Angka-angka dalam Tabel 2 mengungkap beberapa tren kritis yang perlu dicermati. Pertama, laju pertumbuhan dana yang terhimpun meskipun secara persentase mengalami moderasi — dari 83,7% pada 2020 menjadi 38,6% pada 2024 — tetap jauh melampaui pertumbuhan sektor keuangan syariah secara keseluruhan yang berkisar di angka 10-15% per tahun (Bank Indonesia 2023). Moderasi ini bukan tanda pelemahan, melainkan cerminan dari hukum angka besar: basis yang semakin besar membuat pertumbuhan persentase secara alami melambat meski nilai absolutnya terus meningkat signifikan.

Kedua, pertumbuhan jumlah transaksi sebesar 70,3% CAGR dalam lima tahun jauh melampaui pertumbuhan dana yang terhimpun (56,4% CAGR). Ini mengindikasikan bahwa demokratisasi wakaf digital sedang berlangsung nyata — semakin banyak *wakif* baru dengan nilai wakaf yang lebih kecil (namun tidak kalah bermakna) yang masuk ke ekosistem. (Pitchay, Meera, & Saleem 2015) menemukan bahwa kemudahan akses merupakan faktor penentu utama partisipasi dalam wakaf uang, dan data ini mengkonfirmasi bahwa platform digital berhasil menurunkan hambatan tersebut secara dramatis.

Ketiga, dan ini adalah tren yang paling mengkhawatirkan dari perspektif regulasi: pertumbuhan jumlah platform aktif (63,9% CAGR) sedikit melampaui pertumbuhan nazir bersertifikat (34,7% CAGR). Artinya, ekosistem platform tumbuh lebih cepat daripada kapasitas pengawasan dan sertifikasi nazir. Per akhir 2024, terdapat 35 platform aktif dengan hanya 789 nazir bersertifikat — rasio yang menunjukkan bahwa setiap nazir rata-rata bertanggung jawab atas dana dari lebih dari satu platform. Ketika ditambah dengan ketidakjelasan regulasi yang dibahas di atas, kondisi ini menciptakan potensi risiko sistemik yang tidak boleh diabaikan (Arif et al., 2023).

(Bank Indonesia 2021) dalam Roadmap Pengembangan Perbankan Syariah mencatat bahwa penetrasi keuangan syariah di Indonesia, meski terus meningkat, masih menghadapi tantangan kepercayaan (*trust*) dari masyarakat. Ironinya, wakaf digital yang seharusnya menjadi salah satu instrumen untuk membangun kepercayaan tersebut justru berpotensi merusaknya jika tidak didukung oleh kerangka hukum yang memadai. Satu kasus kegagalan platform wakaf digital yang besar — misalnya akibat penyelewengan dana atau kebangkrutan platform — dapat menimbulkan efek jera yang merusak seluruh ekosistem yang telah dibangun dengan susah payah selama bertahun-tahun.

Analisis Yuridis terhadap Kekosongan Hukum Pengelolaan Wakaf Digital

Berdasarkan analisis yuridis terhadap seluruh peraturan perundang-undangan yang relevan dan kajian atas data empiris yang ada, penelitian ini mengidentifikasi tiga kekosongan hukum yang bersifat kritis — dalam artian bahwa ketiadaan ketentuan hukum yang jelas tentang ketiga hal ini berpotensi menimbulkan konsekuensi hukum yang serius bagi seluruh ekosistem wakaf digital Indonesia.

Kekosongan hukum pertama berkaitan dengan keabsahan akad wakaf elektronik. Ini adalah kekosongan yang paling mendasar, karena menyentuh inti dari pertanyaan: apakah wakaf yang dilakukan melalui platform digital itu sah secara hukum? Pertanyaan ini memiliki dua dimensi yang perlu dibedakan. Dari perspektif hukum Islam (fikih), para ulama kontemporer mayoritas berpendapat bahwa akad melalui media digital adalah sah sepanjang memenuhi rukun dan syarat akad — yakni adanya para pihak yang cakap hukum (*wakif* dan *nazir*), objek wakaf yang jelas, dan pernyataan kehendak (*ijab-qabul*) yang dapat dipahami oleh kedua belah pihak, terlepas dari medium penyampaiannya (Dian & Hidayat 2022). (Sudirman & Ridwan 2023) dalam studi mereka tentang wakaf digital dari perspektif *maqasid*

al-shari'ah menyimpulkan bahwa selama substansi akad terpenuhi, penggunaan teknologi sebagai medium tidak membatalkan keabsahan wakaf.

Namun, dari perspektif hukum positif Indonesia, situasinya jauh lebih kompleks. Pasal 17 UU No.41/2004 dengan tegas mensyaratkan bahwa ikrar wakaf dilakukan secara lisan atau tulisan di hadapan PPAIW dan disaksikan oleh sekurang-kurangnya dua orang saksi. Ketentuan ini jelas mengandaikan kehadiran fisik (tatap muka). Meskipun UU ITE Pasal 5 menyatakan bahwa informasi elektronik memiliki kekuatan hukum yang sah, dan Pasal 6 mengakui dokumen elektronik sebagai bukti hukum, tidak ada pasal dalam UU ITE yang secara eksplisit menyatakan bahwa ketentuan ini berlaku untuk akad wakaf yang diatur dalam UU No.41/2004. Dalam hierarki norma hukum, UU ITE bersifat *lex generalis*, sementara UU No.41/2004 bersifat *lex specialis* dalam bidang wakaf — dan asas *lex specialis derogat legi generali* mensyaratkan bahwa ketentuan khusus mengesampingkan ketentuan umum, bukan sebaliknya. Artinya, selama UU No.41/2004 belum secara eksplisit mengakui ikrar elektronik sebagai ikrar yang sah, selalu ada ruang argumen bahwa wakaf digital tidak memenuhi persyaratan formil yang ditentukan undang-undang.

Risiko praktis dari kekosongan ini sangat nyata. Seorang ahli waris yang tidak puas, misalnya, dapat saja menggugat keabsahan wakaf yang dilakukan secara digital oleh pewaris dengan alasan bahwa ikrar elektronik tidak memenuhi syarat Pasal 17 UU No.41/2004. Dalam ketiadaan yurisprudensi yang jelas dan regulasi yang tegas, hakim akan menghadapi ketidakpastian normatif yang berpotensi menghasilkan putusan yang inkonsisten di berbagai pengadilan agama seluruh Indonesia — menciptakan ketidakpastian hukum yang tidak kondusif bagi perkembangan wakaf digital secara keseluruhan.

Kekosongan hukum kedua menyangkut perlindungan dana *wākif* pada platform *fintech* non-bank, dan ini adalah kekosongan yang paling berpotensi menimbulkan kerugian finansial langsung bagi masyarakat. Untuk memahami betapa seriusnya kekosongan ini, perlu dipahami perbedaan fundamental antara dua skenario penghimpunan wakaf. Ketika *wākif* menyetorkan dana melalui LKS-PWU (bank syariah), dana tersebut tunduk pada regulasi perbankan yang komprehensif: Bank Indonesia mengawasi kecukupan modal dan manajemen risiko, OJK melakukan pengawasan prudensial, dan Lembaga Penjamin Simpanan (LPS) memberikan jaminan atas simpanan (dalam hal ini, sertifikat wakaf uang) hingga batas tertentu. Ada sistem berlapis yang melindungi dana tersebut.

Sebaliknya, ketika *wākif* menyetorkan dana melalui platform *fintech* non-bank — yang populer dan mudah diakses oleh generasi muda — perlindungan tersebut menghilang secara

dramatis. Platform *fintech* yang bertindak sebagai aggregator wakaf pada dasarnya adalah perusahaan teknologi yang menerima, menampung sementara, dan meneruskan dana kepada nazir. Mereka tidak diwajibkan oleh peraturan manapun untuk memisahkan (*segregate*) dana *wakif* dari modal kerja perusahaan dalam rekening terpisah. Jika sebuah platform mengalami kebangkrutan — skenario yang bukan tidak mungkin mengingat tingginya tingkat kegagalan startup di Indonesia — dana *wakif* yang belum diteruskan kepada nazir berpotensi tersedot ke dalam aset yang dilikuidasi, dan *wakif* akan kehilangan dananya tanpa mekanisme pemulihan yang jelas (Siswantoro et al., 2018).

Yang memperparah situasi ini adalah ketiadaan kewajiban asuransi atau penjaminan khusus untuk dana wakaf yang disimpan sementara di platform. Berbeda dengan deposit bank yang dilindungi LPS, atau investasi di pasar modal yang dilindungi oleh Dana Perlindungan Pemodal (SIPF), dana wakaf yang transit di platform *fintech* berada di wilayah yang tidak terproteksi secara regulatoris. Hamber & Bhatti (2019) dalam kajian mereka tentang isu-isu tata kelola wakaf kontemporer secara spesifik menyoroti bahwa lemahnya mekanisme perlindungan dana merupakan salah satu hambatan terbesar kepercayaan masyarakat terhadap lembaga wakaf non-bank.

Kekosongan hukum ketiga berkaitan dengan interoperabilitas sistem antara infrastruktur pembayaran nasional dan platform wakaf digital. Ini mungkin terdengar seperti isu teknis semata, namun implikasi hukumnya sangat signifikan. Bank Indonesia telah membangun infrastruktur pembayaran nasional yang canggih: QRIS (*Quick Response Code Indonesian Standard*) yang telah digunakan oleh lebih dari 30 juta merchant per akhir 2023, BI-FAST yang memungkinkan transfer antar-bank secara real-time 24/7, dan GPN (Gerbang Pembayaran Nasional) yang mengintegrasikan seluruh jaringan pembayaran domestik (Bank Indonesia, 2023). Infrastruktur ini sangat potensial untuk dimanfaatkan oleh platform wakaf digital.

Namun, Sistem Informasi Wakaf (SISWAS) yang dikelola BWI — sebagai *backbone* data perwakafan nasional — hingga saat ini belum memiliki standar *Application Programming Interface* (API) yang terbuka dan terstandarisasi untuk terhubung dengan infrastruktur tersebut. Akibatnya, setiap platform *fintech* wakaf harus membangun koneksi teknis secara mandiri dengan berbagai penyedia pembayaran, mengembangkan mekanisme pelaporan ke SISWAS yang berbeda-beda, dan menanggung biaya pengembangan teknis yang tinggi. Situasi ini menciptakan fragmentasi data wakaf nasional — kondisi di mana regulator tidak memiliki gambaran real-time yang akurat tentang berapa sesungguhnya total wakaf uang

digital yang berputar dalam sistem, siapa yang mengelolanya, dan bagaimana penggunaannya. Tanpa data yang terintegrasi, pengawasan yang efektif menjadi mustahil.

Benchmarking Kerangka Regulasi Wakaf Digital di Malaysia

Salah satu cara terbaik untuk memahami apa yang kurang dari sebuah sistem regulasi adalah dengan membandingkannya dengan sistem lain yang lebih maju di bidang yang sama. Malaysia, sebagai negara dengan sistem hukum Islam yang strukturnya mirip dengan Indonesia — berbasis *common law* namun dengan lapisan syariah yang kuat — menawarkan pelajaran yang sangat relevan tentang bagaimana mengintegrasikan teknologi ke dalam sistem wakaf nasional secara efektif.

Tabel 3: Analisis Komparatif Regulasi Wakaf Digital Indonesia dan Malaysia

Dimensi Regulasi	Indonesia	Malaysia
Badan Koordinasi Wakaf Nasional	BWI (independen, di bawah Presiden); belum ada MoU formal dengan OJK	JAWHAR (di bawah Jabatan PM) berkoordinasi formal dengan BNM dan SC
Regulasi Digital Finance Syariah	Tersebar di POJK <i>fintech</i> , belum ada regulasi khusus wakaf digital	BNM telah menerbitkan 'Value-Based Intermediation' dan 'Islamic Digital Finance' framework yang mencakup wakaf
Validitas Akad Elektronik	Diakui UU ITE secara umum, namun belum diintegrasikan dengan UU Wakaf	Diakui secara eksplisit dalam Digital Signature Act 1997 dan Islamic Financial Services Act 2013
Platform Terintegrasi	SISWAS BWI berdiri sendiri; belum terintegrasi dengan GPN/QRIS/BI-FAST	e-Wakaf PWS Selangor terintegrasi dengan FPX (sistem pembayaran nasional Malaysia) sejak 2016
Perlindungan Wakif	Tidak ada ketentuan escrow khusus wakaf untuk <i>fintech</i> non-bank	Wajib pemisahan dana (<i>segregated account</i>) dan dilindungi oleh Perbadanan Insurans Deposit Malaysia (PIDM)
Insentif Perpajakan Digital	Sertifikat wakaf uang dapat dijadikan pengurang pajak, namun mekanisme pelaporan digital belum seragam	Insentif pajak wakaf terintegrasi langsung dengan sistem <i>e-filing</i> Lembaga Hasil Dalam Negeri (LHDN)

Sumber: Analisis komparatif penulis berdasarkan Mohd Noor et al. (2018), Mokhtar & Sidin (2020), Bank Negara Malaysia (2022), dan regulasi Indonesia yang relevan.

Tabel 3 mengungkap perbedaan yang cukup mencolok antara pendekatan Indonesia dan Malaysia. Yang paling fundamental adalah perbedaan pada level koordinasi kelembagaan. Di Malaysia, Jabatan Wakaf, Zakat dan Haji (JAWHAR) yang berada di bawah Jabatan

Perdana Menteri memiliki kewenangan koordinasi lintas sektoral yang jauh lebih kuat dibandingkan BWI di Indonesia yang, meskipun berstatus lembaga independen, tidak memiliki mekanisme koordinasi formal dengan OJK maupun Bank Negara Malaysia (BNM). Koordinasi formal antara JAWHAR dengan BNM dan *Securities Commission* (SC) Malaysia memungkinkan terbitnya panduan regulasi *fintech* syariah yang mencakup dimensi wakaf secara eksplisit — sesuatu yang belum ada padanannya di Indonesia (Alias 2012; Hidayat et al., 2021).

Pelajaran terpenting dari Malaysia adalah bahwa kemajuan regulasi tidak datang secara spontan, melainkan merupakan hasil dari desain kelembagaan yang disengaja. Ketika JAWHAR dan BNM memutuskan untuk berkoordinasi formal pada tahun 2014, mereka tidak menunggu munculnya masalah hukum terlebih dahulu — mereka secara proaktif mengantisipasi perkembangan teknologi yang akan mengubah lanskap wakaf. Hasilnya, ketika platform e-Wakaf Perbadanan Wakaf Selangor (PWS) diluncurkan pada 2016, ia langsung terintegrasi dengan FPX (sistem pembayaran online nasional Malaysia), memberikan pengalaman pengguna yang mulus sekaligus kepastian hukum yang kokoh bagi seluruh pihak (Mokhtar & Sidin 2020).

Indonesia tidak perlu dan tidak harus meniru Malaysia secara persis — konteks kelembagaan dan politik hukum kedua negara berbeda. Namun, prinsip dasarnya dapat diadopsi: koordinasi proaktif antar regulator, antisipasi regulatoris terhadap perkembangan teknologi, dan pengembangan standar teknis yang ditetapkan oleh otoritas publik, bukan diserahkan sepenuhnya kepada mekanisme pasar. (Mujahidin & Arif 2022) dalam kajian mereka tentang transformasi zakat-wakaf digital di Indonesia secara eksplisit merekomendasikan pembelajaran dari model Malaysia sebagai referensi kebijakan.

Dialektika Etika Hukum dan Maqasid Al-Shari'ah dalam Problematika Regulated-Lags

Sejauh ini, analisis kita berfokus pada dimensi teknis-yuridis dari kekosongan regulasi. Namun, dalam tradisi hukum Islam, pertanyaan hukum tidak pernah terpisah dari pertanyaan etis dan moral. *Maqasid al-shari'ah* — tujuan-tujuan fundamental syariah yang dirumuskan secara klasik oleh Al-Ghazali dan disistematisasi oleh Al-Shatibi, kemudian dikembangkan secara kontemporer oleh (Jasser Auda 2008) — memberikan lensa yang sangat berguna untuk menilai kecukupan regulasi wakaf digital dari perspektif yang lebih dalam.

Dalam kerangka *maqasid al-shari'ah*, terdapat lima tujuan pokok (*al-dharuriyyat al-khams*) yang wajib dilindungi oleh hukum Islam: perlindungan agama (*hifz al-din*), jiwa (*hifz al-nafs*), akal (*hifz al-'aql*), keturunan (*hifz al-nasl*), dan harta (*hifz al-mal*). Kekosongan regulasi wakaf digital secara langsung berbenturan dengan dua di antara lima tujuan ini.

Pertama, ketiadaan kepastian hukum tentang akad wakaf elektronik mengancam *hifz al-din* dalam dimensinya yang berkaitan dengan pelaksanaan ibadah sosial. Wakaf adalah ibadah — ia mengandung dimensi spiritual yang tidak dapat dipisahkan dari dimensi hukumnya. Ketika seseorang mewakafkan hartanya dengan niat tulus namun kemudian muncul keraguan tentang keabsahan wakaf tersebut secara hukum positif, hal ini menimbulkan kegelisahan batin yang tidak semestinya. Islam adalah agama yang menghargai kemudahan (*taysir*) dan menolak kesulitan yang tidak perlu (*la haraj*) — ketidakpastian hukum yang dapat dihilangkan melalui regulasi yang tepat adalah bentuk *haraj* yang semestinya dihapuskan.

Kedua, lemahnya perlindungan dana *wakif* merupakan ancaman langsung terhadap *hifz al-mal*. (Rozalinda 2016) menegaskan bahwa dalam hukum ekonomi Islam, negara memiliki kewajiban aktif (*fardhu kifayah* institusional) untuk memastikan bahwa instrumen-instrumen keuangan Islam beroperasi dalam kerangka yang melindungi harta masyarakat dari penyalahgunaan dan kehilangan yang dapat dicegah. Membiarkan miliaran rupiah dana wakaf beredar di platform-platform yang tidak diwajibkan untuk memisahkan dana tersebut dari modal kerja perusahaan adalah bentuk kelalaian negara dalam memenuhi kewajiban ini. (Al-Amine 2008) secara eksplisit berargumen bahwa inovasi keuangan Islam, termasuk wakaf berbasis teknologi, harus selalu dibingkai dalam prinsip perlindungan harta sebagai salah satu tujuan fundamental syariah.

Lebih dari itu, (Jasser Auda 2008) dalam pendekatan sistem (*systems approach*) terhadap *maqasid al-shari'ah* menekankan bahwa hukum Islam harus bersifat purposif — ia harus dilihat dari tujuan-tujuannya, bukan semata-mata dari teks-teks literalnya. Dari perspektif ini, kegagalan regulasi untuk mengakomodasi realitas teknologi bukan hanya kegagalan teknis, melainkan kegagalan dalam memenuhi tujuan syariah itu sendiri. Jika *maqasid al-shari'ah* menghendaki perlindungan harta dan kemudahan beribadah, maka regulasi yang membiarkan ketidakpastian hukum dan risiko kehilangan harta dalam konteks wakaf digital adalah regulasi yang tidak sesuai dengan semangat *maqasid*, meskipun secara teks ia tidak bertentangan dengan nash tertentu.

Formulasi Kebijakan Strategis terhadap Akselerasi Penguatan Ekosistem Wakaf Digital Nasional

Berdasarkan seluruh analisis yang telah dilakukan, penelitian ini merumuskan tiga rekomendasi kebijakan yang bersifat konkret, saling melengkapi, dan dapat segera diimplementasikan dalam jangka waktu yang realistis. Ketiga rekomendasi ini dirangkum dalam Tabel 4 beserta analisis kekosongan hukum yang mendasarinya.

Tabel 4: Matriks Kekosongan Hukum, Risiko, dan Rekomendasi Kebijakan

Kekosongan Hukum	Dampak Hukum	Risiko Empiris	Dasar Hukum yang Dapat Diadopsi	Rekomendasi
Tidak ada ketentuan akad wakaf elektronik dalam UU No.41/2004	Ketidakpastian keabsahan ikrar wakaf digital; potensi pembatalan perwakafan	Sengketa antara <i>wakif</i> dan nazir digital yang tidak dapat diselesaikan dengan kepastian hukum	UU ITE Pasal 5–6; Pasal 1320 KUHPerdata tentang sahnya perjanjian	Amandemen Pasal 17 UU No.41/2004 untuk mengakui ikrar elektronik + tanda tangan digital bersertifikat
Tidak ada kewajiban pemisahan dana wakaf pada platform <i>fintech</i> non-bank	Dana wakaf rentan dicampur dengan dana operasional platform; risiko kebangkrutan platform	<i>Wakif</i> kehilangan dana jika platform pailit; tidak ada mekanisme klaim	POJK Paylater (POJK No.10/2022) yang mewajibkan segregated account untuk dana konsumen	Peraturan BWI + OJK yang mewajibkan escrow syariah terpisah untuk setiap platform wakaf <i>fintech</i>
Tidak ada standar interoperabilitas SISWAS-GPN	Setiap platform membangun koneksi teknis sendiri; fragmentasi data wakaf nasional	Inkonsistensi data, celah keamanan siber, dan inefisiensi biaya transaksi	Standar Open API Bank Indonesia untuk sistem pembayaran; regulasi GPN BI No.19/2017	Pengembangan API Standar Wakaf Digital oleh BI-BWI-Kominfo untuk integrasi wajib per 2026
Overlapping yurisdiksi BWI dan OJK atas <i>fintech</i> wakaf	Kebingungan regulatoris bagi pelaku usaha; potensi regulatory arbitrage	Platform memilih celah di antara dua regulator untuk menghindari kepatuhan penuh	Model MoU OJK-Kemenag dalam pengaturan <i>fintech</i> lending berbasis pesantren	Peraturan Bersama (joint regulation) OJK-BWI dengan pembagian kewenangan yang jelas dan mekanisme koordinasi rutin

Sumber: Analisis penulis berdasarkan kajian yuridis komparatif (2025).

Rekomendasi pertama adalah amandemen terarah Undang-Undang Nomor 41 Tahun 2004. Amandemen ini tidak perlu bersifat menyeluruh — cukup menargetkan pasal-pasal yang secara langsung menciptakan ketidakpastian hukum dalam konteks digital. Secara spesifik, Pasal 17 perlu direvisi untuk menambahkan ayat baru yang secara eksplisit mengakui ikrar wakaf yang dilakukan melalui sarana elektronik sebagai ikrar yang sah, dengan ketentuan bahwa: (a) identitas *wāḳif* diverifikasi melalui sistem elektronik yang diakui negara, minimal setara dengan e-KTP atau sistem verifikasi biometrik; (b) pernyataan kehendak *wāḳif* didokumentasikan secara elektronik dan dapat dibuktikan keasliannya; dan (c) platform penerima telah mendapatkan otorisasi resmi dari BWI. Selain itu, perlu ditambahkan pasal baru yang mengatur kewajiban platform *fintech* yang menghimpun wakaf uang untuk memastikan bahwa seluruh data perwakafan terdaftar dalam SISWAS secara real-time. Model amandemen seperti ini sejajar dengan pendekatan yang diambil Malaysia melalui amendemen terhadap Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 yang mengakomodasi transaksi wakaf digital (Mohd Noor et al., 2018).

Rekomendasi kedua adalah penerbitan Peraturan Bersama OJK-BWI tentang Penyelenggaraan Layanan Wakaf Uang Berbasis Teknologi Informasi. Tidak seperti amandemen undang-undang yang memerlukan proses legislasi yang panjang, peraturan bersama (*joint regulation*) antara dua lembaga ini dapat diterbitkan dalam rentang waktu yang jauh lebih singkat dan fleksibel untuk direvisi seiring perkembangan teknologi. Substansi yang harus diatur dalam peraturan bersama ini mencakup: (a) kategorisasi platform *fintech* berdasarkan tingkat risikonya — platform yang hanya bertindak sebagai *payment gateway* memiliki kewajiban yang berbeda dengan yang bertindak sebagai pengelola dana; (b) kewajiban pemisahan dana *wāḳif* dalam rekening escrow syariah yang terpisah dari rekening operasional platform, dengan bank kustodian syariah yang ditunjuk sebagai penjaga; (c) persyaratan modal minimum dan rasio kecukupan modal bagi platform *fintech* yang menghimpun wakaf dalam volume tertentu; (d) standar pelaporan rutin kepada BWI dan OJK, termasuk pelaporan insiden keamanan siber dalam tempo 1x24 jam; dan (e) mekanisme penyelesaian sengketa yang jelas antara *wāḳif* dan platform, dengan BWI dan OJK sebagai mediator dalam sengketa yang melibatkan dugaan pelanggaran regulasi. Model regulasi bersama ini telah terbukti efektif dalam konteks lain — misalnya MoU antara OJK dan Kementerian Koperasi untuk *fintech* lending berbasis koperasi (Mujahidin & Arif 2022).

Rekomendasi ketiga adalah pengembangan dan standarisasi API Wakaf Digital Nasional oleh Bank Indonesia. Rekomendasi ini bersifat teknis-regulatoris dan menargetkan kekosongan interoperabilitas yang diidentifikasi sebelumnya. BI, sebagai otoritas sistem pembayaran, memiliki kewenangan yang paling tepat untuk memimpin pengembangan standar ini bekerja sama dengan BWI dan Kementerian Komunikasi dan Informatika. API standar yang dimaksud adalah seperangkat spesifikasi teknis terbuka yang memungkinkan seluruh platform *fintech* wakaf terhubung secara seamless dengan SISWAS, QRIS, dan BI-FAST tanpa harus membangun koneksi khusus secara masing-masing. Kerangka ini mirip dengan konsep Open Banking API yang telah diterapkan di berbagai negara — namun dengan penyesuaian untuk konteks wakaf. Dengan API standar ini, setiap transaksi wakaf digital otomatis tercatat dalam SISWAS secara real-time, data wakaf nasional menjadi terintegrasi dan dapat diaudit, serta biaya teknis bagi platform startup berkurang secara signifikan sehingga mendorong lebih banyak inovasi. (Bank Indonesia 2023) sendiri telah mengindikasikan niat untuk mengembangkan standar API untuk sektor keuangan syariah dalam *Roadmap* Sistem Pembayaran Indonesia 2025-2030 — tinggal memastikan bahwa wakaf digital mendapatkan perhatian yang memadai dalam roadmap tersebut.

KESIMPULAN

Penelitian ini membuktikan bahwa arsitektur hukum wakaf uang digital Indonesia mengandung tiga kekosongan hukum yang bersifat kritis dan terklasifikasi: kekosongan substantif berupa ketiadaan pengakuan eksplisit akad wakaf elektronik dalam Pasal 17 UU No.41/2004; kekosongan koordinatif berupa tidak adanya mekanisme formal yang mengintegrasikan kewenangan BWI dan OJK atas platform *fintech* wakaf; serta kekosongan teknis-regulatoris berupa tidak adanya standar interoperabilitas antara SISWAS dan infrastruktur pembayaran nasional (GPN/QRIS/BI-FAST). Dana wakaf digital sebesar Rp571,8 miliar yang terhimpun sepanjang 2024, melibatkan hampir 600.000 transaksi dari ratusan ribu *wakif*, bergerak dalam lanskap regulasi yang mengandung tiga kekosongan tersebut — yang dapat kapan saja menimbulkan krisis kepercayaan yang merusak seluruh ekosistem.

Kekosongan pertama — ketiadaan pengakuan eksplisit terhadap akad wakaf elektronik dalam UU No.41/2004 — menciptakan ketidakpastian tentang keabsahan mendasar dari setiap transaksi wakaf digital yang dilakukan di luar kerangka LKS-PWU konvensional. Kekosongan kedua — lemahnya mekanisme perlindungan dana *wakif* pada

platform *fintech* non-bank — menempatkan miliaran rupiah dana umat dalam risiko yang tidak perlu, tanpa jaring pengaman yang setara dengan yang tersedia dalam sistem perbankan. Kekosongan ketiga — ketiadaan standar interoperabilitas antara SISWAS dengan infrastruktur pembayaran nasional — menghambat pengawasan efektif dan menciptakan inefisiensi sistemik yang membebani seluruh ekosistem.

Analisis komparatif dengan Malaysia memperkuat argumen bahwa solusi untuk ketiga kekosongan ini bukan hanya mungkin, tetapi juga telah terbukti efektif di yurisdiksi yang memiliki karakteristik serupa. Kuncinya bukan pada kecanggihan teknologi atau besarnya anggaran, melainkan pada kesediaan para pemangku otoritas — BWI, OJK, Bank Indonesia, dan Kementerian Agama — untuk berkoordinasi secara proaktif dan menetapkan standar yang jelas sebelum permasalahan menjadi krisis.

Dari perspektif maqasid al-shari'ah, penguatan regulasi wakaf digital bukan sekadar agenda teknis-yuridis. Ia merupakan pemenuhan kewajiban substantif hukum Islam untuk melindungi harta umat (*hifz al-mal*) dan memastikan kemudahan dalam pelaksanaan ibadah sosial yang bernilai tinggi. Membiarkan kekosongan ini berlanjut adalah membiarkan *haraj* yang semestinya dihilangkan.

Berdasarkan temuan tersebut, penelitian ini merumuskan konstruksi hukum alternatif sebagai berikut. Pertama, amandemen terarah Pasal 17 UU No.41/2004 dengan menambahkan ayat yang secara eksplisit mengakui ikrar wakaf elektronik sebagai ikrar yang sah, dengan syarat verifikasi identitas digital setara e-KTP dan otorisasi platform oleh BWI — menutup kekosongan substantif. Kedua, penerbitan Peraturan Bersama OJK-BWI yang mewajibkan segregasi dana *wakif* dalam *escrow syariah*, menetapkan standar pengawasan berbasis risiko, dan membangun mekanisme penyelesaian sengketa — menutup kekosongan koordinatif. Ketiga, pengembangan API Wakaf Digital Standar Nasional oleh Bank Indonesia bersama BWI dan Kementerian Kominfo untuk integrasi real-time seluruh platform dengan SISWAS dan infrastruktur pembayaran nasional — menutup kekosongan teknis-regulatoris. Ketiga langkah reformasi regulasi ini bersifat saling melengkapi dan dapat diimplementasikan secara bertahap. Dengan langkah-langkah ini, Indonesia berpeluang tidak hanya menutup kekosongan hukum yang ada, tetapi juga memposisikan diri sebagai pemimpin global dalam pengembangan kerangka hukum wakaf digital yang komprehensif — sebuah posisi yang sangat layak bagi negara dengan populasi Muslim terbesar di dunia.

Penelitian ini memiliki keterbatasan pada ruang lingkup analisis yang bersifat yuridis normatif tanpa pengumpulan data empiris langsung dari lapangan. Penelitian selanjutnya

disarankan untuk menggunakan metode campuran (*mixed methods*) — mengintegrasikan analisis yuridis dengan survei kepada pengguna platform wakaf digital dan wawancara mendalam dengan regulator — guna menghasilkan pemahaman yang lebih komprehensif tentang kesenjangan antara norma hukum dan praktik yang sesungguhnya terjadi di lapangan.

REFERENSI

- Adeyemi, A. A., & Zulkhibri, M. 2021. "Waqf, poverty alleviation, and sustainable development in the Islamic world". *Journal of Islamic Accounting and Business Research* 12(3): 381–398.
- Al-Amine, M. A. M. 2008. "Waqf: New possibilities for Islamic finance." *IIUM Law Journal* 16(2): 1–26.
- Alias, T. A. 2012. "Venture capital strategies in waqf fund investment and spending." *ISRA International Journal of Islamic Finance* 4(1): 99–126.
- Amalia, E., & Mahalli, K. 2020. "Zakat dan wakaf produktif: Teori dan praktik di Indonesia." *Journal of Islamic Economics Lariba* 6(2): 133–148.
- Arif, S., Choiruzzad, S. A. B., & Wicaksono, H. A. 2023. "Digital waqf platform governance in Indonesia: Challenges and opportunities." *Journal of Islamic Finance* 12(1): 1–15.
- Badan Wakaf Indonesia. 2024. *Laporan perkembangan wakaf nasional 2024*. BWI.
- Bank Indonesia. 2023. *Laporan perkembangan keuangan syariah Indonesia 2023*. Departemen Ekonomi dan Keuangan Syariah BI.
- Bank Indonesia. 2021. *Roadmap pengembangan perbankan syariah Indonesia 2020–2025*. BI.
- Cizakca, M. 2000. *A history of philanthropic foundations: The Islamic world from the seventh century to the present*. Bogazici University Press.
- Dian, R., & Hidayat, R. 2022. "Keabsahan akad wakaf uang melalui aplikasi mobile dalam perspektif hukum Islam." *Al-Abkam: Jurnal Ilmu Syari'ah dan Hukum*, 7(2): 147–165.
- Fauzia, A. 2017. *Faith and the state: A history of Islamic philanthropy in Indonesia*. Brill.
- Hamber, N., & Bhatti, M. I. 2019. "Emerging issues in Islamic waqf management." *Journal of Islamic Accounting and Business Research* 10(4): 591–612.
- Hidayat, S. E., Farooq, M. O., & Nasution, M. 2021. "Waqf-based Islamic microfinance institutions: A conceptual framework for sustainable development." *International Journal of Islamic and Middle Eastern Finance and Management*, 14(5): 919–937.
- Indonesia. 2004. *Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf*. Lembaran Negara RI Tahun 2004 Nomor 159.
- Indonesia. 2006. *Peraturan Pemerintah Nomor 42 Tahun 2006 tentang Pelaksanaan UU No.41/2004 tentang Wakaf*. Lembaran Negara RI Tahun 2006 Nomor 105.
- Indonesia. 2008. *Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik sebagaimana diubah dengan UU No.19/2016*. Lembaran Negara RI Tahun 2008 Nomor 58.
- Jasser Auda. 2008. *Maqasid al-shariah as philosophy of Islamic law: A systems approach*. The International Institute of Islamic Thought.

- Kahf, M. 2016. *Waqf and its sociopolitical aspects*. In M. Obaidullah & H. S. H. Abdul Latiff (Eds.), *Islamic finance for micro and medium enterprises* (pp. 47–62). Islamic Research and Training Institute.
- Kementerian Agama Republik Indonesia. 2023. *Statistik wakaf nasional 2023*. Direktorat Jenderal Bimas Islam.
- Mohd Noor, A. H., Mohamad Noor, M. A., & Ab Shatar, W. N. A. 2018. “The influence of digital financial technology on waqf management.” *International Journal of Academic Research in Business and Social Sciences*, 8(9), 621–631.
- Mokhtar, S., & Sidin, I. 2020. “Cash waqf model and its application in Malaysia.” *International Journal of Management and Applied Science* 6(5): 29–34.
- Mujahidin, A., & Arif, M. 2022. “Fintech syariah dan transformasi pengelolaan zakat-wakaf di Indonesia: Perspektif hukum dan regulasi.” *Jurnal Hukum Islam* 20(1): 45–72.
- Noordin, N. H., Haron, S. N., & Kassim, S. 2017. “Developing a comprehensive performance measurement system for waqf institutions.” *International Journal of Social Economics* 44(7): 921–936.
- Otoritas Jasa Keuangan. 2023. *Laporan perkembangan keuangan syariah Indonesia 2023*. OJK.
- Pitchay, A. A., Meera, A. K. M., & Saleem, M. Y. 2015. “Factors influencing the behavioral intentions of Muslim employees to contribute to cash-waqf through salary deductions.” *Journal of King Abdulaziz University: Islamic Economics* 28(1): 57–90.
- Rozalinda. 2016. *Fikih ekonomi syariah: Prinsip dan implementasinya pada sektor keuangan syariah*. RajaGrafindo Persada.
- Siswantoro, D., Rosdiana, H., & Fatimah, F. 2018. “Reconstructing accountability of the cash waqf (endowment) institution in Indonesia.” *Managerial Finance*, 44(5), 624–644.
- Soekanto, S., & Mamudji, S. 2015. *Penelitian hukum normatif: Suatu tinjauan singkat (17th ed.)*. RajaGrafindo Persada.
- Sudirman, & Ridwan, M. 2023. “Transformasi wakaf uang digital dalam kerangka maqasid al-shari’ah: Studi komparatif regulasi di Indonesia dan Malaysia.” *Jurnal Ilmiah Syari’ah*, 22(1), 1–20.
- Zarqa, M. A. 1994. “Financing and investment in awqaf projects: A non-technical introduction.” *Islamic Economic Studies*, 1(2), 43–59.

A *MAQASID AL-SYARI'AH* BASED EVALUATION OF LOCAL GOVERNMENT INTERVENTIONS IN HALAL CERTIFICATION IMPLEMENTATION: EVIDENCE FROM SUMENEP

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ABSTRACT

The expiration of the phased implementation of mandatory halal certification on 17 October 2024 marked a transition from a facilitative to an enforcement-oriented policy phase, creating significant implementation pressures for local governments and micro and small enterprises facing legal, market, and administrative risks. While previous studies have examined halal certification from normative legal and governance perspectives, limited research integrates empirical public policy analysis with a *maqasid al-syari'ah* framework to evaluate local government interventions during this post-transition period. Using a qualitative policy analysis approach, this study identifies six local intervention strategies: structured multi-stakeholder coordination; optimization of the self-declare assistance scheme; targeted digital literacy and social media outreach; affirmative programs for remote villages; development of a regional Halal Hub ecosystem; and preventive regulatory socialization for the 2026 mandatory phase. Empirically, 4,053 halal certificates were issued by January 2026, 3,933 through the self-declare scheme, with over 90% of assisted MSMEs completing registration on time. These results indicate that proactive facilitation and adaptive local governance significantly reduced non-compliance risks during the transition. From a *maqasid al-syari'ah* perspective, the interventions operationalize multidimensional protection: religion (*hifz al-din*), life (*hifz al-nafs*), wealth (*hifz al-mal*), intellect (*hifz al-'aql*), and lineage (*hifz al-nasl*). Conceptually, this study proposes a *maqasid*-based evaluation model linking Islamic normative principles with measurable governance indicators. Theoretically and practically, it positions *maqasid* as an applied analytical framework and provides evidence-based guidance for adaptive and sustainability-oriented halal governance.

Keywords: halal certification; *maqasid al-syari'ah*; public policy; local government intervention; MSMEs.

ABSTRAK

Berakhirnya masa implementasi bertahap sertifikasi halal wajib pada 17 Oktober 2024 menandai pergeseran dari pendekatan fasilitatif menuju fase penegakan, yang menimbulkan tekanan implementasi bagi pemerintah daerah serta usaha mikro dan kecil yang menghadapi risiko hukum, eksklusi pasar, dan beban administratif. Meskipun penelitian sebelumnya telah membahas sertifikasi halal dari perspektif hukum normatif dan tata kelola administratif, kajian yang mengintegrasikan analisis kebijakan publik empiris dengan kerangka *maqasid al-syari'ah* untuk mengevaluasi intervensi pemerintah daerah pada fase pasca-transisi masih terbatas. Melalui pendekatan analisis kebijakan kualitatif, penelitian ini mengidentifikasi enam strategi intervensi lokal: koordinasi multipihak yang terstruktur; optimalisasi skema pendampingan self-declare; penguatan literasi digital dan kampanye media sosial; program afirmatif bagi desa terpencil; pengembangan ekosistem Halal Hub regional; serta sosialisasi preventif menjelang perluasan kewajiban tahun 2026. Secara empiris, hingga Januari 2026 telah diterbitkan 4.053 sertifikat halal, dengan 3.933 melalui skema self-declare, dan lebih dari 90% UMKM binaan menyelesaikan pendaftaran tepat waktu. Hasil ini menunjukkan bahwa fasilitasi proaktif dan adaptasi tata kelola lokal secara signifikan menekan risiko ketidakpatuhan pada masa transisi. Dalam perspektif *maqasid al-syari'ah*, intervensi tersebut merepresentasikan perlindungan agama (*hifz al-din*), jiwa (*hifz al-nafs*), harta (*hifz al-mal*), akal (*hifz al-'aql*), dan keturunan (*hifz al-nasl*). Secara konseptual, penelitian ini menawarkan model evaluasi berbasis *maqasid* yang menghubungkan prinsip normatif Islam dengan indikator kinerja tata kelola yang terukur.

Kata Kunci: sertifikasi halal; *maqasid al-syari'ah*; kebijakan publik; intervensi pemerintah daerah; UMKM

INTRODUCTION

The global halal economy has experienced robust growth, driven by increasing demand for halal products across food, beverage, tourism, and other sectors (Hidayat & Witta, 2024; Syari et.al, 2025). This expansion is not merely economic; it is closely associated with governance quality, regulatory compliance, and institutional support mechanisms that enable Micro, Small, and Medium Enterprises (MSMEs) to obtain halal certification and participate effectively in domestic and international value chains (Hidayat & Witta, 2024; Syafawi & Hasanah, 2023). Despite its considerable potential, evidence from national and regional studies indicates that many MSMEs continue to struggle with certification processes, limiting their competitiveness and ability to capitalize on emerging market opportunities (Muhromin, 2025; Rahayu et al., 2023). In response to this global momentum, the Indonesian government has prioritized the development of a national halal ecosystem to meet growing domestic and international demand (Yulia et al., 2024). This ecosystem integrates production systems, infrastructure, institutional support, and human resources to strengthen the halal industry (Nursita et al., 2024). In 2023, the Halal Product Guarantee Agency (BPJPH) targeted certification for one million MSMEs as a strategic initiative to enhance Indonesia's global halal competitiveness. Halal certification plays a central role in fostering consumer confidence and ensuring compliance with religious norms, aligning with *maqasid al-syarī'ah* principles that promote societal welfare (*masalih*) (Malau & Svinarky, 2020; Syafrida, 2016).

In Indonesia, halal certification constitutes a cornerstone of economic inclusion and consumer protection. The Halal Product Guarantee Law (Law No. 33 of 2014) and Government Regulation No. 39/2021 mandate certification for food, beverage, slaughtering services, and related products, thereby strengthening legal certainty and market credibility (Nuraeni et al., 2025). Law No. 33 of 2014 (UU JPH) assigns the state responsibility for protecting citizens from non-halal products (Adiwijaya, 2019), while consumers' purchasing decisions are frequently shaped by religious considerations, making certification essential for public reassurance (Aisyah, 2015). However, implementation challenges remain significant. In remote coastal and rural areas, cultural, social, and religious factors complicate engagement with formal certification mechanisms (Himmah et al.; Romadhoni et al., 2024), revealing a persistent gap between formal regulatory frameworks and practical outcomes and underscoring the need for adaptive and context-sensitive governance strategies.

A growing body of empirical research has examined regulatory implementation, institutional procedures, and economic impacts of halal certification (Zain et al., 2024; Rofiah et al., 2024; Nurdiansyah, 2023; Ilham, 2022; Gunawan et al., 2021; Budiman, 2020), as well as halal labeling and consumer assurance (Syafitri et al., 2022; Lubis, 2021), and MSME welfare and competitiveness (Mursadad et al., 2024; Tahliani & Renaldi, 2023; Wanto & Samsuri, 2020). Findings remain nuanced and context-dependent. Akbar and Rohman (2023) report no statistically significant causal relationship between certification and firm performance despite observable differences, whereas Arifin (2020) emphasizes certification's role in ensuring legal certainty and regulatory protection amid procedural constraints. Aslikhah et al. (2024) highlight heterogeneous entrepreneurial perceptions affecting certification uptake, while Azis et al. (2023) identify positive linkages between halal labeling, consumer trust, and business welfare. Additional studies underscore the importance of normative Islamic principles in shaping halal governance. Research identifies weaknesses in legal protection despite existing regulations (Masri et al., 2025), demonstrates how procedural mechanisms influence compliance and commercial performance (Supriyadi et al., 2024), and illustrates the intersection of local culture, religious norms, and state regulation in halal implementation (Suaidi et al., 2025). Foundational and applied scholarship further supports the relevance of *maqasid al-syari'ah* for contemporary legal interpretation and policy evaluation (Tajrid, 2021; Hamzah et al., 2022; Maswanto & Yudha, 2021; Safitri et al., 2025; Umar et al., 2025).

Despite these extensive contributions, a significant research gap persists. Existing studies tend to either emphasize normative *maqasid* frameworks or focus on administrative and procedural challenges, with limited analytical integration between empirical policy performance and *maqasid*-oriented evaluation. In particular, the operationalization of *maqasid* principles in local governance practices following the post-phasing of mandatory halal certification in October 2024 has not been systematically examined. Most studies stop at identifying regulatory constraints or affirming normative ideals, without critically assessing how local interventions translate *maqasid* principles into measurable governance outcomes. This leaves an analytical gap concerning the effectiveness, coherence, and practical impact of halal policy implementation at the subnational level, especially in remote regions characterized by strong religious adherence and geographical constraints.

At its core, the central problem addressed in this study is the persistent disconnect between the normative objectives of halal certification policy, grounded in *maqasid al-syari'ah*

and formal regulatory mandates, and the empirical realities of its implementation at the local level. While the regulatory framework aspires to ensure consumer protection, MSMEs competitiveness, and societal welfare, it remains unclear how and to what extent local government interventions effectively operationalize these objectives in practice, particularly in remote and socio-culturally distinctive regions.

Addressing this problem, the present study aims to construct and apply a *maqasid*-based evaluative framework to assess the effectiveness of local government interventions in facilitating halal certification compliance among MSMEs. Focusing on a strategically selected region with a devout Muslim population, remote geographical characteristics, and active government initiatives, such as Halal Hub programs, MSMEs mentoring, and digital literacy campaigns, this research evaluates how normative Islamic principles are translated into practical governance mechanisms and assesses their implications for consumer protection, MSME competitiveness, and societal welfare. The novelty of this research lies in its integrative approach, combining empirical assessment of local government interventions with normative *maqasid al-syari'ah* principles. Conceptually, it proposes a *maqasid*-based model for evaluating halal policy implementation. Theoretically, it contributes to Islamic public policy studies by positioning *maqasid* as a practical analytical framework rather than solely a normative reference. Practically, it offers actionable guidance for designing adaptive, inclusive, and sustainability-oriented halal governance systems.

The urgency of this study is therefore concentrated on resolving the widening gap between regulatory intent and implementation outcomes at a critical post-mandatory certification phase. Strengthening evaluative mechanisms is essential not only for ensuring consumer protection and religious compliance, but also for safeguarding MSME competitiveness and advancing broader societal welfare within Indonesia's evolving halal governance landscape.

RESEARCH METHOD

This study employs a descriptive qualitative approach. Qualitative research is a type of inquiry where data collection and analysis do not rely on statistical procedures, as the data are not in numerical or computational form (Abdullah & Saebani, 2014). The descriptive qualitative method was chosen to explore the synergy-based halal mentoring model and the role of halal volunteers, as they impact the welfare of business actors from the perspective of *maqasid shari'a*. A qualitative approach is methodologically justified by the study's focus on

meaning-making, value internalization, and educational praxis, which cannot be adequately captured through quantitative indicators (Benuf & Azhar, 2020; Abdussamad, 2021). This study adopts a qualitative socio-legal research design, combining normative legal analysis with empirical investigation to examine government intervention in post-phasing mandatory halal certification compliance and to construct an evaluative framework based on *maqasid al-syari'ah*. The socio-legal approach enables integration of statutory and policy analysis with field observations, stakeholder narratives, and institutional practices (Creswell, 2014).

The research was conducted in Sumenep Regency, East Java, Indonesia, considering its active implementation of halal certification acceleration programs, mentoring initiatives, and local governance strategies in strengthening MSME compliance. The study took place from July to November 2025, allowing sufficient time for in-depth field engagement, iterative data collection, and thematic validation. The population of this study comprises stakeholders involved in halal certification implementation and mentoring activities in Sumenep Regency. These include local government officials responsible for halal policy implementation, halal process facilitators, halal volunteers, MSME actors undergoing certification processes, and institutional representatives engaged in halal ecosystem development. Sampling was conducted using purposive sampling, selecting informants based on their relevance, expertise, and direct involvement in halal certification and mentoring processes. Key informants can be seen in table 1.

Table 1: Key Informants

Informant Category	Involments
Local Government Officials (Dinas / Kepala Seksi)	Provide insights into government policies, strategies, and decision-making processes regarding post-phasing halal certification compliance in Sumenep Regency.
Bakorwil IV (Regional Coordinator)	Explain regional coordination mechanisms among the four Madura districts, facilitate implementation, and identify inter-district challenges and solutions for MSME compliance.
Halal Product Facilitators / Mentors	Share field-level experiences assisting MSMEs, describe practical challenges, evaluate the effectiveness of government interventions, and provide guidance on compliance and <i>maqasid al syari'ah</i> alignment.
Micro and Small Enterprise Actors (MSMEs)	Describe firsthand experiences and responses to halal certification obligations, report operational and administrative challenges, and provide perspectives on the impact of government interventions on business sustainability.

Data collection combined multiple complementary sources to ensure triangulation and enhance validity. Primary data were gathered through in-depth, semi-structured interviews with purposively selected key informants. The use of semi-structured interviews enabled the exploration of policy interpretations, perceptions of challenges and strategies,

experiences of mentoring synergy, and emergent themes aligned with the study's normative and empirical objectives. In addition, Focus Group Discussions (FGDs) were conducted to elicit collective insights on intervention and mentoring models and to cross-validate individual interview data, particularly regarding institutional practices such as the optimization of the self-declare scheme, Halal Hub ecosystem strengthening, capacity-building activities, infrastructure standardization for halal slaughterhouses, and the collaborative role of halal volunteers in facilitating compliance and business sustainability. Secondary data were sourced from official government documents, local regulatory texts, certification records, program reports, meeting minutes, mentoring activity documentation, and relevant scholarly literature. These materials provided contextual and documentary support for evaluating both mentoring practices and government action against legal and ethical benchmarks rooted in *maqasid al-syari'ah*.

Data analysis followed a deductive thematic approach anchored in the *maqasid al-syari'ah* framework, operationalized through systematic coding and categorization into key objective domains such as protection of religion (*bijz al-din*), life (*bijz al-nafs*), and wealth (*bijz al-mal*). Themes were iteratively refined to generate explanatory patterns concerning synergy-based halal mentoring, volunteer engagement, and institutional intervention. The analysis captured both facilitative–preventive dimensions (capacity building, awareness enhancement, compliance assistance) and structural–institutional dimensions (regulatory enforcement, policy coordination, and ecosystem strengthening). Thematically clustered findings were interpreted in relation to regulatory compliance outcomes, legal certainty, MSMEs economic sustainability, welfare enhancement, and alignment with the ethical objectives embedded in *maqasid al-syari'ah*. This methodological strategy ensures comprehensive integration of normative theoretical insights with empirical observations, supporting a robust analysis of public policy effectiveness and mentoring praxis within a culturally and legally complex context.

FINDINGS AND DISCUSSION

Implementation Strategies of Sumenep Regency in Accelerating Halal Certification

Multi-stakeholder collaboration constitutes the primary foundation of the halal certification acceleration strategy in Sumenep Regency. The complexity of the certification process, encompassing administrative, technical, and cultural aspects, renders partial approaches ineffective. Therefore, the local government developed a synergistic network

involving religious institutions, community organizations, and technical agencies, including the Nahdlatul Ulama Halal Task Force (Satgas Halal). This collaboration not only accelerates administrative procedures but also strengthens the social legitimacy of the halal certification program among MSME actors.

Interviews with local government officials (related agencies) confirmed that the government emphasizes an anticipatory and persuasive approach. One informant stated:

“We do not wait for violations to occur. Anticipatory and persuasive approaches are key, with accelerated socialization, technical mentoring, and multi-stakeholder collaboration to prevent MSMEs from experiencing regulatory shock.” (Local Government Interview, 2025).

Coordination is also conducted at the regional level by Bakorwil IV, ensuring policy synchronization across Madurese districts to prevent implementation disparities. Regional coordination forums serve as platforms for sharing best practices, mapping local constraints, and formulating collective strategic steps. This collaborative approach affirms *hifz al-din* (protection of religion), as the halal integrity of products is preserved through social legitimacy, thus protecting the religious practices of the community systematically. Supporting data indicate that multi-stakeholder collaboration significantly increased the number of certification applications, with Sumenep recording 4,053 halal certificates by January 2026, 3,933 of which were issued through the self-declare scheme.

Optimization of mentoring constitutes the second crucial strategy, particularly for MSMEs with limited administrative literacy and capital. Mentoring is conducted comprehensively, ranging from facilitation of Business Identification Numbers (NIBs), management of PIRT, to mentoring for halal certification processes, including the government-facilitated free self-declare scheme. The primary objective of mentoring is not merely to complete administrative procedures, but to improve production quality and business actors’ awareness of the importance of halal assurance.

According to interviews with halal product facilitators:

“Facilitators are not merely technicians, but also educators. We explain the importance of halal product assurance, selection of raw materials, hygienic production processes, and the documentation required for halal audits. Many MSMEs initially did not understand the procedures, but after being guided, they became more open and confident”. (Halal Product Facilitator Interview, 2025).

Findings indicate that mentoring directly contributes to *hifz al-nafs* (protection of life) through hygiene education and product quality control, as well as *hifz al-māl* (protection of wealth) by reducing administrative sanctions and enhancing MSME competitiveness in local

and national markets. Supporting data show that MSMEs receiving intensive mentoring tend to complete certification processes more quickly and maintain compliance sustainably.

In the digital era, **strengthening social** media serves as an effective instrument for expanding the reach of information and halal literacy. Sumenep Regency utilizes digital media to disseminate flyers, educational content, and certification procedures, enabling MSMEs across regions, including islands, to access information rapidly and efficiently.

Bakorwil IV emphasized that social media allows two-way interaction:

“Digital platforms allow MSMEs to ask directly about challenges they face, creating communication that strengthens trust in the halal certification program.” (Bakorwil IV, Interview, 2025).

Findings indicate that strengthening social media is not merely information dissemination, but also contributes to *hifz al-'aql* (protection of intellect), as business actors are provided with sufficient understanding to rationally assess that halal certification is a long-term investment rather than merely an administrative burden. Supporting data show that dissemination of educational content via social media increased MSME participation by 35% in island regions compared to the previous year.

Special Measures for Remote Villages, the geographic characteristics of Sumenep Regency, which include both mainland and islands, require affirmative approaches for remote villages. The local government collaborates with PKK Mobilization Teams to collect data on superior products in each sub-district and prioritize halal certification mentoring. Village coordinators and sub-district communication groups are employed to schedule socialization, collect documents, and facilitate certification applications.

Local government officials stated:

“Network-based approaches have proven effective in fostering collective awareness. Remote villages are not left behind in halal certification, ensuring equitable service distribution.” (Local Government Interview, 2025)

The findings show that this strategy strengthens wealth protection and distributive justice, ensuring all community layers have equal access to halal certification and economic opportunities. Field data indicate that previously underserved villages now achieved certification for over 70% of their MSMEs, demonstrating the success of the affirmative approach.

The Halal Hub is a strategic initiative by Sumenep Regency to establish an integrated halal economic ecosystem. The Halal Hub serves as a coordination center among

business actors, certification bodies, halal facilitators, Islamic financial institutions, and marketing networks. Its objective is to enhance MSME competitiveness through integrated services encompassing the entire halal production chain. The Halal Hub functions not merely as a service center but institutionalizes halal governance at the regional level. Through continuous coordination between the local government, halal facilitators, business actors, and marketing networks, the Halal Hub establishes a sustainable institutional structure rather than a temporary program. Accordingly, halal values are embedded in the local economic system as collective standards, not merely regulatory compliance.

Bakorwil IV stated:

“The Halal Hub is not only for certification but builds a system supporting MSME growth from production to marketing.” (Bakorwil IV Interview, 2025).

The findings confirm that the Halal Hub supports *hifz al-din*, *hifz al-nafs*, and *hifz al-mal*. Product halal integrity is ensured, hygienic production standards are enforced, and market access is expanded. Supporting data indicate a 25% increase in local and regional MSME market penetration following the Halal Hub initiative, reinforcing the government’s long-term orientation toward sustainable halal economic development.

Intensive Socialization Ahead of Mandatory Halal 2026, Ahead of the mandatory halal certification in October 2026, the government conducted intensive socialization at three strategic points with high concentrations of business actors. Materials included self-declare mechanisms, registration procedures, and product mentoring processes. Activities also served as dialogue forums to identify challenges such as digital literacy, raw material documentation, and financing. Although the initial phase of mandatory halal certification ended in October 2024, the local government considered 2025–2026 a consolidation and compliance-expansion period before full implementation in specific sectors. Therefore, pre-2026 socialization was positioned as a preventive strategy to ensure readiness of uncertified business actors.

“Preventive socialization demonstrates the principle of dar’u al-mafāsīd muqaddam ‘alā jalb al-masalīb. We do not wait for violations but educate the community to prevent practices contrary to Sharia.”(Local Government Interview, 2025)

Findings indicate that this approach aligns with *maqasid al-syarī’ah* principles by prioritizing collective welfare and preventing social and economic harms. Field data show that over 90% of MSMEs participating in socialization successfully completed self-declare

registration on time, demonstrating the effectiveness of preventive interventions. Integratively, these six strategies demonstrate that the Sumenep Regency Government's intervention extends beyond mere normative compliance with national regulations, instead shaping an operational *maqasid al-syari'ah*-based public policy design. This model illustrates a shift from enforcement-oriented policy toward *maslahah*-oriented governance, wherein regulations are positioned as instruments to realize collective welfare in a systematic and sustainable manner.

***Maqasid al-syari'ah* Analysis of the Sumenep Regency Intervention Model**

The intervention model of the Sumenep Regency Government in accelerating halal certification can be understood not merely as a technocratic implementation of Law No. 33 of 2014 and Government Regulation No. 39 of 2021, but also as a public policy with a *maqasid al-syari'ah* orientation, aimed at realizing public welfare through the protection of fundamental human values. Research findings indicate that this intervention is conducted through a systemic strategy comprising multi-stakeholder collaboration, mentoring optimization, digital literacy enhancement, affirmative measures for remote areas, development of a Halal Hub, and preventive socialization ahead of the mandatory halal certification. Analysis of these six dimensions employs the classical *al-daruriyyat al-kebams* framework, encompassing the protection of religion, life, wealth, intellect, and progeny.

Local government interventions facilitating halal certification signify the state's role as a guardian of public religious space. Collaboration with the Nahdlatul Ulama Halal Task Force (Satgas Halal) demonstrates that religious protection is implemented through socio-cultural approaches. Sumenep, as a region with a strong religious base, requires strategies that are not solely administrative but grounded in moral legitimacy and community trust. From the *maqasid* perspective, effective policy is one that considers the community's 'urf (social context).

The establishment of a Halal Hub can also be interpreted as the institutionalization of Sharia values within the local economic system. Halal integrity is no longer understood as a private matter but becomes a collective standard in regional economic governance. This represents a shift from an individual-centered approach to a structural approach in safeguarding religion. Furthermore, preventive socialization ahead of the mandatory halal certification in 2026 exemplifies the principle of *dar'u al-mafasid muqaddam 'ala jalb al-masalib* (preventing harm takes precedence over acquiring benefits). The local government does not

wait for violations to occur but educates the community to avoid practices contrary to Sharia. A halal facilitator emphasized:

"We always prioritize education before law enforcement. Many MSMEs were initially hesitant, but after mentoring, they understood that halal is important not only for business but also as part of daily worship." (Halal Product Facilitator Interview, 2025).

In *maqasid*, safeguarding life entails preventing all forms of harm (*darar*). Products with unclear origins or production processes pose potential risks to consumers. By expanding halal certification, the local government indirectly broadens public health protection. Continuous education for MSMEs also fosters a culture of responsible production, building awareness that compliance with halal standards is not merely to avoid legal sanctions but to protect consumers as fellow human beings. Halal certification interventions in Sumenep can thus be categorized as protective social policies.

The local government ensures that MSMEs do not face the burdens of cost and bureaucracy alone, demonstrating advocacy for economically vulnerable groups. The Halal Hub as a halal economic ecosystem reinforces a long-term orientation in protecting community wealth. By expanding marketing networks and improving product standards, MSMEs have greater opportunities to increase income and strengthen family economic stability. Affirmative strategies for remote villages highlight the distributive justice dimension; wealth protection should not be concentrated in specific groups. Equal access to certification, including for island regions, demonstrates a commitment to equitable distribution of welfare. Field data indicate that previously underserved remote villages now achieve certification for over 70% of local MSMEs, reflecting the success of this strategy.

Strengthening social media and halal literacy contributes significantly to the protection of intellect. *Maqasid* encompasses not only material aspects but also the enhancement of the community's intellectual capacity. Digital education, informative flyers, interactive dialogues, and the establishment of village operators create spaces for collective learning. Business actors are encouraged to rationally understand regulations, procedures, and the benefits of halal certification, shielding them from misinformation or unfounded fears. Protection of intellect also entails promoting rational decision-making in economic activities. With adequate information, business actors assess halal certification as a long-term investment rather than a temporary burden. In this context, the local government functions as an enlightenment actor, not merely a regulator.

Halal product assurance directly impacts family consumption quality and the health of future generations. MSMEs educated in halal production standards tend to sustain these practices over time. A culture of proper production is transmitted within family business practices, meaning that halal certification policies contribute to social sustainability and generational quality.

When these dimensions are integrated, the Sumenep Regency intervention model exemplifies a *maqasid al-syari'ah*-based public policy character. Religious protection is implemented through the certification system; life protection through production safety standards; wealth protection through enhanced economic competitiveness; intellect protection through digital literacy; and generational protection through sustainable consumption guarantees. The policy demonstrates a balance between preventive and persuasive approaches. Intensive socialization prior to enforcement reflects an educational, rather than repressive, orientation. This aligns with the principle that Sharia objectives aim to generate collective welfare (*jalb al-masalih*), rather than merely imposing sanctions. The Sumenep intervention model can be categorized as a form of *siyasah shar'iyah* at the local level, government policy formulated to realize Sharia objectives within a specific social context. The intervention moves beyond legal formalities toward structural transformation of the local economy and society. Sumenep's success is measured not only by the increase in halal certificate quantity but by the quality of policy design that integrates regulation, empowerment, education, and equitable access into a single sustainable welfare framework. This model can be replicated by other regions as a best practice for implementing *maqasid al-syari'ah* in contemporary public policy.

Governance Risk Analysis: Policy Risk Mitigation

In the context of accelerating halal certification, policy implementation success is inevitably intertwined with governance-related risks that are both structural and operational. These risks include policy inconsistency, legal compliance challenges, uneven service distribution, intervention effectiveness, and system sustainability. Sumenep Regency has adopted systematic and preventive strategies to mitigate these risks, ensuring that governance supports both regulatory compliance and broader societal welfare.

Policy Inconsistency Risks arise when national regulations are interpreted or applied differently at the regional level, creating uncertainty for business actors. To mitigate this, regional coordination mechanisms, including Bakorwil IV forums and best-practice sharing

platforms, have been established. These mechanisms promote uniform interpretation and implementation of halal certification policies across Madurese districts, minimizing regulatory discrepancies and potential conflicts.

Legal Compliance Risks primarily concern micro, small, and medium enterprises (MSMEs) that may lack the administrative literacy or resources to navigate the certification process. Preventive mitigation measures include intensive mentoring, documentation support, and proactive socialization, particularly through the self-declare mechanism. This anticipatory approach ensures that business actors are prepared ahead of the mandatory certification phase, reducing exposure to administrative sanctions and enhancing regulatory certainty.

Uneven Service Distribution Risks are especially relevant for geographically remote areas and islands, which could otherwise be underserved. Affirmative strategies involving PKK mobilization teams, village coordinators, and local communication networks ensure that all sub-districts receive equitable access to mentoring and certification services. This approach not only guarantees service coverage but also upholds distributive justice and safeguards economic welfare across communities.

Intervention Effectiveness Risks relate to the possibility that socialization and educational efforts fail to achieve adequate comprehension among business actors, thereby limiting participation and compliance. The Sumenep government leverages digital platforms, two-way communication via social media, and community dialogues to enhance understanding, foster rational decision-making, and build trust in the certification program. Consequently, socialization functions as a tool not only for information dissemination but also for intellectual empowerment, ensuring that halal certification is recognized as a strategic, long-term investment rather than a mere administrative obligation.

System Sustainability Risks concern the potential discontinuity of interventions once initial programs conclude. The establishment of the Halal Hub as an integrated halal economic ecosystem addresses this risk. Beyond serving as a service center, the Halal Hub institutionalizes halal governance at the regional level, embedding halal values into the local economic system. It ensures the long-term protection of religious observance, public health, and economic well-being while simultaneously strengthening local institutional capacity. Sumenep Regency's approach demonstrates that governance risk mitigation extends beyond regulatory compliance. It is proactive, preventive, and oriented toward inclusive economic empowerment, equitable service delivery, and collective protection. These measures align

closely with *maqasid al-syari'ah principles*, where public policy serves not merely as a regulatory instrument but as a means of promoting societal welfare (*maslahah 'āmmah*) through the integrated protection of religion, life, wealth, intellect, and progeny.

DISCUSSION

The findings of this study reveal that local government interventions in Sumenep represent a comprehensive, multi-layered public policy strategy that moves beyond mere regulatory enforcement to proactive facilitation. By integrating multi-stakeholder collaboration, structured guidance, digital literacy enhancement, affirmative measures for remote villages, and the development of regional Halal Hubs, the interventions not only address administrative compliance but also embed ethical and developmental support, operationalizing *maqasid al-syari'ah* principles to protect religion (*hifẓ al-dīn*), life (*hifẓ al-nafs*), wealth (*hifẓ al-māl*), intellect (*hifẓ al-'aql*), and lineage (*hifẓ al-nasl*). Empirically, these strategies facilitated the issuance of 4,053 halal certificates by January 2026, of which 3,933 were processed via self-declare, ensuring timely registration for over 90% of participating MSMEs. This multidimensional facilitation transforms the perception of halal certification from a bureaucratic burden into a developmental opportunity, directly addressing barriers identified in previous research, such as limited legal awareness, administrative complexity, and low readiness among small enterprises (Tahlani & Renaldi, 2023; Tuhuteru & Iqbal, 2024; Vintya & Kushidayati, 2025).

In contrast to prior studies that primarily conceptualize the government as a regulator emphasizing compliance (Daulay & Zulham, 2025), this study demonstrates that proactive, ethically guided interventions can enhance both adherence and empowerment. The Halal Hub ecosystem exemplifies a systems-based approach, linking certification offices with production facilities, financial services, and market access, thereby reducing transaction costs and providing a replicable model for holistic halal governance (Sudarto & Arifin, 2025). While earlier scholarship has explored the theoretical and historical foundations of *maqasid al-syari'ah* in Islamic economic law (Syufa'at, 2013; Tajrid, 2021), these studies lacked applied, policy-level implementation. The present research fills this gap by translating normative principles into measurable outcomes, extending insights on legal and ethical compliance (Vintya & Kushidayati, 2025) and MSME readiness (Tuhuteru & Iqbal, 2024).

Comparisons with other empirical studies further illustrate the value of integrative facilitation. (Azhar et al., 2025) emphasize that halal certification strengthens marketing

strategies and consumer trust in the food sector, while (Bahrudin et al., 2025) highlight determinants such as religiosity, consumer awareness, and perceived regulatory complexity that influence MSMEs' decisions to pursue certification. Similarly, (Camelia et al., 2024) demonstrate that halal certification enhances operational transparency and product quality among MSMEs in Bekasi. This study confirms these economic and market benefits but advances them by embedding certification within a structured, multi-agency intervention framework that operationalizes *maqasid* principles, ensuring sustainable adoption of halal practices while fostering community engagement and equitable market access.

This study also converges with (Hidayat, et al., 2024), who adopt a normative *maqasid*-based lens to evaluate district-level interventions in Pamekasan and Sumenep. While their work highlights the ethical and religious imperatives of compliance, the present research extends it by providing empirical evidence of intervention effectiveness, demonstrating measurable outcomes through multi-stakeholder collaboration, self-declare facilitation, digital literacy, and affirmative outreach. By bridging theoretical foundations with applied governance, this study illustrates how halal certification can simultaneously advance regulatory compliance, economic empowerment, ethical adherence, and community welfare. The findings offer a replicable, evidence-based model for adaptive, inclusive, and sustainable halal governance that can inform policy design at both regional and national levels.

By integrating ethical principles, administrative facilitation, and digital literacy within a single multi-dimensional framework, this study demonstrates that halal certification can simultaneously enhance regulatory compliance, consumer trust, economic empowerment, and community welfare. Theoretically, it contributes to Islamic public policy literature by offering a replicable model of *maqasid*-informed governance, illustrating how ethical and legal principles can be operationalized into measurable outcomes. Practically, the findings provide guidance for policymakers seeking to scale such interventions, emphasizing the importance of structured coordination, technology-enabled facilitation, and affirmative measures to reduce inequities. Furthermore, the research highlights the necessity of continuous evaluation of socio-cultural and logistical variables to ensure sustainability, suggesting that adaptive, context-sensitive approaches are essential for extending these interventions beyond Sumenep to other regional and national settings.

CONCLUSION

This study examined the intervention model of Sumenep Regency in responding to the final phase of mandatory halal certification, analyzed through *maqasid al-shari'ah*. Findings reveal a comprehensive strategy integrating regulatory compliance with public welfare, including multiparty collaboration, MSME mentoring, digital literacy initiatives, targeted outreach to remote villages, the establishment of a Halal Hub, and proactive pre-enforcement socialization. These interventions significantly increased halal certification uptake, strengthened the local halal ecosystem, and enhanced public trust. From a *maqasid* perspective, the model addresses five core objectives: protection of religion (*hifz al-din*) via structured certification and community engagement; protection of life (*hifz al-nafs*) through hygienic production and halal slaughterhouse standards; protection of wealth (*hifz al-mal*) by supporting MSME sustainability and market access; protection of intellect (*hifz al-'aql*) via education and digital literacy; and protection of future generations (*hifz al-nasl*) through long-term food safety and continuity of halal practices. This integration demonstrates that local governance can move beyond enforcement toward holistic, welfare-oriented policy aligned with Islamic ethical principles.

The study contributes theoretically by positioning *maqasid al-shari'ah* as an evaluative framework for local public policy and practically by offering replicable strategies for subnational governments. Limitations include a small number of informants and focus on a single regency. Future research could involve comparative studies across regions, assess intervention sustainability, and incorporate quantitative measures of market and social impact. For recommendations, Local governments should institutionalize multiparty collaboration and mentoring programs to ensure continuous MSME support, expand digital literacy and socialization campaigns to reach underserved areas, and strengthen the Halal Hub ecosystem as a central coordinating mechanism. Policy makers are encouraged to integrate *maqasid al-shari'ah* principles in all stages of halal governance to balance enforcement with public welfare. Continuous monitoring and evaluation of intervention outcomes are essential to enhance policy effectiveness and sustainability.

REFERENCES

- Abdullah, B., & Saebani, B. A. (2014). *Metode penelitian ekonomi Islam muamalah*. Pustaka Setia.
- Abdussamad, Z. (2021). *Metode penelitian kualitatif*. Syakir Media Press.
- Adiwijaya, A. J. S. (2019). Menyongsong pemberlakuan kewajiban sertifikasi halal di Indonesia. *Jurnal Ilmiah Living Law*, 11(1), 1–12. <https://doi.org/10.30997/jill.v11i1.1641>
- Aisyah, M. (2015). Peer group effects on Moslem consumer's decision to purchase halal labeled cosmetics. *Al-Iqtisad: Jurnal Ilmu Ekonomi Syariah*, 7(2), 165–180. <https://doi.org/10.15408/aiq.v7i2.1682>
- Akbar, G. R., & Rohman, I. K. (2023). Analysis of the impact of halal certificate on the performance of micro and small enterprises (SMEs) with the propensity score matching (PSM) method. *Journal of Strategic and Global Studies*, 6(1). <https://doi.org/10.7454/jsgs.v6i1.1108>
- Arifin, R. (2020). Legal analysis of halal product guarantee for development of small and medium enterprises (SMEs) business in Indonesia. *Jurnal Hukum Islam*, 18(1), 121–136. <https://doi.org/10.28918/jhi.v18i1.2693>
- Aslikhah, A., Djamaluddin, B., & Mugiyati, M. (2024). Halal certification perspective of small micro-entrepreneurs in Pasuruan Regency. *International Journal of Engineering Business and Social Science*, 2(04), 1120–1140. <https://doi.org/10.58451/ijebss.v2i04.147>
- Azhar, M. R., Alamsyah, A. M., & Sabila, N. S. (2025). Dampak sertifikasi halal pada strategi pemasaran produk UMKM di sektor makanan. *Jurnal Inovasi Ekonomi Syariah dan Akuntansi*, 3(1), 1–15. <https://doi.org/10.61132/jiesa.v3i1.1963>
- Azis, R., Juanda, A. T., & Nurhayati, N. (2023). The impact of the halal label on the welfare of micro small-medium businesses in Indonesia. *Journal of Halal Science, Industry, and Business*, 1(1), 59–70. <https://doi.org/10.31098/jhasib.v1i1.1321>
- Bahrudin, M., Iqbal, M., Saefurrohman, G. U., & Walsh, J. (2025). Determinants influencing micro, small, and medium enterprises (MSMEs) decisions to pursue halal certification. *Indonesian Journal of Halal Research*, 7(2), 125–137. <https://doi.org/10.15575/ijhar.v7i2.39949>
- Benuf, K., & Azhar, M. (2020). Metodologi penelitian hukum sebagai instrumen mengurangi permasalahan hukum kontemporer. *Gema Keadilan*, 7(1), 20–33. <https://doi.org/10.14710/gk.2020.7504>
- Budiman, F. (2020). Sertifikasi halal bagi masyarakat Kabupaten Boyolali Jawa Tengah (Studi tentang keputusan pembelian produk herbal penawar Alwahida Indonesia). *Jurnal Ilmiah Ekonomi Islam*, 6(2), 379. <https://doi.org/10.29040/jiei.v6i2.1192>
- Camelia, I., Achmad, L. I., Ainulyaqin, M., & Edy, S. (2024). Analisis peran sertifikasi halal pada bisnis UMKM Kabupaten Bekasi. *Jurnal Ilmiah Ekonomi Islam*, 10(2), 1474–1484. <https://doi.org/10.29040/jiei.v10i2.13349>

- Creswell, J. W. (2014). *Research design: Qualitative, quantitative, and mixed methods approaches* (4th ed.). SAGE Publications.
- Daulay, N. K., & Zulham. (2025). Analisis hukum ekonomi kewajiban sertifikasi halal terhadap UMKM perspektif maqashid syariah. *Indonesian Journal of Humanities and Social Sciences*, 6(1), 1–15. <https://doi.org/10.33367/ijhass.v6i1.6945>
- Gunawan, S., Juwari, J., Aparamarta, H., Darmawan, R., & Rakhmawati, N. A. (2021). Pendampingan berkelanjutan sistem jaminan halal bagi usaha mikro, kecil, dan menengah (UMKM). *Sewagati: Jurnal Direktorat Riset dan Pengabdian Kepada Masyarakat*, 5(1), 8–14. <https://doi.org/10.12962/j26139960.v5i1.8120>
- Hamzah, M., Febrianto, A., Robbiyono, & Wafi, A. (2022). Nilai halal haram dalam hukum ekonomi. *Hakam: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam*, 6(2). <https://doi.org/10.33650/jhi.v6i2.5072>
- Hidayat, M. H., & Witta, S. R. (2024). Halal certification and implications for MSMEs: A systematic literature review. *Journal of Business Management and Islamic Banking*, 3(1), 151–166. <https://doi.org/10.14421/jbmib.v3i1.2373>
- Hidayat, R., Nasik, K., & Ardyansyah, F. (2024). Analisis maqosid syariah terhadap strategi intervensi pemerintah daerah Kabupaten Pamekasan dan Kabupaten Sumenep dalam menyikapi berakhirnya masa kewajiban sertifikasi halal bagi pelaku usaha produk makanan, minuman, jasa penyembelihan dan hasil penyembelihan. *JIPM: Jurnal Ilmiah Penelitian Mahasiswa*, 1(1), 1–9.
- Himmah, A., Qadariyah, L., & Sarkawi, M. (2024). Studi eksplorasi literasi halal dan sertifikasi halal pelaku usaha UMKM di Lenteng Kabupaten Sumenep. *ADL Islamic Economic*, 5(2), 143–153. <https://doi.org/10.56644/adl.v5i2.130>
- Ilham, B. U. (2022). Pendampingan sertifikasi halal self declare pada usaha mikro dan kecil binaan Pusat Layanan Usaha Terpadu Sulawesi Selatan. *Jurnal Pemberdayaan Masyarakat Universitas Al Azhar Indonesia*, 5(1), 20–25. <https://doi.org/10.36722/jpm.v5i1.1753>
- Malau, P., & Svinarky, I. (2020). Halal dalam upaya perlindungan konsumen. *Justitia: Jurnal Ilmu Hukum dan Humaniora*, 7(3), 547–559. <https://doi.org/10.31604/justitia.v7i3.547-559>
- Masri, E., Irianto, S., Masriani, Y. T., & Falah, S. M. S. (2025). Halal product assurance as legal protection for Muslim consumers in Indonesia. *Al-Ahkam*, 35(1), 205–234. <https://doi.org/10.21580/ahkam.2025.35.1.26384>
- Maswanto, A. R., & Yudha, F. (2021). Review of maqāṣid al shari'ah on the performance and professionalism of productive waqf nadzir in Indonesia. *Hakam: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam*, 9(1), 72–86. <https://doi.org/10.33650/jhi.v9i1.11427>
- Muhromin, E. (2025). Enhancing halal certification literacy among MSMEs: Barriers, strategies, and impacts. *OIKOS: Jurnal Ekonomi, Manajemen, dan Bisnis*, 17(1), 1–14.

- Mursadad, A., Sissah, & Budianto, A. (2024). Peran sertifikasi halal terhadap peningkatan penjualan pada UMKM di Kecamatan Telanai Pura Jambi. *Musyteri: Neraca Manajemen Ekonomi*, 5(2). <https://doi.org/10.8734/mnmae.v1i2.359>
- Nuraeni, R. N., Nurpadilah, V., Abdiansyah, A., & Marlina, L. (2025). Urgensi mandatory sertifikasi halal dalam perspektif maqashid syariah. *Jurnal Ekonomi Manajemen dan Bisnis*, 3(2), 358–368. <https://doi.org/10.62017/jemb.v3i2.5965>
- Nurdiansyah, M. R. D. (2023). Sinergitas akselerasi lembaga Badan Penyelenggara Jaminan Produk Halal dan Lembaga Pemeriksa Halal dalam implementasi sertifikasi halal industri di Indonesia. *Journal of Halal Industry Studies*, 2(1), 39–48. <https://doi.org/10.53088/jhis.v2i1.566>
- Nurdin, M. S., & Rahman, Y. (2021). Sertifikasi produk halal oleh BPJPH DIY dengan pendekatan ekonomi politik perspektif maqasid syariah. *Equilibrium: Jurnal Ekonomi Syariah*, 9(1), 199–216. <https://doi.org/10.21043/equilibrium.v9i1.9783>
- Nursita, R. D., Devi, A., Retno, S., & Primadiani, D. W. (2024). The role of non-state actors in establishing the halal ecosystem in Indonesia. *Hasanuddin Journal of International Affairs*, 4(1), 44–56. <https://doi.org/10.31947/hjirs.v4i01.33028>
- Rahayu, S. A. P., Niravita, A., Anitasari, R. F., & Kamal, U. (2023). Halal certification imperatives for MSMEs: Sustainability, consumer confidence, and policy compliance. *Indonesian Journal of Advocacy and Legal Services*, 5(2), 143–160. <https://doi.org/10.15294/ijals.v5i2.72426>
- Rofiah, K., Safira, M. E., & Rosele, M. I. (2024). The effectiveness of accelerating halal product certification: Regulations and companions. *Journal of Human Rights, Culture and Legal System*, 4(2), 449–476. <https://doi.org/10.53955/jhcls.v4i2.203>
- Romadhoni, M. A., Qadariyah, L., & Sarkawi, S. (2025). Dinamika dan tantangan sertifikasi halal pada usaha mikro, kecil, dan menengah (UMKM) di Kabupaten Sumenep. *SIL'AH: Jurnal Ekonomi Syariah*, 2(2), 77–89. <https://doi.org/10.64994/silah.v2i2.63>
- Safitri, M. N., Nurkhafiah, N., Nurzihan, S., & Turromaniyah, A. (2025). Sharia economic law on the growth of micro, small, and medium enterprises (UMKM) in the digital era. *Hakam: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam*, 9(2), 342–355. <https://doi.org/10.33650/jhi.v9i2.13161>
- Suaidi, S., Anjum, R., Nasrudin, M., Maksum, M., & Dwi Astuti, S. (2025). Halal food development in Bali: Dynamics of Muslim beliefs, state regulations, and local culture. *Al-Ahkam*, 35(1), 147–178. <https://doi.org/10.21580/ahkam.2025.35.1.25732>
- Sudarto, A., & Arifin, Z. (2025). Implikasi sertifikasi halal dalam UMKM sektor pangan dan minuman. *Kafalah: Jurnal Ekonomi Syariah*, 2(2), 131–138. <https://doi.org/10.1234/kafalah.v2i2.69>
- Supriyadi, S., Aulia, R., Nubahai, L., Rahman, R. A., & Mohamed, R. (2024). Legal effectiveness of halal product certification in improving business economics in Indonesia and Malaysia. *Al-Ahkam*, 34(1), 193–220. <https://doi.org/10.21580/ahkam.2024.34.1.20546>

- Syafawi, L., & Hasanah, H. (2023). Sosialisasi dan pendampingan sertifikat halal bagi para pelaku usaha UMKM Komisi Pemberdayaan Ekonomi Umat MUI Kota Tangerang Tahun 2023. *Jurnal Publikasi Ilmu Manajemen dan E-Commerce*, 3(1), 39–48. <https://doi.org/10.30640/digital.v3i1.2165>
- Syafitri, M. N., Salsabila, R., & Latifah, F. N. (2022). Urgensi sertifikasi halal food dalam tinjauan etika bisnis Islam. *Al Iqtishod: Jurnal Pemikiran dan Penelitian Ekonomi Islam*, 10(1), 16–42. <https://doi.org/10.37812/aliqitishod.v10i1.305>
- Syafrida, S. (2016). Sertifikat halal pada produk makanan dan minuman memberi perlindungan dan kepastian hukum hak-hak konsumen Muslim. *Adil: Jurnal Hukum*, 7(2), 159–174. <https://doi.org/10.33476/ajl.v7i2.353>
- Syari, A. Y., Imtinan, H. A., Yasmin, G. M., & Wiryanto, F. S. (2025). Peran sertifikasi halal pada UMKM dalam memperkuat ekonomi syariah di Indonesia. *Journal of Halal Industry Studies*, 4(1), 1–13. <https://doi.org/10.53088/jhis.v4i1.1419>
- Syufa'at, S. (2013). Implementasi maqasid al-shari'ah dalam hukum ekonomi Islam. *Al-Ahkam*, 23(2), 143–166. <https://doi.org/10.21580/ahkam.2013.23.2.20>
- Tahliani, H., & Renaldi, R. (2023). Sertifikasi halal dan implikasinya untuk meningkatkan daya saing perusahaan. *Syar'ie: Jurnal Pemikiran Ekonomi Islam*, 6(1), 1–12. <https://doi.org/10.51476/syarie.v6i1.444>
- Tajrid, A. (2021). Tracing the genealogy of maqasid al-shari'ah concept: A historical approach. *Al-Ahkam*, 31(1), 69–90. <https://doi.org/10.21580/ahkam.2021.31.1.6696>
- Tuhuteru, A. D., & Iqbal, M. (2024). Readiness of micro, small, and medium enterprises in the food and beverage sector for halal certification implementation: A case study in Magelang, Indonesia. *Journal of Islamic Economics Lariba*, 10(2), 24–36. <https://doi.org/10.20885/jielariba.vol10.iss2.art24>
- Umar, H., Bafadhal, H., & Rahmatullah, R. (2025). Eksistensi dan perkembangan kelembagaan hukum Islam di Indonesia. *Hakam: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam*, 9(2), 267–278. <https://doi.org/10.33650/jhi.v9i2.12670>
- Vintya, D. Y., & Kushidayati, L. (2025). Halal certification, legal awareness, and maqāṣid al-shari'ah among fried chicken MSMEs. *Az-Zarqa': Jurnal Hukum Bisnis Islam*, 17(2), 190–213. <https://doi.org/10.14421/az-zarqa.v17.i2.4546>
- Warto, W., & Samsuri, S. (2020). Sertifikasi halal dan implikasinya bagi bisnis produk halal di Indonesia. *Al Maal: Journal of Islamic Economics and Banking*, 2(1), 98. <https://doi.org/10.31000/almaal.v2i1.2803>
- Yulia, S., Desriani, W., & Isnaini, D. (2024). Kebijakan pemerintah dalam pengembangan industri halal terhadap pertumbuhan ekonomi di Indonesia. *Mestaka: Jurnal Pengabdian Kepada Masyarakat*, 3(6), 625–633. <https://doi.org/10.58184/mestaka.v3i6.508>
- Zain, A. R., Hafidz, M. Y., Izza, N., & Azizah, S. N. (2024). Analisis penerapan lembaga sertifikasi halal di kawasan ASEAN. *Tadayun: Jurnal Hukum Ekonomi Syariah*, 5(1), 1–28. <https://doi.org/10.24239/tadayun.v5i1.246>

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EX OFFICIO AUTHORITY OF JUDGES IN DIVORCE SUIT DECISIONS : AN ANALYSIS OF ARTICLE 41 OF LAW NUMBER 1 OF 1974 ON MARRIAGE IN THE PAMEKASAN RELIGIOUS COURT

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ABSTRACT

The protection of women's and children's financial rights after divorce remains a significant issue within the Indonesian Religious Court system. Article 41 of Law Number 1 of 1974 on Marriage normatively obliges the father to bear responsibility for the maintenance and education of children and provides a legal basis for financial obligations toward a former wife. However, in judicial practice, divorce litigation (*cerai gugat*) decisions often do not consistently stipulate iddah maintenance, mut'ah, and child support within the operative part of the judgment. This inconsistency indicates a gap between the normative construction of Article 41 and its practical implementation in court decisions. This study aims to analyze the obligation of judges' *ex officio* authority in divorce litigation decisions and evaluate its implementation at the Religious Court of Pamekasan. The research employs a normative-empirical legal approach through statutory analysis and case study examination of three final and binding divorce judgments issued by the Religious Court of Pamekasan. The findings reveal that variations in the application of *ex officio* authority are influenced by interpretations of the *ultra petita* principle, evidentiary considerations, and judicial sensitivity toward the protection of women and children. Drawing on vulnerability theory, this study argues that *ex officio* authority should be interpreted not merely as judicial discretion but as a juridical obligation inherent in the judicial function. This research contributes to strengthening the doctrinal understanding of judges' *ex officio* authority as a mechanism to ensure substantive justice and improve legal protection for women and children after divorce. application of this authority is therefore essential to strengthen legal protection for women and children after divorce.

Keywords: *ex officio* authority; divorce litigation; Article 41 Marriage Law; legal protection; substantive justice.

ABSTRACT

Perlindungan terhadap hak finansial perempuan dan anak pasca perceraian masih menjadi persoalan penting dalam praktik peradilan agama di Indonesia. Secara normatif, Pasal 41 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan menegaskan tanggung jawab ayah terhadap pemeliharaan dan pendidikan anak serta memberikan dasar hukum bagi kewajiban finansial terhadap bekas istri. Namun dalam praktik peradilan, putusan cerai gugat tidak selalu secara konsisten mencantumkan penetapan nafkah iddah, mut'ah, dan nafkah anak dalam amar putusan. Kondisi ini menunjukkan adanya kesenjangan antara konstruksi normatif Pasal 41 dengan implementasinya dalam praktik peradilan. Penelitian ini bertujuan untuk menganalisis kewajiban kewenangan *ex officio* hakim dalam putusan cerai gugat serta mengevaluasi penerapannya di Pengadilan Agama Pamekasan. Penelitian ini menggunakan pendekatan hukum normatif-empiris melalui analisis peraturan perundang-undangan dan studi kasus terhadap tiga putusan cerai gugat yang telah berkekuatan hukum tetap di Pengadilan Agama Pamekasan. Hasil penelitian menunjukkan bahwa variasi penerapan kewenangan *ex officio* hakim dipengaruhi oleh penafsiran terhadap asas *ultra petita*, pertimbangan pembuktian, serta sensitivitas hakim terhadap perlindungan perempuan dan anak. Berdasarkan perspektif *vulnerability theory*, penelitian ini berargumen bahwa kewenangan *ex officio* tidak semata merupakan diskresi hakim, melainkan kewajiban yuridis yang melekat pada fungsi peradilan sebagai representasi negara dalam mewujudkan keadilan substantif. Penelitian ini berkontribusi dalam memperkuat pemahaman doktrinal mengenai kewenangan *ex officio* hakim sebagai mekanisme perlindungan hukum bagi perempuan dan anak pasca perceraian.

Kata Kunci: *ex officio*; cerai gugat; Pasal 41 UU Perkawinan; perlindungan hukum; keadilan substantif.

INTRODUCTION

Divorce in Indonesia shows continuing trend increased, with dominance case divorced lawsuit filed by the wife in the neighborhood Religious Courts. This phenomenon is not only reflect change gender relations in Indonesian Muslim families, but also shows increasing awareness law women's right to terminate marriage that no longer provides welfare (Maimun et al., 2019; Saputra, 2025). However thus, the height number divorced sue Not yet fully followed by optimal protection of rights financial wife and children after divorce. Even though Article 41 of Law Number 1 of 1974 concerning Marriage is imperative confirm not quite enough father's responsibility for care and education child as well as open room obligation financially towards the former wife. In perspective protection law, this norm should be is *ex lege* and does not depend on the existence or absence of demands in the *petitum* (Rasida, 2025). In empirical judicial practice, this issue becomes a concrete problem because many divorce lawsuit decisions do not explicitly stipulate *iddah* maintenance, *mut'ah*, or child support in the operative part of the judgment, thereby creating legal uncertainty for women and children as parties who are structurally more vulnerable in post-divorce relations.

Theoretically, the authority *ex officio* judge understood as instrument corrective to stiffness principle *ultra petita partium* in civil procedural law. Judges, within the framework of law progressive, not just become a “mouthpiece” law”, but rather must actively guarantee realization justice substantive, in particular for vulnerable groups (Sahara & Raharjo, 2022). A number of study confirm that in this case divorce, the use of *ex officio* is not exceedance authority, but rather obligation juridical to enforce rights normative women and children (Hassan et al., 2022; Jamiatul Hasanah & Wisri Wisri, 2021). However, in practice, it is still found the judge to be acting passive and reluctant set *iddah*, *mut'ah*, or subsistence living child if not explicitly requested by the plaintiff. This situation demonstrates a tension between the *ultra petita partium* principle in civil procedural law and the obligation of legal protection toward vulnerable parties, raising the debate as to whether the use of *ex officio* authority constitutes judicial discretion or a normative duty inherent in the judicial function.

The gap between imperative norms and practice the judiciary is seen in a number of decision divorced sued at the Pamekasan Religious Court, including Decision Number 1205/Pdt.G/2025/PA.PMK, 1514/Pdt.G/2023/PA.PMK, and 1630/Pdt.G/2024/PA.PMK, which shows variations in application *ex officio* authority. Some decisions explicitly set living child, while part other only cut off main divorce without amar about right financial wife. This phenomenon strengthens existence *normative-practical*

gap, namely asynchrony between order normative Article 41 of the Marriage Law and its implementation in practice religious courts (Jamil & Nur, 2022). These variations in judicial decisions indicate that *ex officio* authority has not been consistently implemented by judges, resulting in disparities in legal protection for women and children in divorce litigation cases.

Study regarding *ex officio* judges have widely practiced in *Samarah: Journal of Family Law and Islamic Law* confirm that *ex officio* authority in cases divorce is form protection law against wives, but its implementation often limited by worries violate *ultra petita* principle. This research provides base normatively important, but more focused on divorce and not specifically study obligation imperative of Article 41 of the Marriage Law in the context of divorced sue. Thus, the study still places *ex officio* authority within the framework of judicial discretion and has not empirically analyzed how its application varies in divorce litigation decisions.

Temporary that (Sakira et al., 2024), in *El- Izdivaj* study *ex officio* application as instrument protection right post- divorce wife. The result show that the judge has room progressive to establish rights financial without demands explicit. However, the study did not analyze right children comprehensively based on Article 41 of the Marriage Law. On the other hand, others (Nurhayati et al., 2021), in *Al-Abwal* emphasize importance perspective protection women and children in the decision divorce, but not yet place *ex officio* as obligation juridical nature imperative. In other words, previous studies largely discuss the normative dimension of protecting women and children but have not integrated normative analysis with empirical examination of variations in judicial decisions.

In contrast to previous studies, this article places *ex officio* not just as authority the judge's discretion, but rather as obligation juridical imperatives attached to the position of judge based on Article 41 of Law No. 1 of 1974. This research also specifically study practice implementation the obligation in the decision divorced sue at the Pamekasan Religious Court through case approach. Thus, the novelty This research is based on integration analysis normative – imperative Article 41 with empirical studies court decisions, as well as *ex officio* affirmation as obligation constitutional in guaranteeing justice substantive. Theoretically, this research is positioned within the framework of progressive legal theory and vulnerability theory, which view the state represented by judges as having an active responsibility to protect vulnerable groups through judicial decisions.

This study aims to analyze *ex officio* obligations of judges in decisions divorced sue based on Article 41 of Law Number 1 of 1974 concerning Marriage and evaluate its implementation in practice at the Pamekasan Religious Court in order to assess consistency protection rights financial wife and children after divorce.

This article argues that the judge's *ex officio* authority in the case divorced sue is not choice discretionary, but rather obligation juridical nature imperative. The uselessness of *ex officio* in determining right financial wife and children is form neglect of mandate normative Article 41 of the Marriage Law and is contrary to the principal justice substantive as well as *the best interest of the child*. Therefore that, the judge is obliged to interpret law in a progressive manner and oriented towards protecting vulnerable groups, as emphasized in legal theory progressive (Aulia, 2018).

This research is theoretically important to strengthen construction doctrinal that *ex officio* the judge in the case divorce is obligation law, not just right position. Practically, the results This research is expected become recommendation normative for Religious Court judges to be consistent set rights financial wife and children in every decision divorced sue, so that the Religious Court does not only ensure certainty law, but also presents justice substantive responsive to protection women and children.

RESEARCH METHOD

This research is a study law normative-empirical (*socio-legal research*), namely research that examines law as a written norm at a time as practices that are alive in court (Rifa'i, 2023). Normatively, this study examines Article 41 of Law Number 1 of 1974 concerning Marriage as an imperative norm that regulates not quite enough father's responsibility for care and education child and possible liabilities financially towards the former wife. Empirically, this study analyzes implementation obligation *ex officio* judge in the decision divorced sued at the Pamekasan Religious Court. This approach was chosen Because allows researchers identify gap between legal norms that are imperative and practice judicial development in the field (Fathurrohmah, 2022) .

The approach used to cover approach legislation, approach conceptual, and case approach. legislation used to study construction normative Article 41 of Law Number 1 of 1974, Compilation of Islamic Law, as well as regulations Supreme Court relating to the authority of judges in cases divorce (Ahmad et al., 2024) . Approach conceptual used to analyze

doctrine *ex officio*, principle *ultra petita partium*, protection theory law, and draft justice substantive in perspective law progressive (Hadjon, 1987; Rahardjo, 2012). The case approach is carried out by examining in depth a number of decisions divorced sue at the Pamekasan Religious Court to see consistency and variety implementation authority *ex officio* in amar decision.

Research location is at the Pamekasan Religious Court with the object study in the form of decision divorced the lawsuit that has been powerful law fixed (*in kracht van gewijsde*). That is 1205/Pdt.G/2025/PA.PMK, 1514/Pdt.G/2023/PA.PMK, and 1630/Pdt.G/2024/PA.PMK. Election the decision was based on considerations existence variations in amar decision regarding the determination living iddah, mut'ah, and living children, so that relevant to test consistency implementation of Article 41 of the Marriage Law as an imperative norm.

sources in this study consist of on material primary law, material law secondary, and empirical data. Primary legal materials include Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law, Circular Letter Supreme Court Number 2 of 2019, as well as copy official decision divorced the lawsuit that became object research. Legal materials secondary obtained from reputable journals national and international issues that discuss authority *ex officio*, judicial activism, as well protection right women and children in cases divorce. In addition, this study also uses literature methodology study law and legal theory progressive as runway conceptual. If required, empirical data can be strengthened through interview limited to judges or court officials to confirm consideration law in its use or non-use authority *ex officio* (A. Abdullah, 2020).

Data collection techniques are carried out through document studies of court decisions to identify amar decisions related to rights financial wife and children, as well as literature studies to obtain runway relevant theoretical and conceptual data. Data analysis was conducted qualitatively-descriptively by interpreting the norms of Article 41 of the Marriage Law, classifying amar decision based on whether or not there is determination right financial, as well as compare between norms and practices in order to find existence *normative-practical gap*. Analysis results Then interpreted using protection theory law and law progressive to assess whether the authority *ex officio* has executed as obligation imperative or still understood as judicial discretion.

Data validity is guaranteed through technique triangulation sources, namely by comparing legal norms written, the judge's considerations in the decision, and view doctrinal in

literature scientific (Soekanto & Mamudji, 2014). This approach ensures that the resulting analysis is not only nature textual, but also contextual and argumentative, so that capable give contribution theoretical and practical aspects of strengthening obligation *ex officio* judge in the case divorced sue.

FINDINGS AND DISCUSSION

The results of this research show that in practice divorce lawsuit decisions at the Pamekasan Religious Court demonstrate variations in the inclusion of post-divorce financial rights. Based on the analysis of Decision Number 1205/Pdt.G/2025/PA.PMK, 1514/Pdt.G/2023/PA.PMK, and 1630/Pdt.G/2024/PA.PMK, it was found that not all decisions explicitly stipulate iddah maintenance, mut'ah, and child support in the operative part of the judgment. In several cases, the panel of judges only granted the divorce and declared the dissolution of marriage without determining the husband's financial obligations toward his former wife and children, even though Article 41 of Law Number 1 of 1974 concerning Marriage regulates the father's responsibility for child maintenance and provides the possibility of financial obligations toward the former wife. This situation indicates a discrepancy between the normative mandate of Article 41 of the Marriage Law and its implementation in judicial practice. This fact shows that the *ex officio* authority of judges has not been consistently applied as an imperative obligation in divorce litigation cases.

This study found differences in the implementation of judges' *ex officio* authority in several divorce lawsuit decisions at the Pamekasan Religious Court. In one of the decisions, the panel of judges actively determines living child although not formulated in detail in the petitum lawsuit, with consideration protection of interest's best child. However, in the decision otherwise, the judge did not use such authority and only focus on the main point case divorce. This difference shows that use authority *ex officio* Still understood as room individual discretion of the judge, not as obligation juridical matters attached to the position as can be interpreted from the norms of Article 41 of the Marriage Law. From the perspective of judicial authority theory, judges are not merely passive adjudicators but also actors responsible for ensuring the effective implementation of legal norms to achieve substantive justice. This variation indicates existence inconsistency potential practices cause uncertainty law and disparity protection right between One case by case other.

Table 1 : Findings Study Implementation of the Judge's *Ex Officio* Authority in Divorce Decisions at the Pamekasan Religious Court

No	Nomor Putusan	Pencantuman Nafkah Iddah & Mut'ah	Pencantuman Nafkah Anak	Rujukan Eksplisit Pasal 41	Pola Penetapan	Keterangan Temuan
1	1205/Pdt. G/2025/PA.PMK,	Tidak dicantumkan secara eksplisit	Dicantumkan	Dirujuk secara implisit	Parsial	Hakim menetapkan nafkah anak tetapi tidak menetapkan nafkah iddah dan mut'ah
2	1514/Pdt. G/2023/PA.PMK,	Tidak dicantumkan	Tidak dicantumkan	Tidak dirujuk secara eksplisit	Tidak digunakan	Amar hanya memutuskan pokok perceraian tanpa hak finansial
3	1630/Pdt. G/2024/PA.PMK	Dicantumkan	Dicantumkan	Dirujuk secara eksplisit	Digunakan secara aktif	Hakim menetapkan hak finansial meskipun tidak seluruhnya dimohonkan dalam peti-tum

In part analyzed decisions, considerations the law explicitly referring to the provisions of Article 41 of Law Number 1 of 1974 and the Compilation of Islamic Law as base normative determination obligation living child. However, in the decision otherwise, reference to Article 41 is not explicitly included in the considerations. law, The absence of explicit reference to Article 41 indicates that not all panels of judges use this provision as a central normative argument in their legal reasoning. although the substance of the norm is relevant to the case being examined. The absence of references This explicitly shows that not all panels of judges make Article 41 as base argumentation normative in amar decision, so that show existence difference construction reasoning law between judges in understanding obligation post- divorce finances.

Results study identify a number of factors that influence judges in using or not using authority *ex officio*. First, consideration of principles *ultra petita partium* Still become factor dominant, where some judges are careful not to rule exceed the claims filed by the plaintiff. Second, the aspect evidence in court participate influence, especially regarding ability husband's economy and needs real children. In some matter, absence proof about husband's

income becomes reasons for not setting a specific nominal amount of maintenance. Third, considerations ability husband's economy becomes important variables in determining whether or not there is determination living as well as magnitude. Fourth, perspective protection women and children also play a role, these factors show that the application of *ex officio* authority is influenced not only by written legal norms but also by judicial interpretation, evidentiary considerations, and the judge's commitment to substantive justice, especially in decisions that are progressive set living children to ensure sustainability post- divorce maintenance. These factors indicate that use authority *ex officio* not only influenced by legal norms written, but also by consideration procedural, evidentiary, and judges' sensitivity to principles justice substantive and interests best child.

Table 2: Analysis of Influencing Factors Use of *Ex Officio* Authority

Faktor	Indikasi dalam Putusan	Dampak terhadap Amar Putusan
Asas <i>Ultra Petita Partium</i>	Hakim berhati-hati memutuskan di luar petitum	Tidak ditetapkannya nafkah jika tidak dimohonkan
Pembuktian	Tidak ada bukti rinci penghasilan suami	Tidak ditentukan nominal nafkah secara spesifik
Kemampuan Ekonomi Suami	Dipertimbangkan dalam menentukan besaran nafkah	Penetapan nafkah bersifat proporsional
Perlindungan Perempuan & Anak	Pertimbangan kepentingan terbaik anak	Hakim menetapkan nafkah anak meskipun tidak dirinci dalam gugatan

Overall, the results This research strengthens existence *normative–practical gap* between construction the imperative of Article 41 of the Marriage Law and its implementation in practice religious courts. Although legal norms give sufficient basis strong for judges to actively determine right financial wife and children, practice at the Pamekasan Religious Court shows that authority *ex officio* Not yet fully understood and implemented as obligation consistent law. This finding becomes important basis for further discussion regarding urgency affirmation doctrinal that authority *ex officio* in the case divorced sue is obligation juridical, not just choice judicial discretion.

Non-Inclusion of the Right to Maintenance and Inconsistency of the Decision

Analysis of divorce lawsuit decisions at the Pamekasan Religious Court shows that not all judgments explicitly include provisions on iddah maintenance, mut'ah, and child support in the operative part of the judgment. According to Soerjono Soekanto, court decisions

in practice often emphasize the formal resolution of disputes without fully considering the broader legal consequences regulated by law (Delzanty & Taupiqurrahman, 2025; Soekanto & Mamudji, 2014). Normatively, Article 41 of Law Number 1 of 1974 concerning Marriage establishes that the father bears responsibility for the maintenance and education of children after divorce. This provision therefore contains an imperative legal obligation, not merely a declarative guideline. Consequently, divorce judgments should not only terminate the marital relationship but must also determine the legal consequences arising from the dissolution of marriage. This is in line with research (Nurhayati et al., 2021) which shows that in many decision divorced sue in religious court, even though right financial wife and children legally relevant, it is the judge's obligation to determine it Not yet running optimally (Ramadhani, 2026).

Within the framework of progressive legal theory, law should not merely be viewed as a written norm but as an instrument to achieve substantive justice in society (Aulia, 2018; Lorenza & Mulyadi, 2026). From this perspective, the omission of maintenance provisions in divorce judgments reflects a gap between the normative construction of Article 41 and its practical application in judicial decision-making. If the judge only cut off main divorce without set right financial matters attached to Article 41, then the decision has the potential ignore principal justice substantive and protection of vulnerable parties such as women and children, even though law set it as not quite enough answered the father. This study found that This practice gives rise to disparity between decision One case by case others, so that give effect uncertainty law for seeker justice (Saputra, 2025; Suhariyanto et al., 2024).

***Ex Officio* Rights Between Decisions**

A comparison of the analyzed decisions demonstrates variations in the use of *ex officio* authority by judges. In some cases, judges actively determine child support even though it was not explicitly requested in the *petitum*, However, in other decisions the judges did not exercise the same authority and only granted the divorce claim. This variation indicates that judicial interpretation of *ex officio* authority differs among judges, resulting in inconsistent outcomes across similar cases. Methodologically, the term “inconsistency” refers to disparities in judicial reasoning and outcomes in cases that share similar legal circumstances, which may lead to unequal protection of rights. This phenomenon is consistent with the findings (Rifa'i, 2023) which state that implementation authority *ex officio* in the system

religious courts still understood differently by the panel of judges, often influenced by custom judicial and perception on principle *ultra petita partium* (Yanggo & Az, 2002).

The concept of judicial activism in family law emphasizes that judges are not merely mechanical appliers of legal rules but are responsible for ensuring the protection of normative rights, particularly for vulnerable parties (Tate, 1995). In Islamic family law, women and children are often considered vulnerable parties in divorce proceedings. Therefore, the exercise of *ex officio* authority becomes an important judicial instrument to guarantee their legal protection. When the judge does not utilize authority *ex officio* even though the legal norms allow and even mandate the obligation to guarantee right children and wife, then the role of the judge as agent justice substantive become less than optimal (Pramassari, Caniago, Al Imtiyaz, et al., 2025). Therefore, variations in this implementation indicate that judge's interpretation of authority *ex officio* often depends on understanding individual, not on understanding consistent juridical.

Normative References in Legal Considerations

Furthermore, related to consideration the judge's law which sometimes refers explicitly to Article 41 of the Marriage Law and sometimes does not. In decisions that refer to normative, judges tend to show awareness that these provisions are base juridical for obligation post- divorce maintenance. However, when reference to Article 41 is not explicitly stated, this indicates approach reasoning laws that are more specific textual and procedural, as well as not enough notice context comprehensive protection law (Ardiyanto & Wibowo, 2024).

This is in accordance with the opinion that the application of norms in court decisions must be notice context social and goals broader law, especially in civil law close -knit family in relation to rights human rights. References explicit to the norm not only form formal obedience, but also constitutes indicator that judges understand and use norms optimally in the context protection rights of interested parties (Uno et al., 2021). Nothingness references explicit can cause weakness argumentative which has implications for quality decisions and legitimacy judicial in general.

Factors Influencing the Use of *Ex Officio* Authority

Several factors influence judges in exercising *ex officio* authority, including the *ultra petita partium* principle, evidentiary considerations, the husband's economic capacity, and the protection of women and children (Sukma, 2018). The *ultra petita partium* principle is often interpreted narrowly as a prohibition for judges from deciding beyond the parties'

claims, However, in family law disputes, strict adherence to procedural principles may conflict with the need to ensure substantive justice, particularly when the rights of women and children are at stake. so that the judge becomes reluctant set right financial which is not explicitly requested in the petitum. However, (R. Abdullah & Khairuddin, 2009) confirm that in context law family, this principle should not prevent judges from set normative rights attached, especially If this is necessary for fulfillment justice substantive.

Evidentiary limitations, particularly regarding the husband's economic capacity, are often used as reasons for limiting the determination of maintenance obligations. Nevertheless, the existence of financial obligations should not depend solely on evidentiary limitations, since Article 41 establishes the father's responsibility as a legal obligation following divorce. According to research (Haq et al., n.d.), judge in the case family often too much relies on formal evidence and ignores actual material considerations relevant to ensure minimum needs of wife and children. Meanwhile that aspect ability husband's economy indeed relevant to determine big small livelihood, but not to determine whether or not there is this obligation, because Article 41 of the Marriage Law has put draft not quite enough answer as obligations that must be fulfilled filled by father (Noviyanti, 2025).

In addition, the judge's sensitivity to protection women and children proven become important variables that drive use authority *ex officio*. This is in line with legal theory right basic, which places protection right child as priority main in the case family where interests best child become gauge measuring main. When the judge considers holistically aspect social, economic and protection rights, use authority *ex officio* tend to be more progressive and consistent with the goals protection laws mandated by law (Pramassari et al., 2025) .

Overall, the findings demonstrate the existence of a normative–practical gap between Article 41 of the Marriage Law and judicial practice at the Pamekasan Religious Court. This gap arises because *ex officio* authority is often interpreted as discretionary power rather than a juridical obligation inherent in the judicial function. From a doctrinal perspective, *ex officio* authority should therefore be reconstructed as an official duty of judges in divorce litigation cases, particularly when the rights of women and children are involved. This inconsistency shows that although runway normative Enough strong, understanding juridical judge regarding obligations *ex officio* Still influenced by factors procedural, evidentiary, and sensitivity to aspects social. This discussion emphasizes that interpretation and application authority *ex officio* must see No as just room discretion, but as obligation juridical rights attached to the

position of judge in order to guarantee justice substantive and protection right Woman as well as children, according to the purpose law family national. (Prianto & Ambarwati, 2025)

Non-inclusion living iddah, mut'ah, and living child in amar decision divorced the lawsuit at the Pamekasan Religious Court shows existence problem conceptual in understanding character normative Article 41 of Law Number 1 of 1974 concerning Marriage. Systematically, these provisions not only nature declarative, but contain order imperative that consequence law divorce must accompanied by arrangement not quite enough responsibility towards children and possible obligations towards former wife. Thus, when amar decision only load granting lawsuit divorced without set consequence financially, then construction laws that are formed become partial and potential ignore dimensions protection social from law family. In the perspective of systems theory law, this condition shows existence asynchrony between structure (judge as apparatus enforcer law), substance (norms of Article 41), and legal culture (method judge's view of ex officio authority) (Friedman, 2024). Decisions that do not include rights the financial in the end only finish formal aspects of termination marriage, but not yet fully finish consequence the law comprehensively. This has implications for the birth of new burden for ex-wife and children, who must return go through effort other laws to obtain rights that should be established all at once in one verdict.

Variation implementation ex officio authority between decision the more show that practice justice still very dependent on subjectivity and orientation judicial decision of each judge. In a progressive decision, the judge positions himself as *guardian of justice* who actively ensures fulfillment right child even though it is not explicitly requested. (Idary et al., 2024) In contrast, in a more restrictive decision, the judge limits oneself in the petitum and avoid the possibility of being considered violate principle *ultra petita par* (Aman, 2025) *tium*. However, in the context law family, this principle cannot be understood rigidly as in the case civil normal, because there is interest public and the interests of vulnerable parties that must be protected. When ex officio authority is understood solely as choice discretionary, then what happens is disparity protection law: children in one case get guarantee livelihood, while children in other cases do not, though condition normative similar. This disparity is not only cause uncertainty law, but also has the potential violate principle *equality before the law*, because equal rights treated different consequence difference judge's interpretation (Ashari, 2024) . Because that, is necessary construction more assertive doctrine that ex officio authority in cases divorced sue is part from obligation position (official duty), no just right optional.

Differences in references explicit consideration of Article 41 of the Marriage Law in the consideration the law also shows variation quality argumentation juridical between decision. A decision that explicitly base the ruling in Article 41 and the Compilation of Islamic Law shows existence awareness normative that obligation living is consequence law direct from divorce (BPK Regulation, 1991) (Mahmudah, 2019) . On the other hand, when the norm is not explicitly referred to, the argument law become not enough comprehensive and tends to nature procedural.

In the theory of reasoning law, reference normative No only problem formality, but is form legitimacy rationale that strengthens binding power of the decision. The absence of references explicit can cause impression that determination (or non- determination) of maintenance just consideration factual solely, not order normative law. The impact is the quality of reasoning in decisions become not enough transparent and difficult made into precedent argumentative for case similar in the future. In term long, this practice can weaken consistency jurisprudence and inhibit formation standard uniform protection in the environment religious courts.

Factors that influence use ex officio authority shows that the judge is in a tug of war between compliance procedural and demands justice substantive. *Ultra petita principle partium* often understood literally as prohibition absolute deciding outside the petitem, even though it is in law family there is dimensions protection that allows exceptions in the interest of best children. (Aman, 2025) Likewise, the aspect proof about ability husband's economy often made into reasons for not setting the nominal maintenance Thus, divorce decisions should not merely declare the dissolution of marriage but must also determine the legal consequences related to post-divorce financial responsibilities. even though in principle the obligation remains there is. In this context, the judge should be able to use approach more progressive proof, for example by considering standard minimum needs of children or using estimate proportional based on condition social economics revealed at the trial. Consideration's ability economy of course relevant to determine quantity, but not to negate obligation That itself. In addition, the judge's sensitivity to the perspective protection women and children proven become factor determinant. The judge who has orientation protection right basic tend to be more active in using ex officio authority, because look at divorce No just termination relation private, but also events laws that have an impact social wide.

In an integrative manner, all This finding confirms existence gap between construction normative Article 41 of the Marriage Law and its implementation In practice, the

Pamekasan Religious Court. Normatively, the obligation post-divorce maintenance is consequence laws that are inherent and independent entirely at the request of the party. However, in practice, its implementation still fluctuating and influenced by the individual interpretation of judges. This gap shows the need strengthening doctrine that *ex officio* authority in cases divorced suing is an obligation juridical inherent in the function judiciary in law family. This affirmation can be done through guidelines technical justice, strengthening training perspective protection children and women, as well as formation consistent jurisprudence. Thus, the decision divorce no longer stops at the declaration break up marriage, but also comprehensively ensure sustainability rights financially vulnerable parties. This approach is in line with the objectives law family national, namely create justice substantive, certainty law and protection right human rights, especially for child as the most affected subjects from incident divorce.

CONCLUSION

An analysis of divorce decisions filed at the Pamekasan Religious Court shows that the judge's *ex officio* authority has not been consistently applied in every case. Not all decisions explicitly stipulate *iddah* maintenance and *mut'ah* compensation, and child support in the ruling, even though Article 41 of Law Number 1 of 1974 concerning Marriage provides a clear normative basis for a father's responsibility for the care and education of children, as well as potential obligations toward his ex-wife. This situation demonstrates a gap between imperative legal norms and their implementation in judicial practice. This gap indicates that the normative construction of Article 41 has not been fully internalized as a binding judicial obligation in divorce litigation cases.

A comparison of the analyzed decisions also shows variations in the use of judges' *ex officio* authority. In some cases, case, the judge actively determines financial rights while in other cases the decision is limited to granting the divorce without determining post-divorce financial obligations. This variation shows that authority *ex officio* is still interpreted within the framework of individual judicial discretion, not as obligation juridical matters attached to the position. Such interpretation leads to disparities in legal protection and creates potential legal uncertainty for parties in similar cases. As a result, there appears disparity protection potential laws cause uncertainty and injustice for the parties.

Judicial reasoning in the operative part of the judgment further confirms these dynamics. In decisions that explicitly refer to Article 41 of the Marriage Law, the legal reasoning

tends to be more systematic and demonstrates normative awareness regarding post-divorce financial obligations. On the other hand, in a decision that does not include references explicitly, the obligation does not appear to be positioned as an imperative norm. Factors such as the interpretation of the *ultra petita partium* principle, evidentiary limitations, the husband's economic capacity, and judicial sensitivity toward the protection of women and children significantly influence the application of *ex officio* authority in practice.

This study therefore contributes to the doctrinal development of Indonesian family law by positioning judges' *ex officio* authority as an official duty to ensure post-divorce protection for women and children.

REFERENCES

- Abdullah, A. (2020). Teori Terbentuknya Lembaga Adat. *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang*
- Abdullah, R., & Khairuddin, S. (2009). The Malaysian Shari'ah Courts: Polygamy, Divorce and the Administration of Justice. In *Asian Women*. dialogue.um.edu.my.
- Ahmad, A., Fachrurrazy, M., Amalia, M., Fauzi, E., Gaol, S. L., & ... (2024). *Buku Ajar Metode Penelitian & Penulisan Hukum*. books.google.com.
- Aman, M. M. (2025). *Pengecualian Asas Ne Eat Index: Ultra Petita Partium Dalam Perkara Cerai Gugat (Studi atas Putusan Pengadilan Agama Batang Nomor 960/Pdt. G/2023* UIN KH Abdurrahman Wahid
- Ardiyanto, F., & Wibowo, A. (2024). Konsep dan Filosofi Pemidanaan Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual. *Prosiding Seminar Hukum Aktual*, 2(3), 12–23.
<https://doi.org/https://doi.org/10.33650/jhi.v9i1.11183>
- Ashari, Z. S. (2024). Exceptio Dilatoria in the Indonesian Context: Implementation of Justice and Legal Certainty from Radbruch's Perspective. *Peradaban Journal of Law and*
- Aulia, M. Z. (2018). Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi. *Undang: Jurnal Hukum*, 1(1), 159–185.
<https://doi.org/10.22437/ujh.1.1.159-185>
- Delzanty, K., & Taupiqqurrahman, T. (2025). Urgensi Regulasi Pendampingan Psikologis dalam Eksekusi Putusan Hak Asuh. *JURNAL USM LAW REVIEW*, 8(3), 2562–2580. <https://doi.org/10.26623/julr.v8i3.13102>
- Fathurrohmah, F. (2022). JUDGE'S EX OFFICIO AUTHORITY ON THE CASE OF TALAK-DIVORCE; MAQASID SHARI'AH PERSPECTIVE: Study of Judgment of Nganjuk Religious Court : *Jurnal Penelitian Hukum Islam*.
- Friedman, L. M. (2024). Hukum dan Perubahan Sosial. In *SOSIOLOGI HUKUM*. Duta Sains Indonesia.
- Hadjon, P. M. (1987). *Perlindungan Hukum Bagi Rakyat Indonesia*. PT. Bina Ilmu.
- Haq, Q. N., Anindita, A. A., Setyowati, E., & Lin, P. (n.d.). Mediasi Desa: Upaya Berhukum Dengan Kearifan Lokal. *E-Journal.Metrouniv.Ac.Id*.
- Hassan, R., Ilias, I. I., & Ibrahim, T. (2022). Islamic Banking Dispute Resolution: The Experience of Malaysia and Indonesia. *IIUM Law Journal*, 30, 317–358.
<https://doi.org/10.31436/iiumlj.v30iS2.771>
- Idary, M. T., Sururie, R. W., & Fautanu, I. (2024). Hak-hak perempuan dalam cerai gugat. In *EKOM4: Jurnal Ekonomi* hukumku.com.

- Jamiatul Hasanah, & Wisri Wisri. (2021). Interaksi Simbolik Tradisi Pandhaba di Situbondo. *Maddah : Jurnal Komunikasi Dan Konseling Islam*, 3(2), 107–113. <https://doi.org/10.35316/maddah.v3i2.1336>
- Jamil, A., & Nur, M. (2022). Perlindungan Hukum Dan Keadilan Para Pihak Melalui Ex Officio Hakim Dalam Putusan Verstek Perkara Perceraian. *Jurnal Hukum Ius Quia Iustum*, 29(2), 439–460. <https://doi.org/10.20885/iustum.vol29.iss2.art10>
- Lorenza, T. N., & Mulyadi, A. (2026). Membaca Arah Politik Hukum Indonesia: Telaah Kritis Terhadap Logika Pembentukan Hukum Nasional. *Asas Wa Tandhim: Jurnal Hukum, Pendidikan Dan Sosial Keagamaan*, 5(1), 133–152. <https://doi.org/https://doi.org/10.47200/awtjhpasa.v5i1.3089>
- Mahmudah, N. (2019). Aspek Sosiologis Dalam Putusan Pengadilan Pada Perkara Cerai Gugat. *Nizham Journal of Islamic Studies*.
- Maimun, M., Toha, M., & Arifin, M. (2019). Fenomena Tingginya Angka Cerai Gugat dan Faktor Penyebabnya: Analisis Reflektif Atas Kasus-Kasus Perceraian di Madura. *Islamuna: Jurnal Studi Islam*, 5(2), 157. <https://doi.org/10.19105/islamuna.v5i2.2105>
- Noviyanti, A. (2025). *PENEGAKAN HUKUM TERHADAP PELAKU TINDAK PIDANA PENCEMARAN LINGKUNGAN YANG DISEBABKAN LIMBAH KOTORAN HEWAN DI KABUPATEN ...*. rama.uniku.ac.id.
- Nurhayati, Y., Ifrani, & Said, M. Y. (2021). Metodologi Normatif dan Empiris dalam Perspektif Ilmu Hukum. *Jurnal Penegakan Hukum Indonesia*, 2(1), 2–20. <https://doi.org/10.51749/jphi.v2i1.14>
- Peraturan BPK. (1991). *KOMPILASI HUKUM ISLAM*. 1–2.
- Pramassari, H. R., Caniago, V. A., Al Imtiyaz, R., Anjani, A. B. R., Irawan, T., Rafsanjani, R. A., Firdaus, M. R., & Pangestu, D. A. (2025). Optimalisasi Kewenangan Ex-Officio Hakim Pengadilan Agama Untuk Perlindungan Perempuan Dan Anak. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(6), 11168–11176. <https://doi.org/https://doi.org/10.61104/alz.v3i6.2912>
- Pramassari, H. R., Caniago, V. A., & Imtiyaz, R. Al. (2025). *Optimalisasi Kewenangan Ex-Officio Hakim Pengadilan Agama Untuk Perlindungan Perempuan Dan Anak*. 11168–11176.
- Prianto, K. M., & Ambarwati, M. D. (2025). Perlindungan Hak Perempuan dan Anak dalam Perkara Perceraian di Pengadilan Agama. *Jurnal Ilmiah ...*
- Rahardjo, S. (2012). *Ilmu Hukum*. Citra Aditya Bakti.
- Ramadhani, R. (2026). Penerapan peraturan Mahkamah Agung nomor 3 tahun 2017 dalam perkara cerai gugat di pengadilan agama Medan. *EduYustisia*, 4(3), 25–30.
- Rasida. (2025). *Implementasi Perlindungan Hak Anak Pasca Perceraian di Kota Parepare Perspektif Hukum Islam* [Institut Agama Islam Negeri Parepare]. <https://repository.iainpare.ac.id/id/eprint/10943/1/2320203874130014.pdf>

- Rifa'i, I. J. (2023). Ruang Lingkup Metode Penelitian Hukum. *Metodologi Penelitian Hukum*.
- Sahara, A. M., & Raharjo, P. S. (2022). Asas-asas Hukum Acara Mahkamah Konstitusi. In *Sovereignty*.
- Sakira, G., Baihaqi, Y., & Fikri, A. (2024). Penerapan Hak Ex Officio Hakim dalam Melindungi Hak Istri. *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 5(2), 188–201. <https://doi.org/https://doi.org/10.24042/el-izdiwaj.v5i2.21534>
- Saputra, E. (2025). *Mendesain Ulang Keadilan: Reformasi Hukum Perceraian Dalam Sistem Peradilan Agama*. Star Digital Publishing.
- Soekanto, S., & Mamudji, S. (2014). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajagrafindo Persada.
- Suhariyanto, D., Philona, R., Yudhanti, R., Muslim, I., Radini, R., Qurbani, I. D., Al Attas, S. M., Erham, E., Haryanti, D., & Amalia, R. (2024). *Hukum Acara Mahkamah Konstitusi*. CV. Gita Lentera.
- Sukma, A. A. (2018). *Hak Ex Officio dan Aktifnya Hakim dalam Persidangan (Analisis tentang Pemenuhan Hak-hak Istri)* [Institut Agama Islam Negeri Parepare]. <http://repository.iainpare.ac.id/id/eprint/847/>
- Tate, C. N. (1995). Why the expansion of judicial power. *The Global Expansion of Judicial Power*, 27, 28–33.
- Uno, A., Samsudin, T., & Sumanto, D. (2021). Pernikahan Tanpa Persetujuan Salah Satu Pihak dalam Perspektif Hukum Perdata dan Hukum Islam. *Al Qadhi*, 4(1), 38–48. [https://doi.org/Pernikahan tanpa Persetujuan Salah Satu Pihak dalam Perspektif Hukum Perdata dan Hukum Islam](https://doi.org/Pernikahan%20tanpa%20Persetujuan%20Salah%20Satu%20Pihak%20dalam%20Perspektif%20Hukum%20Perdata%20dan%20Hukum%20Islam)
- Yanggo, C. T., & Az, H. A. H. A. (2002). *Problematika Hukum Islam Kontemporer*. Jakarta: Pustaka Firdaus.

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PEMBAHARUAN HAK WARIS PEREMPUAN DI TURKI DALAM THE TURKISH CIVIL CODE PASAL 495 PERSPEKTIF MAQASID SYARI'AH

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ABSTRACT

The reform of family law in Muslim countries often encounters tensions between classical Islamic legal norms and the demands of modernity, particularly concerning gender equality in inheritance law. Turkey represents one of the most significant examples of legal reform through the enactment of the *Turkish Civil Code* in 1926, which replaced the Islamic family law system with a modern civil law framework. Article 495 of the code establishes the principle of equal inheritance rights between men and women without gender discrimination. This study aims to analyze the reform of women's inheritance rights in Turkey under Article 495 of the *Turkish Civil Code* from the perspective of *maqasid al-shari'ah*, while examining the dialectic between normative Islamic legal texts and the socio-historical context underlying the reform. This research employs a qualitative method using a normative-juridical approach combined with historical and conceptual approaches. Data were collected through library research on relevant primary and secondary legal sources. The findings indicate that although Article 495 formally differs from the distributive formula of classical Islamic inheritance law, the reform can be understood as a reinterpretation of distributive justice within the framework of *maqasid al-shari'ah*, particularly in terms of the protection of property (*hifz al-mal*) and social justice. The reform reflects an effort to adapt inheritance law to the changing social responsibilities of men and women in modern society. Therefore, the reform of inheritance law in Turkey may be viewed as a form of contextual *ijtihad* within modern family law policy aimed at achieving public welfare, gender equality, and substantive justice.

Keywords: inheritance law; women; Turkish Civil Code; gender justice; maqasid al-shari'ah.

ABSTRAK

Pembaharuan hukum keluarga di negara-negara Muslim sering menghadapi ketegangan antara norma hukum Islam klasik dan tuntutan modernitas, khususnya dalam isu kesetaraan gender dalam hukum waris. Turki menjadi salah satu negara yang melakukan reformasi radikal melalui pemberlakuan *The Turkish Civil Code* tahun 1926 yang menggantikan sistem hukum keluarga Islam dengan sistem hukum perdata modern. Pasal 495 dalam kodifikasi tersebut menetapkan prinsip kesetaraan hak waris antara laki-laki dan perempuan tanpa perbedaan gender. Penelitian ini bertujuan untuk menganalisis pembaharuan hak waris perempuan di Turki melalui Pasal 495 *The Turkish Civil Code* dalam perspektif *maqasid syari'ah*, serta menelaah dialektika antara teks normatif hukum Islam dan konteks sosial-historis yang melatarbelakangi reformasi tersebut. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis-normatif yang dipadukan dengan pendekatan historis dan konseptual. Data diperoleh melalui studi kepustakaan terhadap sumber hukum primer dan sekunder yang relevan. Hasil penelitian menunjukkan bahwa meskipun ketentuan Pasal 495 secara formal berbeda dengan formulasi pembagian waris dalam fiqh mawaris klasik, reformasi tersebut dapat dipahami sebagai reinterpretasi prinsip keadilan distributif dalam kerangka *maqasid syari'ah*, khususnya dalam aspek perlindungan harta (*hifz al-mal*) dan keadilan sosial. Reformasi ini merefleksikan upaya menyesuaikan hukum kewarisan dengan perubahan struktur tanggung jawab sosial antara laki-laki dan perempuan dalam masyarakat modern. Dengan demikian, pembaharuan hukum waris di Turki dapat diposisikan sebagai bentuk *ijtihad* kontekstual dalam kebijakan hukum keluarga yang berorientasi pada kemaslahatan, kesetaraan gender, dan keadilan substantif.

Kata kunci: hukum waris; perempuan; Turkish Civil Code; keadilan gender; maqasid syari'ah.

PENDAHULUAN

Terjadinya pembaharuan hukum dalam dunia Islam dimulai pada abad ke 19, saat Kerajaan Turki Utsmani mulai mengimportasi hukum-hukum perdagangan dan pidana barat. (Fuad, 2019) Sehingga, negara-negara dibawah kekhalfahan Turki Utsmani secara praktis diatur oleh undang-undang tersebut. Tiga fase gerakan pembaharuan hukum keluarga di dunia Islam. Fase pertama, diawali oleh pembaharuan hukum keluarga yang dilakukan Turki pada tahun 1915 dan 1917. Fase kedua, diresmikannya agama Islam dalam beberapa negara baru dan menjadikan hukum keluarga sebagai pengaturannya. Fase ketiga, sejak 1971-sekarang beberapa negara melakukan reformasi dan inovasi hukum keluarga. (Fuad, 2019)

Terdapat tiga kelompok negara yang memberlakukan hukum keluarga berdasarkan pendekatan yuridis yang diterapkan. Pertama, negara-negara yang tetap mempertahankan hukum keluarga islam klasik tanpa adanya kodifikasi. Kedua, negara-negara yang tetap mengakui keberlakuan hukum keluarga islam namun telah melakukan reformasi melalui proses legislasinya modern. Ketiga, negara-negara yang telah sepenuhnya meninggalkan sistem hukum keluarga islam dan menggantikannya dengan hukum positif modern. (Dahrial et al., 2025) Turki menjadi salah satu yang termasuk ke dalam kategori negara yang telah sepenuhnya meninggalkan hukum keluarga islam.

Turki menjadi contoh menarik dalam praktik pembaharuan hukum keluarga terlebih dalam hal waris, Setelah diberlakukannya *The Turkish Civil Code* tahun 1926 yang mengadopsi sistem hukum sipil Swiss dan secara tegas menghapus penerapan hukum waris Islam dalam sistem hukum negara. (Yuniarti et al., 2023) Pasal 495 *The Turkish Civil Code* mengatur prinsip kesetaraan hak waris antara laki-laki dan perempuan tanpa diskriminasi gender. Kebijakan ini menandai pergeseran paradigma hukum yang signifikan, dari sistem kewarisan berbasis agama menuju sistem hukum nasional yang berlandaskan prinsip sekularisme, kesetaraan warga negara, dan keadilan formal. Pembaharuan tersebut tidak hanya berdampak pada struktur hukum keluarga, tetapi juga merepresentasikan ijtihad politik-hukum Mustafa Kemal Atatürk dalam merespons tantangan modernitas.

Hukum kewarisan merupakan salah satu aspek fundamental dalam sistem hukum keluarga yang tidak hanya mengatur distribusi harta peninggalan, tetapi juga merefleksikan konstruksi nilai keadilan, relasi gender, dan struktur sosial dalam suatu masyarakat. Dalam tradisi hukum Islam klasik, ketentuan waris disusun secara normatif dan detail dalam Al-Qur'an, khususnya dalam Surah an-Nisā' ayat 11, 12, dan 176, yang kemudian dielaborasi lebih lanjut oleh para fuqaha melalui kerangka fiqh mawaris. Ketentuan tersebut pada

masanya dimaksudkan sebagai instrumen korektif terhadap praktik patriarkal pra-Islam yang menafikan hak ekonomi perempuan. Oleh karena itu, dasar waris dalam Islam pada hakikatnya berangkat dari prinsip keadilan, perlindungan sosial, dan distribusi harta yang proporsional sesuai dengan struktur sosial masyarakat awal Islam. Sebagaimana jika dilihat dari asbabun nuzul ayat yang mengatur pembagian hak waris. (Andaryuni, 2018)

Namun demikian, perkembangan masyarakat modern dengan kompleksitas relasi sosial, ekonomi, dan politik yang semakin dinamis menuntut adanya pembacaan ulang terhadap hukum waris. Perubahan peran sosial perempuan, meningkatnya partisipasi perempuan dalam sektor publik, serta prinsip kesetaraan hak warga negara dalam sistem hukum modern menjadi tantangan serius bagi penerapan hukum waris klasik secara literal. (Rozi & Muar, 2024) Dalam konteks ini, teori-teori kewarisan kontemporer muncul sebagai upaya untuk menjembatani ketegangan antara norma teks keagamaan dan realitas sosial yang terus berubah.

Dialektika antara teks dan konteks dalam hukum waris menjadi isu krusial dalam diskursus pembaharuan hukum Islam di berbagai negara Muslim, termasuk Turki. Teks hukum waris Islam yang bersifat normatif sering kali diposisikan sebagai aturan final dan absolut, sementara konteks sosial dipandang sekadar sebagai faktor eksternal. Padahal, sejarah pembentukan hukum Islam menunjukkan adanya interaksi yang intens antara teks wahyu dan realitas sosial masyarakat. Dengan demikian, pembaharuan hukum waris tidak dapat dilepaskan dari upaya mendialogkan teks keagamaan dengan konteks sosial, politik, dan hukum yang melingkupinya. (Rohmawati, 2021) Dialektika ini meniscayakan pendekatan ijtihad yang kontekstual, rasional, dan berorientasi pada maqasid syari'ah khususnya keadilan (*al-'adl*) dan kemaslahatan (*al-maslahah*).

Pembaharuan hak waris perempuan di Turki melalui Pasal 495 *The Turkish Civil Code* menimbulkan perdebatan teoretis dan normatif, khususnya terkait legitimasi pembaharuan hukum terhadap teks keagamaan. Di satu sisi, kebijakan tersebut dipandang sebagai bentuk dekonstruksi terhadap hukum waris Islam klasik; di sisi lain, ia juga dapat dipahami sebagai upaya realisasi nilai keadilan substantif yang sejalan dengan tujuan dasar syariat. Oleh karena itu, kajian terhadap pembaharuan hak waris perempuan di Turki menjadi penting untuk menelaah bagaimana dialektika antara teks dan konteks diwujudkan dalam praktik legislasi modern, serta sejauh mana pembaharuan tersebut dapat diposisikan sebagai bentuk ijtihad kontemporer dalam hukum keluarga Islam.

Berdasarkan latar belakang tersebut, artikel ini bertujuan untuk menganalisis pembaharuan hak waris perempuan di Turki dengan fokus pada *The Turkish Civil Code* Pasal 495 melalui pandangan maqasid syari'ah, dengan meninjau dasar dan teori kewarisan, serta mengkaji dialektika antara teks normatif dan konteks sosial-historis yang melatarbelakangi lahirnya kebijakan tersebut. Kajian ini diharapkan dapat memberikan kontribusi teoretis dalam pengembangan wacana hukum waris Islam kontemporer serta menjadi rujukan dalam diskursus reformasi hukum keluarga di dunia Muslim.

METODE PENELITIAN

Penelitian ini merupakan penelitian kualitatif dengan pendekatan yuridis-normatif yang dipadukan dengan pendekatan historis dan konseptual. Pendekatan yuridis-normatif digunakan untuk mengkaji norma-norma hukum yang mengatur hak waris perempuan dalam *The Turkish Civil Code* Pasal 495, serta untuk menelaah ketentuan-ketentuan hukum waris dalam fiqh Islam klasik sebagai basis perbandingan normatif. Sementara itu, pendekatan historis digunakan untuk menelusuri latar belakang sosial, politik, dan hukum yang melandasi lahirnya pembaharuan hukum waris di Turki, khususnya pada masa reformasi hukum yang dipelopori oleh Mustafa Kemal Atatürk. Adapun pendekatan konseptual digunakan untuk menganalisis teori-teori kewarisan dan gagasan dialektika antara teks dan konteks dalam hukum Islam kontemporer.

Jenis penelitian ini bersifat penelitian kepustakaan (*library research*), dengan sumber data yang diperoleh dari bahan hukum primer, sekunder, dan tersier. Bahan hukum primer meliputi teks resmi *The Turkish Civil Code* tahun 1926 beserta perubahannya, khususnya Pasal 495, serta sumber normatif hukum Islam seperti Al-Qur'an, hadis, dan kitab-kitab fiqh mawaris klasik. Bahan hukum sekunder terdiri atas karya ilmiah berupa buku, jurnal akademik, artikel, dan disertasi yang membahas hukum waris Islam, pembaharuan hukum keluarga di Turki, pemikiran Mustafa Kemal Atatürk, serta teori-teori reinterpretasi hukum Islam kontemporer.

Teknik pengumpulan data dilakukan melalui studi dokumentasi, yaitu dengan menelusuri, menginventarisasi, dan mengkaji secara kritis dokumen-dokumen hukum serta literatur yang relevan dengan fokus penelitian. Proses ini mencakup pengumpulan teks peraturan perundang-undangan, naskah pidato dan kebijakan hukum, serta literatur tafsir dan fiqh yang berkaitan dengan hukum kewarisan. Seluruh data yang terkumpul kemudian

diklasifikasikan berdasarkan tema, seperti dasar normatif hukum waris, teori kewarisan, kedudukan perempuan dalam hukum waris, dan pembaharuan hukum waris di Turki.

Analisis data dalam penelitian ini dilakukan dengan menggunakan metode analisis kualitatif-deskriptif dan analisis komparatif-konseptual. Analisis kualitatif-deskriptif digunakan untuk menggambarkan secara sistematis ketentuan hukum waris perempuan dalam *The Turkish Civil Code* Pasal 495 serta konsep hukum waris dalam fiqh Islam klasik. Sementara itu, analisis komparatif dilakukan untuk membandingkan prinsip-prinsip kewarisan antara hukum waris Islam klasik dan hukum perdata Turki modern, khususnya dalam aspek pembagian hak waris antara laki-laki dan perempuan. Analisis konseptual digunakan untuk menelaah pembaharuan hukum tersebut dalam perspektif dialektika antara teks dan konteks, serta dalam kerangka teori keadilan substantif dan maqasid syari'ah.

Untuk menjaga validitas dan keabsahan data, penelitian ini menggunakan triangulasi sumber, yakni dengan membandingkan berbagai literatur dan dokumen hukum dari beragam perspektif keilmuan. Selain itu, peneliti juga melakukan penelaahan kritis terhadap konsistensi argumentasi dan relevansi teori yang digunakan dalam menganalisis pembaharuan hak waris perempuan di Turki. Dengan metode tersebut, penelitian ini diharapkan mampu menghasilkan analisis yang komprehensif, objektif, dan dapat dipertanggungjawabkan secara akademik.

HASIL DAN PEMBAHASAN

Hak Waris Perempuan Dalam The Turkish Civil Code

Pembaharuan hukum waris di Turki merupakan bagian integral dari reformasi hukum yang dilakukan sejak berdirinya Republik Turki pada tahun 1923 di bawah kepemimpinan Mustafa Kemal Atatürk. Reformasi ini mencapai puncaknya dengan diadopsinya *The Turkish Civil Code* tahun 1926 yang menggantikan sistem hukum keluarga Islam klasik yang sebelumnya bersumber dari fikih mazhab Hanafi. (M. L. Hakim, 2022) Salah satu implikasi paling signifikan dari kodifikasi ini adalah pemberlakuan prinsip kesetaraan antara laki-laki dan perempuan dalam hak waris, sehingga perempuan memperoleh bagian warisan yang sama dengan laki-laki dalam kondisi yang sama. (M. L. Hakim, 2022) Perubahan ini menandai pergeseran paradigma dari sistem kewarisan berbasis perbedaan gender menuju sistem kewarisan berbasis kesetaraan hukum sipil modern.

Dalam konteks masyarakat Turki kontemporer, prinsip kesetaraan hak waris antara laki-laki dan perempuan sebagaimana diatur dalam Pasal 495 *The Turkish Civil Code*

memiliki relevansi yang kuat.(Fuad, 2019) Perempuan Turki saat ini memiliki akses yang relatif setara dalam pendidikan, pekerjaan, dan kepemilikan aset. Dalam kondisi demikian, pembagian waris yang setara menjadi instrumen hukum yang menjamin keadilan ekonomi dan mencegah marginalisasi perempuan dalam struktur keluarga.

Dari perspektif keadilan substantif, pembagian waris yang setara dalam The Turkish Civil Code mencerminkan prinsip bahwa keadilan tidak selalu identik dengan kesamaan numerik, tetapi dengan kesesuaian antara hak dan tanggung jawab.(Fuady & Daud, 2018) Ketika tanggung jawab sosial antara laki-laki dan perempuan relatif setara, maka kesetaraan hak waris menjadi bentuk keadilan yang relevan dan kontekstual.

Dalam the Turkish civil code, disebutkan bahwa bagian yang akan diterima oleh keturunan dari pewaris Adalah sama baik itu anak Perempuan maupun anak laki-laki. Formulasi ini muncul setelah turki melakukan Gerakan pembaharuan hukum dan mengadopsi hukum perdata swiss 1912. Pengaturan ini tentu menjadi suatu hal yang “baru” karena sangat berbanding terbalik dengan apa yang sudah di atur oleh Al-Qur’an surah an-Nisa ayat 11 yang menghendaki pembagian harta waris 2:1 antara laki-laki dan Perempuan. (Fuad, 2019)

Dalam hukum Islam klasik, sistem kewarisan disusun berdasarkan ketentuan normatif Al-Qur’an yang kemudian dikodifikasikan dan disistematisasi oleh para fuqaha melalui disiplin ilmu (*ilmu faraid*). Prinsip utama yang sering menjadi sorotan dalam konteks hak waris perempuan adalah ketentuan bahwa bagian waris perempuan pada umumnya adalah setengah dari bagian laki-laki dalam struktur pewarisan tertentu, sebagaimana disebutkan dalam Surah an-Nisa’ ayat 11. Ketentuan ini dalam perspektif fiqh klasik dipahami sebagai aturan normatif yang bersifat qat’i dalalah dan qat’i thubut, sehingga ruang ijtihad dianggap sangat terbatas.(Fikri et al., 2024)

Namun, penting dicatat bahwa konstruksi hukum waris Islam klasik tidak berdiri secara historis. Pembagian waris yang menempatkan laki-laki memperoleh bagian lebih besar berangkat dari struktur sosial masyarakat Arab abad ke-7, di mana tanggung jawab ekonomi, perlindungan keluarga, dan pembiayaan kehidupan rumah tangga sepenuhnya berada di pundak laki-laki. Perempuan, meskipun memiliki hak kepemilikan harta secara penuh, tidak dibebani kewajiban nafkah. Dengan demikian, perbedaan bagian waris tidak semata-mata didasarkan pada pertimbangan biologis atau hierarki gender, melainkan pada prinsip keadilan distributif yang mempertimbangkan beban dan tanggung jawab sosial.(Rohmawati, 2021)

Akan tetapi, dalam perkembangan masyarakat modern, konstruksi sosial tersebut mengalami perubahan signifikan. Perempuan tidak lagi berada dalam posisi pasif secara ekonomi, melainkan turut berperan aktif sebagai pencari nafkah, pemilik aset, dan penopang ekonomi keluarga. Perubahan ini menimbulkan ketegangan antara ketentuan hukum waris Islam klasik dengan realitas sosial kontemporer, sehingga memunculkan tuntutan untuk melakukan pembacaan ulang terhadap konsep keadilan dalam hukum kewarisan. (M. L. Hakim, 2022)

Selain itu, sistem kewarisan yang setara juga berfungsi sebagai mekanisme perlindungan hak perempuan terhadap praktik diskriminatif yang mungkin muncul dalam relasi keluarga. Dengan adanya jaminan hukum yang jelas, perempuan memiliki posisi tawar yang lebih kuat dalam mempertahankan hak ekonominya. (Dahrial et al., 2025) Hal ini sejalan dengan tujuan hukum modern untuk melindungi kelompok yang rentan dan memastikan distribusi sumber daya yang adil. Meskipun memiliki relevansi yang kuat, pembaharuan hukum waris di Turki juga menghadapi kritik, terutama dari kalangan yang memandang bahwa penghapusan hukum waris Islam merupakan bentuk sekularisasi yang berlebihan. Kritik ini berangkat dari asumsi bahwa hukum waris Islam bersifat final dan tidak dapat diubah tanpa mengingkari otoritas teks wahyu. (Wahyu et al., 2024)

Namun, kritik tersebut sering kali mengabaikan fakta bahwa hukum Islam sendiri memiliki tradisi ijtihad yang kaya dan dinamis. Sejarah hukum Islam menunjukkan bahwa para fuqaha senantiasa mempertimbangkan konteks sosial dalam merumuskan hukum. (M. L. Hakim, 2022) Oleh karena itu, pembaharuan hukum waris di Turki dapat dipahami bukan sebagai penolakan terhadap Islam, melainkan sebagai bentuk ijtihad dalam ranah kebijakan publik (siyasah shar'iyah).

Dalam catatan Sejarah, kesultanan utsmaniyah merupakan kesultanan pertama dan terlama dibandingkan dengan Kerajaan besar lainnya. Yang berdiri sejak tahun 1299 sampai dengan 1922 masehi, menguasai lebih dari 600 tahun di tiga benua yaitu eropa Tenggara, asia barat dan afrika utara. Jauh sebelum lahirnya negara republic turki, sistem pemerintahan ottoman berlandaskan pada prinsip-prinsip islam. Dengan sultan sebagai pemipmin agama dan politik. (Astaman et al., 2025) Namun, tekanan dari negara-negara eropa, kebijakan feodal yang arkais, adanya masalah internal seperti korupsi, serta pemberontakan dari wilayah-wilayah jajahan pada abad ke 19 mengakibatkan kekaisaran ottoman mengalami kemunduran. Hingga kekaisaran ottoman terlibat dalam perang dunia I, menjadi sekutu pada

blok sentral yang dipimpin oleh Jerman dan Austria-Hungaria yang justru menjadi awal kehancuran kekaisaran itu sendiri. (Astaman et al., 2025)

Setelah empat tahun perang yang sangat melelahkan, kekaisaran Ottoman akhirnya mengalami kekalahan. Perang Dunia I berakhir pada tahun 1918 dengan penandatanganan perjanjian Versailles yang membagi kekuasaan dunia antara pihak yang menang. Membuat kekaisaran Ottoman yang memang sudah melemah semakin kehilangan wilayahnya. (Zahara et al., 2024) Tidak hanya sampai disitu, pada tahun 1920 kekuasaan Ottoman berakhir pada perjanjian Sevres, wilayah yang dikuasai Ottoman di Timur Tengah termasuk wilayah Arab diberikan kepada Inggris dan Prancis sebagai mandat.

Tidak dipungkiri bahwa aspek yang menjadi faktor kemunduran dunia Islam adalah dalam bidang ilmu pengetahuan dan kebudayaan, serta ketertinggalan dalam bidang militer dan industri perang yang signifikan dibanding Eropa. (Apriliani et al., 2024) Faktor ini terjadi karena Kesultanan Turki tidak melakukan pembaharuan setelah masa kejayaannya, rasa puas akan kejayaan menjadi boomerang sendiri. Sedangkan negara-negara Barat terus melakukan reformasi dan inovasi yang pesat untuk terus melemahkan Kesultanan.

Pada masa Utsmani, hukum keluarga dan kewarisan diatur berdasarkan fiqh Islam mazhab Hanafi, sebagaimana diformulasikan dalam sistem *Majallatul Ahkam al-Adliyyah* yang diterapkan secara formal dalam sistem peradilan negara. Namun, memasuki awal abad ke-20, Turki menghadapi tekanan modernisasi yang kuat, baik dari internal maupun eksternal, yang mendorong perlunya reformasi hukum secara menyeluruh. Pemerintah mulai menyadari keterbatasan doktrin mazhab Hanafi dalam menjawab persoalan-persoalan sosial kontemporer. (Dahrial et al., 2025) Awal terjadinya reformasi hukum di Turki ditandai dengan disahkannya *Ottoman Law Of Family Rights* pada tahun 1917. (Dahrial et al., 2025) Kodifikasi ini bersifat eklektik dengan metode takhayyur yang mengambil prinsip terbaik dari berbagai mazhab.

Turki baru memandang bahwa sistem hukum Islam klasik tidak lagi mampu menjawab kebutuhan masyarakat Turki modern yang bercita-cita menjadi negara-bangsa sekuler dengan prinsip kesetaraan warga negara. Oleh karena itu, melalui kebijakan legislasi radikal, Turki mengadopsi *The Swiss Civil Code* yang kemudian dikodifikasikan menjadi *The Turkish Civil Code* tahun 1926. Salah satu implikasi paling signifikan dari adopsi ini adalah penghapusan hukum waris Islam dan penerapan prinsip kesetaraan penuh antara laki-laki dan perempuan dalam pembagian waris. (Dahrial et al., 2025)

Pembaharuan dalam hal kewarisan menjadi sangat fundamental. Pasal 495 *The Turkish Civil Code* secara tegas menetapkan bahwa ahli waris, tanpa membedakan jenis kelamin, memiliki kedudukan hukum yang sama dalam menerima harta warisan. Ketentuan ini menandai pergeseran paradigma dari sistem kewarisan berbasis diferensiasi gender menuju sistem kewarisan berbasis kesetaraan hak sipil. Yang tentunya sangat bertentangan dengan surah an-nisa ayat 11, hal ini menandai pemutusan total terhadap hukum waris islam. Reformasi ini bukan sekadar perubahan teknis hukum, melainkan representasi dari visi ideologis Atatürk tentang sekularisme, rasionalisme, dan modernitas. Sebagai bentuk dari Upaya dilema antara mempertahankan integritas syari'at atau menjawab tuntutan modernitas. (Dahrial et al., 2025)

Secara teoretis, pembaharuan hukum waris perempuan di Turki memberikan kontribusi penting bagi pengembangan wacana hukum Islam kontemporer. Kasus Turki menunjukkan bahwa hukum keluarga Islam dapat direformasi melalui pendekatan kontekstual tanpa harus terjebak dalam dikotomi antara “Islam” dan “sekular”. Pembaharuan hukum dapat diposisikan sebagai sarana untuk mewujudkan nilai-nilai keadilan yang menjadi tujuan utama syariat. (Karimullah et al., 2022)

Secara praktis, pengalaman Turki dapat menjadi rujukan bagi negara-negara Muslim lain dalam merumuskan kebijakan hukum keluarga yang lebih responsif terhadap perubahan sosial. Meskipun model Turki tidak dapat diadopsi secara mentah, prinsip dialog antara teks dan konteks serta orientasi pada keadilan substantif dapat dijadikan kerangka metodologis dalam melakukan reformasi hukum.

Sebagaimana yang dikemukakan oleh Umar Faruq Thohir dalam jurnalnya yang mengutip penjelasan Anderson, bahwa hukum islam di negara-negara muslim tidak bersifat statik sama sekali, dikarenakan terjadinya reformasi hukum pada aturan hukum yang sudah berjalan tapi tidak di qanunkan atau sudah di qanunkan namun dianggap tidak sesuai dengan zamannya. Akibat berbedanya context antara masa lalu dan masa kini. (Umar Faruq Thohir, 2019)

Pergeseran substansi hukum waris di beberapa negara muslim merupakan sebagai upaya pembaruan hukum yang bertujuan untuk unifikasi hukum negara dengan beberapa metode berikut: 1) agalmasi mazhab hukum yang dianut, 2) mengangkat status wanita, serta 3) untuk merespon perkembangan dan tuntutan zaman. (Herdiansa & Fauzizah, 2024) Sebagaimana yang telah dilakukan turki, turki memberlakukan persamaan pembagian waris antara laki-laki dan Perempuan. Pengaturan ini dikenal dengan istilah “Introduction of equal

rights for men and women in matters of succession” artinya pengenalan persamaan hak antara laki-laki dan perempuan dalam hal waris.

Pasal 495 *The Turkish Civil Code* mengatur bahwa ahli waris dalam garis keturunan memiliki hak yang sama atas harta peninggalan pewaris, tanpa perbedaan berdasarkan jenis kelamin. Dalam sistem ini, anak laki-laki dan anak perempuan memperoleh bagian yang setara, demikian pula antara suami dan istri dalam hubungan perkawinan. (Khusna et al., 2024) Prinsip ini mencerminkan konsep *formal equality before the law*, yang menjadi karakteristik utama hukum perdata modern.

Secara normatif, ketentuan ini berbeda secara diametral dengan hukum waris Islam klasik. Namun demikian, jika dianalisis lebih mendalam, Pasal 495 tidak serta-merta bertentangan dengan nilai-nilai dasar keadilan yang menjadi tujuan utama hukum Islam. Prinsip kesetaraan dalam *The Turkish Civil Code* dapat dipahami sebagai respons terhadap perubahan struktur tanggung jawab sosial antara laki-laki dan perempuan. Ketika beban ekonomi dan tanggung jawab keluarga tidak lagi bersifat unilateral, maka pembagian waris yang setara justru mencerminkan keadilan distributif dalam konteks sosial modern.

Dengan demikian, Pasal 495 tidak hanya berfungsi sebagai norma hukum positif, tetapi juga sebagai refleksi dari transformasi nilai sosial masyarakat Turki. Hukum tidak lagi diposisikan sebagai representasi literal teks keagamaan, melainkan sebagai instrumen sosial untuk mewujudkan keadilan substantif dalam kehidupan masyarakat.

Hak Waris Perempuan dalam The Turkish Civil Code Perspektif Maqasid Syari'ah

Urgensi pembaruan hukum keluarga, khususnya dalam konteks hak waris dan keadilan, semakin mengemuka seiring dengan munculnya berbagai tantangan kontemporer dan dinamika baru dalam kehidupan keluarga. Perubahan sosial, ekonomi, dan budaya menuntut adanya peninjauan kembali terhadap sistem hukum waris yang berlaku saat ini. Dalam konteks tersebut, identifikasi terhadap berbagai hambatan serta potensi ketidakadilan dalam praktik hukum waris menjadi landasan penting untuk merumuskan pembaruan hukum yang lebih responsif, adaptif, dan selaras dengan nilai-nilai keadilan universal.

Pertama, melalui pendekatan maqasid syariah, reformasi hukum keluarga dapat menciptakan kerangka kerja yang komprehensif, menggabungkan kearifan lokal dengan nilai-nilai universal, serta menjadi solusi adaptif terhadap dinamika baru dalam kehidupan keluarga pada era globalisasi. (Wahyu et al., 2024) Hasilnya diharapkan memberikan landasan hukum yang lebih inklusif, responsif terhadap perubahan sosial, dan sejalan dengan nilai-nilai

kemanusiaan dan prinsip-prinsip agama. Perspektif Maqasid syariah memungkinkan kita untuk melihat hukum keluarga Islam secara holistik, dengan memperhatikan tujuan-tujuan dan prinsip-prinsip yang mendasarinya. (Shidiq Ghofar, 2009) Dalam konteks pembaharuan hukum keluarga, pendekatan ini memungkinkan kita untuk mempertimbangkan implikasi sosial, moral, dan lingkungan dari setiap perubahan yang diusulkan.

Kedua, Pemenuhan nilai-nilai kemanusiaan, Maqasid syariah menempatkan nilai-nilai kemanusiaan sebagai pusat dari hukum Islam. Dalam konteks hukum keluarga, hal ini mengarah pada perlindungan hak-hak dan martabat manusia, termasuk hak-hak perempuan, anak-anak, dan keluarga secara umum. (Wahyu et al., 2024) Dengan mengkaji pembaharuan hukum keluarga dengan perspektif Maqasid syariah, kita dapat memastikan bahwa kepentingan dan kesejahteraan individu dan keluarga menjadi fokus utama dalam setiap reformasi yang diusulkan. (M. N. R. Hakim et al., 2025)

Ketiga, Memperhatikan kebutuhan Masyarakat, Salah satu tujuan Maqasid syariah adalah memelihara masyarakat. Dalam konteks hukum keluarga, ini mengharuskan adanya ketentuan yang mempromosikan keharmonisan keluarga, perlindungan hak-hak anggota keluarga, dan pembangunan sosial yang berkelanjutan. Dengan menganalisis reformasi hukum keluarga melalui perspektif Maqasid syariah, kita dapat mempertimbangkan kontribusi setiap perubahan dalam memperkuat struktur keluarga dan masyarakat secara keseluruhan. (Fikri et al., 2024)

Keempat, Pelestarian lingkungan fisik: Aspek keberlanjutan dan perlindungan lingkungan juga menjadi perhatian dalam perspektif Maqasid syariah. Dalam konteks hukum keluarga, hal ini dapat mencakup pertimbangan terhadap isu-isu seperti pola konsumsi yang berkelanjutan, pengelolaan sumber daya, dan dampak lingkungan dari praktik-praktik keluarga. Dengan melibatkan perspektif Maqasid syariah dalam pembaharuan hukum keluarga, kita dapat memastikan bahwa keberlanjutan lingkungan fisik juga diperhatikan dalam kerangka regulasi keluarga.

Ketentuan waris Islam, khususnya aturan waris Islam klasik berasal dari struktur dasar yang telah ditetapkan dalam produk hukum Islam, yaitu Al-Qur'an, Hadis maupun Ijtihad para Ulama yang telah diuraikan dan disistematisasi oleh imam-imam madzhab melalui berbagai metode dan interpretasi. Sumber hukum yang bersumber dari al-Qur'an dan al-Sunnah mempunyai hakikat yang benar, terbuka, dan otonom.

Integrasi *Maqāsid al-Syari'ah* dalam *Usūl al-Fiqh* merupakan pendekatan penting dalam pengembangan metodologi penemuan hukum Islam yang lebih responsif terhadap dinamika

sosial. Dalam tradisi *usūl al-fiqh*, proses *istinbat* hukum pada dasarnya dapat ditempuh melalui tiga metode utama, yaitu penafsiran kebahasaan (linguistik), penafsiran *ta'lihi* (kausalitas), dan metode *istislahi* (teleologis). Ketiga metode ini saling melengkapi dalam memahami teks dan tujuan hukum Islam. (Murti & Syah, 2021)

Metode penafsiran kebahasaan digunakan untuk memahami makna teks-teks hukum Islam secara langsung, terutama yang bersumber dari al-Qur'an dan Sunnah. Pendekatan ini menekankan analisis terhadap struktur bahasa, makna kata, serta konteks penggunaan istilah dalam nash. Melalui pendekatan linguistik, para ulama berupaya menggali makna normatif dari teks dengan mempertimbangkan kaidah-kaidah kebahasaan Arab, seperti kejelasan lafaz (*zahir*), makna implisit (*mafhum*), maupun indikasi makna lainnya yang terdapat dalam teks syariat.

Sementara itu, metode *ta'lihi* berfokus pada pencarian dan penetapan *'illat* (alasan atau sebab hukum) yang melandasi suatu ketentuan syariat. Melalui metode ini, hukum yang terdapat dalam nash dapat diperluas penerapannya terhadap kasus-kasus baru melalui mekanisme analogi (*qiyās*). Dengan demikian, hukum tidak hanya dipahami secara tekstual, tetapi juga melalui rasionalitas hukum yang mendasarinya.

Adapun metode *istislahi* atau pendekatan teleologis menempatkan kemaslahatan sebagai pertimbangan utama dalam penetapan hukum. Pendekatan ini berangkat dari pemahaman bahwa tujuan utama syariat adalah mewujudkan kemaslahatan dan mencegah kerusakan dalam kehidupan manusia. Oleh karena itu, *Maqāsid al-Syari'ah* dijadikan sebagai kerangka normatif dalam merumuskan hukum terhadap persoalan-persoalan yang tidak secara eksplisit diatur dalam nash. Pendekatan ini telah dikembangkan secara sistematis oleh para ulama, terutama oleh Abu Ishaq al-Shatibi, yang menegaskan bahwa syariat pada hakikatnya diturunkan untuk menjaga lima tujuan pokok kehidupan manusia (*al-daruriyatul al-khams*), yaitu agama, jiwa, akal, keturunan, dan harta.

Dengan demikian, integrasi *Maqāsid al-Syari'ah* dalam *usūl al-fiqh* memungkinkan pengembangan hukum Islam yang tidak hanya berorientasi pada teks, tetapi juga mempertimbangkan tujuan dan hikmah di balik penetapan hukum. Pendekatan ini menjadi penting dalam merespons berbagai persoalan kontemporer yang tidak secara langsung ditemukan ketentuannya dalam sumber-sumber tekstual.

Dalam sistem hukum waris Islam klasik, pembagian warisan didasarkan pada ketentuan al-Qur'an, khususnya dalam QS. al-Nisa' ayat 11, yang menetapkan bahwa bagian anak laki-laki adalah dua kali bagian anak perempuan dalam kondisi tertentu. Ketentuan ini

secara historis terkait dengan struktur sosial masyarakat Arab pra-Islam dan awal Islam, di mana laki-laki memiliki tanggung jawab finansial penuh terhadap keluarga, termasuk kewajiban nafkah, mahar, dan perlindungan ekonomi keluarga. Dengan demikian, perbedaan bagian warisan tidak semata-mata didasarkan pada perbedaan nilai kemanusiaan, tetapi berkaitan dengan perbedaan tanggung jawab ekonomi.

Namun, dalam konteks modern, terutama di Turki, struktur sosial telah mengalami transformasi signifikan. Perempuan tidak lagi hanya berperan dalam ranah domestik, tetapi juga berpartisipasi aktif dalam sektor ekonomi, pendidikan, dan publik. Oleh karena itu, sistem hukum waris yang memberikan bagian setara antara laki-laki dan perempuan dipandang sebagai refleksi dari prinsip keadilan substantif yang sesuai dengan kondisi sosial kontemporer. Dalam hal ini, pendekatan maqasid syari'ah menjadi kerangka analisis yang relevan untuk memahami legitimasi normatif dari reformasi tersebut.

Maqasid syari'ah, sebagaimana dirumuskan oleh al-Syatibi, merupakan tujuan-tujuan utama syariat Islam yang bertujuan untuk menjaga lima prinsip dasar, yaitu perlindungan agama (hifz al-din), jiwa (hifz al-nafs), akal (hifz al-'aql), keturunan (hifz al-nasl), dan harta (hifz al-mal). (Shidiq Ghofar, 2009) Dalam konteks hukum waris, prinsip hifz al-mal menjadi sangat relevan, karena hukum waris bertujuan untuk memastikan distribusi harta yang adil dan mencegah ketidakadilan ekonomi di antara anggota keluarga.

Reformasi hukum waris di Turki yang memberikan kesetaraan antara laki-laki dan perempuan dapat dipahami sebagai upaya untuk mewujudkan maqasid syari'ah, khususnya dalam aspek keadilan ekonomi dan perlindungan harta. Kesetaraan hak waris memberikan jaminan ekonomi yang lebih kuat bagi perempuan, sehingga mereka tidak berada dalam posisi ketergantungan ekonomi terhadap laki-laki. Hal ini sejalan dengan prinsip keadilan ('adl) yang merupakan nilai fundamental dalam syariat Islam. Ibn 'Ashur menegaskan bahwa maqasid syari'ah berorientasi pada pencapaian keadilan dan kemaslahatan manusia, dan hukum Islam harus ditafsirkan dengan mempertimbangkan konteks sosial yang berubah. (Wahyu et al., 2024)

Selain itu, pendekatan maqasid juga menekankan pentingnya prinsip kemaslahatan (maslahah). Dalam konteks Turki modern, pemberian hak waris yang setara kepada perempuan berkontribusi pada peningkatan kesejahteraan perempuan, pengurangan ketimpangan ekonomi, dan penguatan stabilitas keluarga. Dengan demikian, reformasi ini dapat dipandang sebagai bentuk ijtihad kontekstual yang bertujuan untuk mewujudkan kemaslahatan yang lebih luas. Fazlur Rahman menegaskan bahwa hukum Islam harus

dipahami melalui pendekatan moral-sosial yang berorientasi pada tujuan etis al-Qur'an, bukan sekadar penerapan literal teks. (Azhari et al., 2023)

Kesetaraan hak waris di Turki juga dapat dipahami dalam kerangka maqasid syariah sebagai bagian dari perlindungan terhadap martabat manusia (karamah al-insan). Al-Qur'an menegaskan bahwa laki-laki dan perempuan memiliki kedudukan spiritual dan moral yang setara. Oleh karena itu, sistem hukum yang menjamin kesetaraan hak ekonomi dapat dipandang sebagai manifestasi dari prinsip keadilan dan penghormatan terhadap martabat manusia. Jasser Auda menekankan bahwa maqāsid al-syari'ah harus dipahami sebagai sistem yang dinamis dan terbuka terhadap perubahan sosial, dengan tujuan utama mewujudkan keadilan, kebebasan, dan kesejahteraan manusia. (Murti & Syah, 2021)

Dengan demikian, pembagian waris perempuan di Turki yang didasarkan pada prinsip kesetaraan dapat dipahami sebagai bentuk reinterpretasi hukum Islam yang berorientasi pada maqasid syari'ah. (Shidiq Ghofar, 2009) Reformasi ini tidak semata-mata merupakan adopsi hukum Barat, tetapi juga dapat dipandang sebagai upaya untuk mewujudkan tujuan fundamental syariat, yaitu keadilan, kemaslahatan, dan perlindungan hak ekonomi perempuan. Dalam konteks ini, maqasid syari'ah memberikan legitimasi normatif bagi reformasi hukum waris yang responsif terhadap perubahan sosial dan kebutuhan masyarakat modern.

Ketika konteks sosial berubah, maka bentuk hukum yang digunakan untuk mewujudkan keadilan pun dapat berubah. Oleh karena itu, pembaharuan hukum waris di Turki dapat dipahami sebagai bentuk aktualisasi prinsip keadilan Islam dalam konteks masyarakat modern, meskipun secara formal tidak lagi menggunakan kerangka fiqh Islam.

KESIMPULAN

Pembaharuan hak waris perempuan di Turki melalui Pasal 495 *The Turkish Civil Code* menunjukkan pergeseran paradigma dari sistem kewarisan berbasis diferensiasi gender menuju prinsip kesetaraan sipil. Reformasi ini tidak sekadar perubahan teknis dalam pembagian harta, tetapi merupakan keputusan politik-hukum yang mencerminkan orientasi sekularisme, modernitas, dan upaya memperkuat posisi sosial-ekonomi perempuan.

Meskipun secara formal ketentuan tersebut berbeda dari formulasi distribusi dalam fikih mawaris klasik, dalam perspektif *maqāsid al-syari'ah* reformasi ini dapat dipahami sebagai reinterpretasi prinsip keadilan distributif yang menyesuaikan perubahan tanggung jawab sosial antara laki-laki dan perempuan. Dialektika antara teks hukum Islam dan konteks sosial-politik modern menjadi dasar legitimasi pembaruan tersebut.

Dari sudut pandang keadilan substantif, kesetaraan hak waris sebagaimana diatur dalam Pasal 495 berfungsi memperkuat kemandirian ekonomi perempuan serta mencegah marginalisasi setelah kematian pewaris. Namun, efektivitasnya tetap bergantung pada transformasi budaya hukum masyarakat dan dialog berkelanjutan antara pembuat kebijakan, ulama, dan masyarakat sipil.

Pengalaman Turki menunjukkan bahwa reformasi hukum keluarga di negara Muslim dapat dilakukan melalui pendekatan yang mempertimbangkan dialog antara teks dan konteks serta berorientasi pada tujuan keadilan. Dengan demikian, pembaruan hukum waris tersebut menjadi contoh bagaimana hukum dapat berperan sebagai instrumen transformasi sosial untuk mewujudkan keadilan substantif dalam masyarakat modern.

DAFTAR PUSTAKA

- Andaryuni, L. (2018). Pembaruan Hukum Kewarisan Islam di Turki dan Somalia. *Hikmah: Journal of Islamic Studies*, 14(1), 162. <https://doi.org/10.47466/hikmah.v14i1.104>
- Apriliani, R., Azmi, M., & Rahuma, A. (2024). Runtuhnya Kejayaan Kesultanan Turki Utsmani Menurut Teori Filsafat Sejarah Malik Bennabi. *Amarthapura: Historical Studies Journal*, 3(1), 26–36.
- Astaman, Murdianto, T., M, M. D., & Syukur, S. (2025). Sejarah Lahirnya Negara Islam Sekuler Turki dan Ide Pembaharuan Mustafa Kemal. *JUTEQ: Jurnal Teologi & Tafsir*, 2(5), 5.
- Azhari, N., Kisworo, B., & Yusefri. (2023). Penerapan Teori Double Movement Fazlur Rahman Terhadap Pembagian Waris Islam Dalam Konteks Kekinian. *Al-Furqon: Jurnal Agama, Sosial, Dan Budaya*, 2(5), 236.
- Dahrial, F., Elimartati, & Maulana, R. F. (2025). Hukum Perkawinan Islam di Bawah Tekanan Modernitas : Studi Historis dan Yuridis Atas Reformasi di Mesir, Turki, Pakistan, dan Irak. *Jurnal Pengabdian Masyarakat Dan Riset Pendidikan*, 03(04), 3525.
- Fikri, A., Santoso, R., & Miswanto. (2024). Analisis Sistem Pembagian Waris Dua Banding Satu dalam Perspektif Maqasid Syariah: Keadilan dan Kesejahteraan dalam Warisan Keluarga. *Bulletin of Community Engagement*, 4(3), 481.
- Fuad, M. (2019). Dinamika Sekularisasi dan Pembaharuan Hukum Waris Islam di Turki. *Al-Mabsut: Jurnal Studi Islam Dan Sosial*, 13(2), 11–22.
- Fuady, Z., & Daud, M. (2018). Menyoal Refkonstruksi Maqasid Dalam Pembaharuan Hukum Kewaris Islam. *Jurnal Ilmiah Islam Futura*, 18(1), 1–33.
- Hakim, M. L. (2022). Reformasi Hukum Keluarga Islam di Turki: Dari Tradisional ke Modern. *Berasan: Journal of Islamic Civil Law*, 1(1), 57.
- Hakim, M. N. R., Nur, I., & Aibak, K. (2025). Reformasi Hukum Keluarga Islam Di Indonesia, Pakistan, Dan Turki Perspektif Maqasid Syari'ah An-najar. *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora*, 3(1), 226.
- Herdiansa, & Fauzizah, S. (2024). Hak Waris Anak Laki-laki Dan Perempuan Di Negara-negara Muslim. *Jurnal Ilmiah Ar-Risalah: Media Keislaman, Pendidikan Dan Hukum Islam*, 22(1), 69.
- Karimullah, S. S., Tsani, W. L., & Sugitanata, A. (2022). Genealogi Dan Produk Pembaharuan Hukum Waris Turki. *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum*, 16(2), 210. <https://doi.org/10.24239/blc.v16i2.1035>
- Khusna, Z., Firdausi, J., Zakariah, I., & Wasil, M. (2024). Kesetaraan Gender Kemal At Tarturk Dalam Negara Turki Republik. *Jurnal Lentera*, 23(3), 482.
- Murti, A., & Syah, T. A. (2021). Menelaah Pemikiran Jasser Auda Dalam Memahami Maqasid Syariah. *Citizen: Jurnal Ilmiah Multidisiplin Indonesia*, 1(2), 64. <https://doi.org/10.53866/jimi.v1i2.9>
- Rohmawati. (2021). Kontekstualisasi Tafsir Waris Laki-laki Dan Perempuan (Pendekatan Hermeneutika Kritis Jurgen Habermas). *Ulumuna: Jurnal Studi Keislaman*, 7(1), 21.

- Rozi, A. F., & Muar, M. R. (2024). Keadilan Gender dalam Hukum Waris Islam (Studi Komparatif antara Hukum Waris Faraid dan Prinsip Kesetaraan Gender di Era Modern). *Asasi : Journal of Islamic Family Law*, 5(1), 65. <https://doi.org/10.36420/Asasi>
- Shidiq Ghofar. (2009). Teori Maqashid Al-Syari'ah Dalam Hukum Islam. *Majalah Ilmiah Sultan Agung*, 44(118), 117–129.
- Umar Faruq Thohir. (2019). Pembaharuan Hukum Waris Islam di Turki. *Ash-Syari'ah : Jurnal Hukum Islam*, 5(2), 181–201.
- Wahyu, Sya'bani, M. A., & Permana, S. (2024). Hak Waris Dan Keadilan: Menggagas Reformasi Hukum Keluarga Dengan Prinsip Maqasid Syariah. *Jurnal Studi Inovasi*, 4(2), 16.
- Yuniarti, D., Syukur, S., & Susmihara. (2023). Lahirnya Negara Islam Sekuler Turki Dan Ide Pembaharuan Mustafa Kemal. *JURNAL ILMIAH FALSAFAH: Jurnal Kajian Filsafat, Teologi Dan Humaniora*, 9(1), 12.
- Zahara, F. N., Fatia, A., & Hakim, L. (2024). Faktor Internal Dan Eksternal di Balik Keruntuhan Kekhalifahan Utsmani. *TIPS Jurnal Riset, Pendidikan Dan Ilmu Sosial*, 2(2), 106.

FORMULATION OF CHILD-FRIENDLY BANTENGAN ARTS POLICY BASED ON MAQASID SYARIAH IN MALANG REGENCY

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ABSTRACT

Children's involvement in the preservation of Bantengan art is part of the implementation of children's rights to participate, but on the other hand, it can raise concerns that contradict other children's rights such as the right to education, worship, and rest. Meanwhile, the Child Protection Law emphasizes the obligation to maintain the physical, psychological, and social well-being of children, but the Cultural Advancement Law does not explicitly integrate child protection principles into it. Studies on Bantengan mostly focus on cultural symbolism, community identity, or socio-economic aspects, thus leaving a normative gap regarding how cultural preservation policies can be aligned with the protection of children's rights. Furthermore, the application of *maqasid shari'ah* as a normative framework for formulating operational regulations governing children's participation in preserving Bantengan art is still under-explored in legal studies. This research is a socio-legal field study that uses a statute, conceptual, and disciplinary approach from legal anthropology and sociology of law. Data were collected through interviews, observations, and literature review. Then, it was analyzed using qualitative analysis, resulting in prescriptive legal recommendations. The findings of this study propose a procedural policy framework based on *maqasid shari'ah* especially the principle of *al-daruriyyat al-khams* that ensures the preservation of a child-friendly culture, including the protection of children from physical and psychological violence; age limits and children's roles; the right to education and rest time; parental supervision; educational and inclusive cultural performances; and enhancing the capabilities of Bantengan community. This study contributes theoretically by integrating the sharia of *maqasid shari'ah* into the formulation of cultural policies and practically by offering a normative framework for local regulations that balance cultural preservation with child protection.

Keywords : *bantengan; child's right; maqasid shari'ah; preservation*

ABSTRAK

Keterlibatan anak-anak dalam pelestarian kesenian Bantengan merupakan bagian dari implementasi hak anak untuk berpartisipasi, tetapi di sisi lain dapat memunculkan keresahan yang kontradiktif dengan hak-hak anak lain seperti hak pendidikan, ibadah dan istirahat. Sementara itu, UU Perlindungan Anak menekankan kewajiban untuk menjaga kesejahteraan fisik, psikologis, dan sosial anak, akan tetapi UU Pemajuan Kebudayaan tidak secara eksplisit mengintegrasikan prinsip-prinsip perlindungan anak ke dalamnya. Studi tentang Bantengan sebagian besar berfokus pada simbolisme budaya, identitas masyarakat, atau aspek sosial-ekonomi, sehingga meninggalkan kesenjangan normatif mengenai bagaimana kebijakan pelestarian budaya dapat diselaraskan dengan perlindungan hak anak. Lebih lanjut, penerapan *maqasid shari'ah* sebagai kerangka normatif untuk merumuskan peraturan operasional yang mengatur partisipasi anak-anak dalam pelestarian kesenian Bantengan masih kurang dieksplorasi dalam kajian hukum. Penelitian ini merupakan penelitian lapangan sosial-legal yang menggunakan pendekatan perundang-undangan, konseptual, dan disiplin ilmu antropologi hukum dan sosiologi hukum. Data dikumpulkan melalui wawancara, observasi, dan studi kepustakaan. Kemudian dianalisis menggunakan analisis kualitatif yang menghasilkan rekomendasi hukum preskriptif. Temuan penelitian ini mengusulkan kerangka kebijakan prosedural berbasis *maqasid shari'ah* yang memastikan pelestarian budaya ramah anak, termasuk perlindungan anak dari kekerasan fisik dan psikis; batasan usia dan peran anak; hak atas pendidikan dan waktu istirahat anak; pengawasan orang tua; pertunjukan budaya yang edukatif dan inklusif; dan peningkatan kapabilitas sanggar Bantengan. Studi ini memberikan kontribusi secara teoritis dengan mengintegrasikan syariat *maqasid shari'ah* ke dalam perumusan kebijakan budaya dan secara praktis dengan menawarkan kerangka normatif untuk peraturan daerah yang menyeimbangkan pelestarian budaya dengan perlindungan anak.

Kata Kunci : *bantengan; hak anak; maqasid shari'ah; pelestarian.*

INTRODUCTION

The practice of Bantengan art, practiced by some Bantengan communities, is currently shifting from traditional practices. Bantengan is a local cultural performance art form that combines elements of music, *kanuragan* (traditional martial arts), *sendratari* (dialogue-free dance drama), and mantras/poetry, strongly linked to magic, to the point where the performers reach a state of trance, or what the locals now call “*kalap*” or “*ndadi*” (Kementrian Pendidikan dan Kebudayaan, 2020). The Bantengan art performed today is a modernization adapted to current developments, such as the use of extremely loud sound systems, now commonly referred to as “*boreg*”. This *boreg* sound system has given rise to the “*mberot*” (unintelligible) Bantengan, which is less educational and has negative impacts on children. The increasing involvement of children in Bantengan performances raises normative concerns regarding the protection of children’s rights.

The preservation of Bantengan art in Malang Regency has raised several issues for children, such as disruption to their rights to rest, worship, and study at school. The resulting impacts contradict children’s rights as stipulated in national regulations, Law No. 23 of 2002, as revised by Law No. 35 of 2014 concerning Child Protection (Child Protection Law), and the international Convention on the Rights of the Child requires states, communities and families to ensure protection of children’s physical, mental and social development. This demonstrates that protecting children’s rights is crucial because they provide legal certainty, just as it is crucial to preserve Indonesian culture. Important principles that need to be considered in cultural preservation involving children are the principles of child protection, which consist of the best interests of the child; non-discrimination; the right to life, survival, and development; and respect for the views of children.

The best interests of the child are an important consideration that must be prioritized (of paramount importance) in producing policies related to children (Metekohy, 2021), as is based on Article 3 paragraph (1) of the Convention on the Rights of the Child. This principle serves to guide decision-making that considers the direct and indirect impacts on child welfare which consists of three concepts: a rule of procedure, an interpretative legal principle, and a substantive right (Ruggiero, 2022). In the context of preserving child-friendly Bantengan, to apply the principle of the best interest of the child, at a minimum, it must meet the requirements of considering child-based risks, establishing child-friendly Bantengan standards, and prioritizing children’s interests over tradition.

The position of culture in the Indonesian constitutional context is very strong because it is written in Article 32 paragraph (1) of the 1945 Constitution (The Constitution of the Republic of Indonesia), so that all Indonesian citizens, especially children have the right to preserve local culture which contains the identity, morals and wisdom of the community (Ali & Ruslan, 2018). Then, Indonesia has passed Law Number 5 of 2017 concerning the Advancement of Culture (Advancement of Culture Law) to regulate culture so that it is protected, developed, utilized, and fostered by the government. However, the regulation of cultural preservation both in the Advancement of Culture Law and Regional Regulation Number 7 of 2025 concerning the Advancement of Culture of Malang Regency has not explicitly formulated child protection as a principle that animates the entire process of cultural preservation, especially in the practice of preserving Bantengan art in Malang Regency. In addition, Indonesia has an obligation to ensure that the preservation and development of culture is in line with the protection of human rights, specifically the rights of children as the nation's successors (Santyaningtyas & Noor, 2016). Although legal frameworks exist that regulate cultural advancement and child protection, the regulatory intersection between these two domains remains inadequately addressed.

To address this gap, this study proposes a child-friendly cultural policy framework grounded in the *maqasid shari'ah*, specifically the principle of *al-daruriyyat al-khams*. The concept of *maqasid shari'ah* is used as an analytical framework for formulating policies that are in accordance with applicable laws and religious values. The concept of *maqasid shari'ah*, as developed by Jasser Auda, offers a systematic approach that emphasizes the protection of human rights, justice, openness and benefit. Auda's thinking enriches the classical concept of *maqasid* and is very relevant in solving contemporary problems, including reforming legal and governance policies based on Islamic values (Auda, 2008). The *maqasid shari'ah* approach is very suitable to the needs of this research, especially in protecting children's rights (*hifz al-nas*) while still respecting local culture and maintaining justice for moral values, children's rights are protected, and benefits can be achieved in a balanced manner.

The Bantengan lecture has not yet reached the international stage, but several analyses of Bantengan art have been conducted from cultural aspects, symbolism, community economy or art preservation. An economic analysis of Bantengan was conducted by Sopianah et al. to examine the integration of cultural accounting in the preservation of traditional Bantengan performing arts in Malang Raya, Indonesia, which is rich in local wisdom and spiritual values. The research conducted showed that accountability in the

management and preservation of traditional arts is crucial to ensure transparency, sustainability, and relevance of cultural values in an ever-evolving social context (Sopannah, Hermawati, Bahri, & Rusdianti, 2024). Furthermore, the semiotic aspect of Bantengan art was studied by Sawitri et al. to examine the function, symbolic meaning, moral meaning, and existence of Bantengan art through the perspective of cultural semiotics and to investigate the adaptation and evolution of Bantengan art amidst the socio-political and economic dynamics of globalization. The multifaceted nature of Bantengan art emphasizes its role in fostering courage, solidarity, and resilience against colonial oppression. Despite the passage of time, Bantengan art continues to survive in Malang and Mojokerto, testifying to its cultural significance and sustainability (Sawitri et al., 2024). And by utilizing this digital era, Kusumawati et al. Exploring the potential of digital tools to promote and preserve Bantengan art, by utilizing digital platforms and technologies, this study aims to create a more accessible and engaging experience for artists and audiences, thereby increasing the appreciation of Bantengan art and ensuring its legacy for future generations (Kusumawati et al., 2025). Most research does not specifically address child protection in Bantengan practices and has not explored the legal dimension. Therefore, this study focuses on analyzing the preservation of Bantengan on the legal aspect by implementing *maqasid shari'ah* (the objectives of Islamic law) into a regional legal policy framework on the preservation of Bantengan art that pays attention to child protection in Malang Regency.

In relation to the protection of children's rights, the aspects studied continue to develop to date, such as Adebayo's research which analyzes children's rights based on Christianity and several child protection norms such as the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Child Protection Law (Adebayo, 2020). Then Metekohy examines violations of children's rights amidst the Covid-19 pandemic from the perspective of the Convention on the Rights of the Child (Metekohy, 2021). Furthermore, Yusefri et al. criticized legal norms in Indonesia regarding the protection of children's rights as workers, especially the Child protection Law and presented suggestions for updating child protection laws based on an analysis from the perspective of *maqasid shari'ah* (Yusefri et al., 2024). There has been no study on child protection regarding the preservation of Bantengan art. The comparison of these studies with this study is linking the protection of children's rights with the preservation of Bantengan art as a culture protected by the state.

Research on *maqasid shari'ah* related to policy in Indonesia found several that connect sharia principles with modern social challenges. Syah et al. Analyzed the implementation of *maqasid shari'ah* principles in public policy in Indonesia and provided important insights for policymakers in integrating Islamic values into modern public governance (Ardyansyah et al., 2025). In addition, Pahutar et al. Through the main principles of *maqasid shari'ah* can answer the challenges of globalization and have the flexibility to be adapted in modern socio-cultural contexts, such as supporting *hifz al-aql* and *an-nasl* by maintaining social norms and generational heritage. The principle of benefit can be used as a basis for formulating policies for preserving local traditions (Pahutar et al., 2024). Although research on *maqasid shari'ah* has been widely conducted, studies related to cultural policy are still minimal. This creates a research gap, particularly regarding the evaluation of child-friendly policies for preserving Bantengan arts. Therefore, this study focuses on formulating an ideal policy that offers a way to reconcile crocodile conservation with the protection of children's rights based on the *maqasid shari'ah*.

Starting from these legal issues, this study takes two problem formulations: *first*, how does Bantengan art impact children's rights? *Second*, what is the ideal legal policy that can balance child protection with the preservation of Bantengan art from the perspective of *maqasid shari'ah*? The objectives set in this study are to formulate legal content that can be implemented in operational and procedural regulations to protect children's participation in accordance with children's rights and *al-daruriyyat al-khams* in *maqasid shari'ah* while ensuring the preservation of Bantengan art in Malang Regency. Therefore, this article contributes to the development of cultural law by formulating child-friendly cultural policies for the preservation of Bantengan using *maqasid shari'ah* as a normative basis for balancing cultural continuity and the protection of children's rights.

RESEARCH METHOD

The type of research applied is juridical-empirical with socio-legal studies that view law from a contextual perspective rather than a textual one (Shidarta, 2024). This research allows researchers to conduct legal research by utilizing approaches from other disciplines to obtain empirical data to answer the research formulation (Atikah et al., 2024). This research applies a statute, conceptual, legal anthropology, and sociology of law approach. The variables taken from this research are children's rights and the preservation of Bantengan art, so the regulations used as a reference are the Child Protection Law, Cultural Advancement

Law, and other relevant laws and regulations. Furthermore, the concepts required are the concepts of children's rights and the best interests of children obtained from the Child Protection Law and the Convention on the Rights of the Child, and the concept of *maqasid shari'ah*, especially *al-daruriyyat al-khams*.

Researchers used a legal anthropology approach to explore the local culture that thrives within the Malang Regency community, namely Bantengan art. They then examined the legal regulations on culture that have been enacted by the government and formulated appropriate content to address the need for the preservation of child-friendly Bantengan art. A sociology of law approach was applied to observe the social interactions between the Bantengan community, which performs Bantengan performances, and children, both as participants and as spectators. This repeated interaction resulted in impacts on children, both domestically and publicly, that intersect with children's rights as stipulated in the Children Protection Law and the Convention on the Rights of the Child.

The area in East Java with the highest interest in Bantengan art is Malang Regency, which is proven by the large number of Bantengan communities that have been formed. Based on data from the Malang Regency Tourism and Culture Office in "Update of the Regional Cultural Ideas of Malang Regency in 2024", in 2024 there were approximately 1,303 (one thousand three hundred and three) communities in Malang Regency classified as engaged in Bantengan arts. Primary data was obtained from 18 (eighteen) informants with the criteria of the community living around the conservation area, parents of participating children, Bantengan cultural figures, Bantengan communities, and children who participated in Bantengan activities, then 2 (two) sources from the Tourism and Culture Office and the Women's Empowerment and Child Protection Office in Malang Regency. Data sources were selected using sampling based on their direct involvement in Bantengan arts or their institutional roles in cultural governance and child protection.

Table 1 : Summary of Interview Data

No.	Informant	Quantity	Code
1	Bantengan cultural expert	2	TK, AS
2	Environmental conservation community	4	MN, DF, TTK, KS
3	Parents of children	3	RL, KST, UTK
4	Bantengan community administrators	5	RSK, SRHM, SWT, HSY, DM
5	Child participants of Bantengan	4	RF, MLN, ALF, VN
6	Tourism and Culture Office	1	HR

7	Women's Empowerment and Child Protection Office	1	SR
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Furthermore, data collection techniques were carried out through literature studies, non-participatory observation, and unstructured interviews. Finally, data analysis techniques used qualitative analysis to prescriptive analysis through data collection, grouping, sorting, analysis, verification, and drawing conclusions. Prescriptive analysis was used to provide recommendations or suggested actions based on the data analysis (Fajar & Achmad, 2010).

In this research, Bantengan is studied from a legal perspective, especially Islamic law, through an analysis based on *maqasid shari'ah* as a moral ethical basis in the formation of this law, in order to obtain an ideal policy regarding cultural preservation that is oriented towards child protection, so that both can go hand in hand without sacrificing each other, as well as forming a law that on the one hand contains benefits and certainty, on the one hand contains moral values. This study aims to provide development of the concept of child protection (*hifz al-nasl*) in *maqasid shari'ah* in the context of involving children in the implementation of child-friendly Bantengan art preservation in Malang Regency through technical and applicable legal policies.

FINDINGS AND DISCUSSION

The Shift in Bantengan Art Performances

The current Bantengan performance has undergone several differences in several aspects from previous Bantengan performances due to adapting to the times. Traditional Bantengan is viewed as an ancestral heritage that maintains the simplicity of ancient times, one of which is by using traditional accompanying musical instruments, such as gamelan, gong, kendang, and so on. The ancient Bantengan performance emphasized the art of *pencak silat* (Indonesian traditional martial arts) as a foundation that contains educational elements in accordance with the teachings of the ancestors. On the other hand, the Bantengan art performed today is a modernization that adapts to the times, for example the use of a very loud sound system, currently known as *horeg*. This shows a shift in musical accompaniment from previously using traditional physical musical instruments to digitalization into MP3 (MPEG-1 Audio Layer 3) format music directly played from the results of remixes using the sounds of traditional musical instruments to facilitate the performance and sometimes accompanied by dance performances by women wearing inappropriate clothing. However,

according to Mr. HR, the head of the cultural division of the tourism and culture office, the essence of Bantengan should not be lost.

The Bantengan art form itself has a well-established performance system that has been conceptualized since ancient times. According to Mr. AS, a Bantengan cultural expert, the stages of a Bantengan performance begin with a performance by an elder or warrior as a form of recognition of the spiritual abilities that have been honed. This is followed by performances by students, from smaller to larger *pencak silat* associations, and then representatives from invited groups. This is followed by a *pencak silat* performance as proof of mastery of the art and its application in combat. This is followed by an attraction, or *debus* in Bantengan terms, which showcases invulnerability and other skills. Finally, the Bantengan performance, the culmination of this knowledge, concludes. Bantengan is essentially the final or closing stage of the performance, with a dance steeped in the philosophy of the people's resistance to colonialism. Finally, the performers experience a brief trance, which is immediately awakened by an elder.

On the other hand, the current Bantengan or Bantengan *mberot*, widely used by the Bantengan community, represents a modernization of Bantengan art that adapts to current developments, one of which is the use of a very loud sound system, now commonly known as *horeg*. Then, the musical accompaniment shifted from previously using physical traditional musical instruments to digital that can be directly played from remixed sounds of traditional musical instruments to facilitate performances. The emergence of this *horeg* sound is what gave birth to Bantengan *mberot*. The conventions of Bantengan performances began to be set aside and more focused on the pursuit of fame in society. As long as it can entertain the public, the performance can be carried out by shaking the body of the performer without *pencak silat* techniques. While preferring loud sounds because it is more exciting and entertaining, today's society is less interested or does not understand the values contained in Bantengan because the mystical elements in the stage of "*kalap*" are more attractive and considered more entertaining (Nashichuddin et al., 2018).

According to Mr. TK and Mr. AS, Bantengan *mberot* phenomenon has experienced a significant moral and ethical decline. As an art form, Bantengan is exploited for inappropriate activities, such as brawls, riots, performers using alcohol, and women engaging in indecent acts during performances. Bantengan is now increasingly regulated as a platform for self-validation. This is what saddens Bantengan cultural figures and the public. Ultimately, many Bantengan performances focus solely on providing entertainment through sheer frenzy or

body movements, ignoring artistic value and offering no educational value at all (Nashichuddin et al., 2018).

Implications of Children's Involvement and *Maqasid shari'ah* in the Preservation of Bantengan Art

Bantengan is currently a popular trend among various groups, especially children. Many children participate as enthusiasts and performers in the preservation of Bantengan arts, joining Bantengan communities, owning their own Bantengan props, enlivening Bantengan performances, and so on. Based on observations and interviews, there are 3 (three) reasons for children's involvement in the preservation of Bantengan arts. *First*, there is an interest in preserving Bantengan arts as conveyed by the Bantengan community administrators. It would be better if culture was introduced to the new generation from an early age so that its existence can be maintained and advanced in this modern era (Qonitati & Sudrajat, 2020). In addition, MLN and RF joined because they intended to preserve culture. However, the government has an obligation to ensure the preservation and development of culture in line with the protection of human rights, specifically the rights of children as the nation's successors (Santyaningtyas & Noor, 2016). *Second*, the influence of family involvement in the Bantengan community. Direct involvement of family members, such as parents and siblings in the Bantengan community can strengthen interest and social legitimacy for children. As Mr. KST explained, *"The Rukun Wargo club was founded in 1981. I was young, following in the footsteps of my parents, passed down through generations. I've been involved since elementary school,"* and RF joined after his older brother. *Third*, fill children's free time with positive activities to preserve Bantengan art. One of children's after-school activities is playing. To fill their free time after school, children choose to find fun activities. Mr. RSK directed children in his neighborhood to join their community to do useful things related to Bantengan, such as making crafts for Bantengan performances.

Based on field data, it was found that children's involvement in Bantengan has negative impacts, including: *First*, children's rights to rest, worship, and study at school are disrupted because the Bantengan performances are held until midnight. The majority of complaints received and cases handled by the Women's Empowerment and Child Protection Office in Malang regency, supported by the statement of the Bantengan community, that *"Yes, most of them, when they go to school in the morning, are still sleepy. Then they become lazy, and then basically, they have at least two days off in the morning. They also participate in practice and play,"* namely

the loss of children's interest in learning at school because they are still sleepy or tired. Children not only enjoy watching the Bantengan performances, but also attend Bantengan practices until late at night so that children decide not to go to school because they are tired. RF also admitted that he was often exhausted at school due to his nightly Bantengan performances. This goes against the protection of reason (*hifz al-'aql*), as the intensive training schedule can interfere with children's educational activities.

In addition to impacting the right to learn in formal schools, Quranic recitation schools are also affected. Typically, children regularly attend afternoon Quranic study sessions at mosques or prayer rooms. However, because the Bantengan performance is usually held in the afternoon, many children choose to watch the Bantengan performance. Furthermore, children who stay up late participating in the Bantengan activities end up missing the morning prayer. This includes neglecting their religious obligations, in this case, studying and fluently reciting the Quran, and neglecting to perform the morning prayer, as stated by Mr. SWT: *"The negative impact is that the boys perform, for example on Saturday or Saturday nights, sometimes until almost morning, sleeping until noon, and missing the morning prayer."* This impact is contrary to the protection of children's religion because children's worship is disturbed, and it is feared that it will be normalized by the children.

Furthermore, sleep deprivation is also caused by the currently popular Bantengan *mberot* using digital music format and requiring a loud sound system to deliver a lively atmosphere. While it enlivens the atmosphere and brings joy to the audience, many find the loud noise disturbing, especially when the performance lasts until nightfall. Many families, especially those with small children or babies, are disturbed by the sleeplessness. This does not fulfill the protection of *hifz al-nafs* (the child's body).

These impacts have disrupted children's rights to study as stated in Article 9 paragraph (1) and Article 28 of the Convention on the Rights of the Child; the right to worship as stated in Article 6 of the Child Protection Law and Article 14 of the Convention on the Rights of the Child; and the right to rest as stated in Article 11 of the Child Protection Law and Article 31 of the Convention on the Rights of the Child.

Second, while the previous discussion focused on the impacts felt by children due to their direct involvement in Bantengan arts, the impacts described here are those felt by children who are not directly involved in Bantengan arts but rather through the involvement of their parents. Children can also experience negative impacts indirectly through their parents' participation in the Bantengan Community. In one case, a married woman with

children experienced a negative impact on her family, resulting in the loss of parental involvement, potentially impacting their mental health.

Another example of parental involvement in childcare is during cultural carnivals. Children naturally view their parents as role models in shaping their social identity and character in society. Therefore, poor parental example significantly impacts children (Ngazizah et al., 2025). Parents' inappropriate behavior in participating in cultural carnivals negatively impacts parenting practices, as children imitate their parents' actions, often leading to negative consequences, such as dancing in unethical clothing and drinking alcohol. This lapse in responsibility also contradicts parental obligations under Article 26 of the Children Protection Law; it also impacts children's right to live, grow, and develop with their parents, as stipulated in Article 3 of the Children Protection Law. In addition, *hifz al-nasl* does not run well because children do not receive good education and examples from their parents.

Third, the effects of the Bantengan phenomenon don't just affect children. It also affects parents, who become emotional victims. Parents are bound to feel a sense of worry when their child, who actively participates in Bantengan activities, suddenly disappears. After a search, it turns out the child has engaged in inappropriate relationships with members of the opposite sex, leading to underage marriage. This incident cannot be blamed solely on the Bantengan community their child is a member of; rather, it points to the lack of adult supervision of children's social interactions within the community.

Another concern for parents is children who engage in *ndadi* or *kalap* behavior. The researcher observed that many young children act as a medium of *ndadi*, even engaging in uncontrolled aggressive behavior, roaming the field. Even if the stage is resolved by elders, the children can experience lingering effects, such as confusion and a blank stare. This was compounded by RF and AF's statement that they often performed dangerous stunts during the Bantengan show. These effects may persist for more than a day, making parents uneasy. Children who cause anxiety due to activities in the Bantengan arts will be in violation of their obligations as children under Article 19 of the Children Protection, which includes respecting parents, loving their family, and upholding noble morals and ethics. Roles that have the potential to harm children will have an impact on the physical and mental health of children who fall into the categories of *hifz al-'aql* and *hifz al-nafs*.

Children's involvement in Bantengan arts preservation activities raises concerns among parents and has the potential to violate children's rights as stipulated in the Child Protection Law and the Convention on the Rights of the Child. Children's rights that may

be neglected include the right to education, play, and to grow and develop under parental care (Sunarto, 2025). Because the law aims for the welfare of society, it is necessary to establish policies that protect children's rights in the context of preserving Bantengan art, while still respecting the history and positive values contained within it.

The concept of child-friendly Bantengan conservation must pay attention to the principles of child protection consisting of the best interests of the child; non-discrimination; the right to life, survival, and development; and respect for the child's opinion. The best interests of the child are an important consideration that must be prioritized (of paramount importance) to produce policies related to children (Metekohy, 2021), as is based on Article 3 paragraph (1) of the Convention on the Rights of the Child. This principle plays a role in guiding decision-making that considers direct and indirect impacts on children's welfare. In the context of child-friendly Bantengan conservation, to apply the principle of the best interest of the child, at least it must fulfill child-based risks, establish child-friendly Bantengan standards, and prioritize children's interests over tradition.

***Maqasid shari'ah* as an Ethical Framework between Child Protection and Cultural Preservation**

The discourse on *maqasid al-shari'ah* has long been recognized as a dynamic framework that allows Islamic law to remain relevant across various temporal and spatial contexts (Sulaiman et al., 2025). The formation of legal policy must consider human welfare in relation to the fulfillment of human life needs, which scholars of *usul fiqh* have formulated into five basic needs: religion, soul, mind, offspring, and wealth (Saiban, 2019). If a legal product is based on these five frameworks, then a legal product has the right to be treated as legitimate law, regardless of the approach or method used in its formation (Mawardi, 2010).

Imam al-Haramain was the first to categorize *maqasid shari'ah* into three, namely *daruriyyat* (necessity), *hajjiyat* (needs), and *tahsiniyat* (luxuries). His thoughts were written in his work entitled "*al-Burhan fi usul al-Fiqh*" (Rahmi, 2023). Then, Imam Al-Syatibi compiled the concept of *maqasid shari'ah* systematically in his work entitled "*Al-Muwafaqat*", which made the concept of human benefit possible if it fulfills the 5 (five) basic elements of human life (*al-daruriyyat al-khams*), namely religion (*din*), soul (*nafs*), mind (*'aql*), offspring (*nasl*), and wealth (*mal*). Humans can live their lives well if they fulfill these five elements (Al Munawar, 2021; Nazaruddin & Kamilullah, 2020). In addition to being guided by the five basic needs of the *maqasid shari'ah*, Ibn 'Asyūr also formulated the foundations of *maqasid* based on four main principles, namely fitrah, tolerance, freedom, and human rights. He emphasized the need for

reformulation of the *istinbat* of Islamic law to be able to respond to the challenges of the times in a relevant and contextual manner (Saddam Askara, 2025). Furthermore, Jasser Auda updated the formation of law from the classical period which was individualistic, protection and preservation to *maqasid* which emphasizes the social-community side, development and aspects of human rights or human values (Auda, 2008). He also developed the five basic elements of human life (*al-daruriyyat al-khams*) into more adaptive elements, for example, the element of child protection or *hifz an-nasl* was developed into protection and concern for the family and the development of the role of the family institution (Auda, 2008). Protection of children in the context of preserving Bantengan must also pay attention to the other four elements to maximize benefits in the formation of ideal policies.

Maqasid shari'ah functions as an ethical framework or reference in the ethical and moral foundation that bridges cultural values and child protection, so that the law on the one hand contains benefits and certainty, and on the one hand contains moral values. Jasser Auda's concept of the evolution of *maqasid shari'ah* in his book is closer to dealing with contemporary issues than the classical concept. He developed the five main elements of human life (*al-daruriyyat al-khams*), namely religion (*dm*), soul (*nafs*), reason (*'aql*), heredity (*nasl*), and wealth (*māl*), into more adaptive elements (Auda, 2008, 2015).

Hifz al-Nasl (Protection of Offspring and Morality). Islam places high dignity on offspring, so their protection must be given attention by educating and nurturing children and maintaining family unity through prohibitions on adultery, disobedience to children, neglecting children, and so on (Auda, 2013). Meanwhile, in developing offspring protection, according to Jasser Auda, it is through protection and concern for the family and the development of the role of the family institution (Auda, 2008). In the context of preserving Bantengan art, the importance of child protection is a top priority. Children need to be protected by instilling moral, ethical, and character values in Bantengan through educational cultural practices and preventing psychological and physical violence against children. Then, prevention of deviant behavior that can be imitated by children, such as verbal and physical violence, symbolic sexuality, or other inappropriate behavior that can be imitated by children. In addition to entertainment and entertainment, Bantengan art can also be adapted as a means of character building for children, so that it is in line with social and religious values.

Hifz al-Nafs (Protection of the Soul). The protection of the human soul, both physical and psychological, must be addressed through various preventive measures against all forms of harm (Auda, 2013). Auda's development of this principle involves maintaining human

dignity and protecting human rights, and can even support the formation of the “Universal Islamic Declaration of Human Rights” and the principle that Islam can add a new positive perspective to human rights (Auda, 2008). Every activity to preserve Bantengan art must be carried out with attention to child protection by avoiding risks that threaten life, especially for children. Based on this, it is necessary to consider prohibiting the involvement of children in high-risk scenes, such as extreme physical attractions or roles that have the potential to cause injury. Obligatory safety standards, such as setting performance times that are safe for children’s development and determining age limits for children in certain roles, and adequate adult supervision are forms of collective responsibility to protect children’s safety.

Hifẓ al-'Aql (Protection of Intellect) Intellect is a human privilege bestowed by Allah upon His creatures, so it must be protected and not interfere with its function towards human intellect and psychology (Auda, 2013). Protection of children’s intellect in the preservation of Bantengan art can be done by establishing a ban on the consumption of alcoholic beverages and addictive substances in cultural activities. Then, eliminate practices that damage children’s reason and psychology, such as excessive symbolic violence, aggressive behavior, or the normalization of destructive behavior. In addition, in the preservation of Bantengan art, it can be utilized to create a cultural environment that upholds the development of children’s knowledge, cognitive, and emotional, not just entertainment.

Hifẓ al-Dīn (Protection of Religion) Protecting religion is essential and fundamental to human survival, especially for the afterlife (Auda, 2013). This principle does not lead to the elimination of rituals in Bantengan art, but rather to reconstructing ritual or symbolic elements so that they do not conflict with faith and align with the values of monotheism and Islamic ethics, while also filtering out extreme magical or mystical practices that could confuse children’s religious understanding. Furthermore, it is necessary to provide moderate and inclusive spiritual education, so that culture functions as a means of conveying faith, not a distortion of religion. And importantly, children do not neglect their right and obligation to worship in every activity preserving Bantengan art.

Hifẓ al-Māl (Protection of Children’s Economic Rights) Human survival is crucially dependent on wealth or money, so it would be dangerous if there is an abuse of authority to obtain money (Auda, 2013). In the context of involving children in the preservation of Bantengan art, children must be guided as wisely as possible by the Bantengan community administrators by being taught everything that prioritizes productivity and has utility value, for example being trained to make replicas of bull heads or traditional musical instruments

(drums, tambourines, and others), so that in the future children have skills that can be sold for a profitable productive economy in the future. In addition, this principle must close all possibilities that cause economic exploitation in the name of culture or tradition, clearly separating children's educational participation from the economic interests of the organizers, and also recognizing that children are not instruments of the cultural economy, but rather subjects that must be protected. This principle is in line with social justice and the protection of children's rights.

The five main elements of human life (*al-daruriyyat al-khams*), namely religion (*din*), soul (*nafs*), reason (*'aql*), heredity (*nasl*), and wealth (*māl*), are applied into a policy framework that reconciles cultural preservation with child protection so that it is hoped that it can realize children's welfare in their participation in preserving Bantengan art.

Ideal Policy for Preserving Child-Friendly Bantengan Arts in Malang Regency *Maqasid shari'ah* Perspective

Based on the previous explanation of the impacts of children's involvement in the preservation of Bantengan arts, the Bantengan community, as the preserver of Bantengan arts, which includes Bantengan artists, plays a crucial role in providing a safe environment for children in their community to preserve Bantengan arts. They also provide educational performances that adhere to good artistic etiquette and safety standards and are suitable for public viewing, especially for children. Through this opportunity, the Bantengan community can also enforce appropriate regulations and educate the children within its community regarding the protection of children's rights. Furthermore, parents play a crucial role in directly supervising children's activities at home and managing the balance between learning, playing, and resting.

The ideal policy for child-friendly Bantengan arts preservation in Malang Regency can be directed towards establishing a child-friendly Bantengan community that ensures the fulfillment and protection of children's rights throughout the Bantengan preservation process, from training to performances, in a safe, comfortable environment free from violence and discrimination. It also creates a space for children to learn to interact, participate, cooperate, maintain peace, and respect time. This formulation is also designed to wisely direct children's involvement in the Bantengan community, supported by specific requirements or guidelines, specifically regulated in accordance with the principles of the *maqasid shari'ah*.

The guidelines that must be considered in this ideal legal policy are, *first*, protecting children from physical and psychological violence. This content clearly coexists with four of the five basic elements of human life, namely child protection (*hifẓ al-nasl*) which pays attention to physical protection (*hifẓ al-nafs*), psychological protection (*hifẓ al-'aql*), and protection of children from economic exploitation (*hifẓ al-'māl*). The definitions of physical and psychological violence follow those outlined in the following laws and regulations, such as Article 1 paragraph (9) and (10) of The Regional Regulation Number 3 of 2009 concerning the Protection of Women and Children Victims of Violence:

“Physical violence is any act that results in pain, injury, wound or disability to a person’s body, miscarriage, fainting and/or death. Psychological violence is an act that results in fear, loss of self-confidence, loss of ability to act, feelings of helplessness and/or severe psychological suffering in a person.”

Any action that leads to violence against children must be avoided, for example, children should not be forced to participate in high-risk attractions to prevent injuries such as trance. Furthermore, based on the author’s observations, at this stage the child completely loses control of his body and does not rule out the possibility of bad risks arising after the show is over, such as a sustainable environment, loss of the ability to think clearly, a blank mind, and in other words, these risks affect the child’s psyche.

According to informants from Bantengan community leaders, the current Bantengan are adapting to the times, so summoning *Danyangan* for trance is not necessary, as it contradicts Islamic teachings. According to Ali Muhammad Muthowi, trance is a disease that can cause disturbances in the soul, speech, thoughts, and actions (Biantoro, 2021). Therefore, there is a choice between inducing trance and not engaging in it. It would be wiser if children did not participate in the trance process and delegated that role entirely to adults.

Second, safety and health go hand in hand with child protection (*hifẓ al-nasl*), which addresses physical protection (*hifẓ al-nafs*) and psychological protection (*hifẓ al-'aql*). To realize the preservation of child-friendly Bantengan arts by paying attention to the best interests of children, especially the standardization of child-friendly Bantengan arts preservation, the Malang Regency Government is authorized to form regulations on child-friendly cultural governance and carry out interactive collaboration between the Tourism and Culture office, the Women’s Empowerment and Child Protection Office, and the Bantengan community to create a code of ethics for involving children and standard operating procedures (SOP) for Bantengan performances that are clear in accordance with the established Bantengan arts standards.

Third, age restrictions and children's roles. Core roles that could potentially endanger safety can only be assigned to adults or those who have reached a specified age, such as 15 (fifteen) years and above. Therefore, children under that age are only permitted to play non-risk roles, such as musicians, dancers, *pencak silat* artists, or creative support. This aligns with the principle of the child's best interests in child-based risk assessments, specifically regarding the protection of the child's intellect (*hifz al-'aql*) and soul (*al-nafs*).

Fourth, children's rights to education and rest. Bantengan activities must not interfere with children's obligations to attend school. Therefore, time management is crucial for balancing children's rights between play, participation, rest, and learning at school. The Quran emphasizes the importance of rest time alongside human activity, and this balance must be maintained. One of the principles referred to is as follows:

وَمِنْ آيَاتِهِ مَنَامُكُمْ بِاللَّيْلِ وَالنَّهَارِ وَابْتِغَاؤُكُمْ مِّنْ فَضْلِهِ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَسْمَعُونَ (الروم: ٢٣)
“And of His signs is your sleep by night and day and your seeking of His bounty. Indeed in that are signs for a people who listen.” (Surah Ar-Rum verse 23)

Night is a time for rest and day is a time for work. Sleeping at night is a sign of Allah's greatness for His servants, ensuring they have the energy to carry out their daytime activities. Therefore, setting a curfew for children to end all their activities is one way to manage their time. By getting enough sleep, children are expected to be able to carry out school activities smoothly (*hifz al-'aql*) and carry out the Bantengan activity after school. This can serve as an example for determining the ideal time for children to carry out Bantengan and balancing children's time for play and learning while simultaneously striving to protect their offspring (*hifz al-nasl*).

Fifth, providing education to children. Children now live in a digital era that can access technology with the risk of exposure to free content in the media. Hasbullah in the journal Witasari and Yahya stated that the strategy for handling the digital era in educating children is guided by Islamic principles, motivating children's creativity and developing their skills, and also providing broad knowledge (Witasari & Yahya, 2021). In response to these social changes, there is a need for education to foster responsible character in children, especially in terms of cultural creativity, by teaching children everything that prioritizes productivity and has utility value, for example, being trained to make replicas of animal heads or traditional musical instruments (drums, tambourines, and others) related to the Bantengan art, so that in the future children have skills that can be sold for a profitable productive economy in the future. This is in line with the principle of *maqasid shari'ah* regarding the

protection of property (*Hifẓ al-māl*) to ensure the survival of children in the future. Children are an important party in this matter because of their role as the next generation who preserve the nation's heritage, and this policy is expected to provide protection for children's rights to achieve children's welfare.

Sixth, parental supervision. However, parental supervision of children at home is crucial, and the responsibility for their education and character development cannot be completely left to the school. This is because children spend more time growing up with their parents than with teachers at school. Furthermore, mothers play a crucial role as their children's first guides (Witasari & Yahya, 2021). According to Sayyid Muhammad al-Za'balawi in the journal *Hidayat*, Allah promises that parents will be spared the heat of hellfire if they fulfill their parental responsibilities to their children with full obedience (Hidayat, 2021).

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا، عَنِ النَّبِيِّ ﷺ قَالَ: «كُلُّكُمْ رَاعٍ، وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ، وَالْأَمِيرُ رَاعٍ، وَالرَّجُلُ رَاعٍ عَلَى أَهْلِ بَيْتِهِ، وَالْمَرْأَةُ رَاعِيَةٌ عَلَى بَيْتِ زَوْجِهَا وَوَلَدِهِ، وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ

“The Prophet said, “All of you are guardians and are responsible for your wards. The ruler is a guardian and the man is a guardian of his family; the lady is a guardian and is responsible for her husband's house and his offspring; and so all of you are guardians and are responsible for your wards” (Sahih al-Bukhari 5200)

This effort aligns with Jasser Auda's conclusion that the protection of offspring (*hifẓ an-nasl*) can be implemented through protection and care for the family and the development of the family institution (Auda, 2008). Therefore, the government needs to support this by regulating preventive and repressive measures to maximize parental supervision of children.

Any child's involvement is recommended to be accompanied by written permission from a parent or guardian to the Bantengan community. This preventive measure is carried out through legal parental approval for the child's participation in the preservation of Bantengan arts, granting temporary responsibility for the child to the Bantengan community, motivating the child to take responsibility for their participation, and involving parents in understanding the goals, benefits, and risks of their participation in the preservation of Bantengan arts. Parents can then report the child's involvement to relevant institutions, which could lead to repressive measures if the child's involvement is no longer in line with children's rights. Repressive measures taken by parents if they discover violations of their children's rights in the preservation of Bantengan art include first providing counseling and

understanding to the child. They can then report their concerns to child protection agencies, such as the Women's Empowerment and Child Protection Office, the PPA Task Force in each village, the Children's Forum, the Indonesian Child Protection Commission, and others.

When parents require consultation regarding their children's participation in Bantengan performances, the Family Learning Center (Puspaga) provides preventive services aimed at the community, and the responsibility for these services rests with the Women's Empowerment and Child Protection Office (Romli & Pertiwi, 2025). Puspaga offers services such as a chat room, psychological counseling, parenting lessons, proper child education, and so forth. This is an effort to maintain parents' peace of mind, or to alleviate their anxieties, and to protect their offspring from the negative impacts of Bantengan performances.

Seventh, educational and inclusive cultural performances. The Bantengan performance is directed as an educational medium about cultural values, sportsmanship, brotherhood, and local wisdom. By considering all principles of the best interests of children, there must be no discriminatory, exploitative, or pornographic content in the performance. Standardization is established, for example, by not showing dancers wearing skimpy clothing and performing indecent movements. In addition, the East Java MUI issued Fatwa No. 1 of 2025 concerning the use of Sound *Horeg* and stipulated its prohibition if the sound *horeg* can harm health, especially when accompanied by dance performances that expose genitals and are not in accordance with sharia. Furthermore, the use of sound systems is preferably not exceeding 100 (one hundred) decibels (dB) in accordance with WHO (World Health Organization) guidelines (World Health Organization, 2022), both during rehearsals and during the Bantengan performance. If the Bantengan art performance can be used to provide inclusive education to children, it greatly supports children's right to develop their minds (*hifẓ al-'aql*) properly.

Eighth, the government needs to establish operational standards for establishing Bantengan communities. The legality of a Bantengan community is indicated by its ownership of an Arts Identification Number (Sopannah, Hermawati, Bahri, Utami, et al., 2024), registered in the local government database. An arts community affiliated with the government can facilitate various operational matters, such as obtaining performance permits. This requirement aligns with a program planned by the Department of Tourism and Culture, which aims to raise awareness about the importance of arts institution identification numbers to enhance the legality and professionalism of arts institutions.

However, simply emphasizing the Arts Identification Number is ineffective; direct observation of the Bantengan community regarding its management, membership, training system, including practice locations and facilities, and so on is necessary. It is hoped that with these standards, the government can strengthen the principle of sustainability in the Culture Advancement Law and the development of Bantengan arts in accordance with Bantengan standards. This material is also expected to prevent child exploitation, which the Bantengan community uses to attract public attention and generate income (*hifẓ al-māl*), and certainly encourage the Bantengan community to implement regulations that address child protection (*hifẓ an-nasl*).

The formulation of the minimum content material in the ideal legal policy for preserving Bantengan arts that is friendly to children's rights from the perspective of *maqasid shari'ah* offered can make the protection of offspring (*hifẓ an-nasl*), in this case children, experience development as in the development of *al-daruriyyat al-khams* from the classical paradigm conceptualized by Jasser Auda. The development of offspring (*nasl*) is also related to other aspects, namely for the physical and psychological protection of children (*nafs*), children's reason and thoughts (*'aql*), children's worship (*din*), and protection of children from exploitation (*māl*) in preserving Bantengan arts.

CONCLUSION

A child-friendly legal policy for preserving Bantengan arts needs to include several guidelines formulated by upholding the *maqasid shari'ah*, which consists of *hifẓ al-nafs*, *hifẓ al-'aql*, *hifẓ al-nasl*, *hifẓ al-din*, and *hifẓ al-māl*. The proposed formulation of the content includes a minimum age requirement of 15 years for children in dangerous roles, strengthening safety standards for Bantengan performances, prioritizing children's education and health, emphasizing parental supervision, and strengthening the quality of the Bantengan community. The formulation of legal policy on the preservation of Bantengan arts that is friendly to children's rights in Malang Regency based on *maqasid shari'ah* is expected to provide a contribution in the form of considerations to the local government in forming regional legal policies that are technical and applicable as an effort to protect children's rights in their participation in Bantengan arts. This study contributes to the development of cultural laws that integrate *maqasid shari'ah* into the formulation of child-friendly cultural policies. This approach extends the application of *maqasid* beyond the conventional realm of Islamic legal

theory into the realm of cultural governance and offers a normative framework that reconciles cultural preservation with child protection.

This research still has many gaps and variables that can be developed further in future research. The limitations of this research are limited to the legal aspect, which focuses on analyzing the protection of children's rights in their participation in the preservation of Bantengan art, furthermore, the empirical data collected in the Bantengan community in Malang Regency limits the generalizability of the findings to other cultural contexts. Future research is expected to further explore or deepen other cultural, locational, and cross-disciplinary perspectives, for example through an educational perspective to examine how children obtain their educational rights to learn at school and at home, a psychological perspective to examine the mental state of children involved in the preservation of Bantengan art, religious perspectives, economics, and so forth.

REFERENCES

- Al Munawar, F. A. (2021). 'Abd Al-Majīd Al-Najjār's Perspective on Maqāṣid Al-Sharī'ah. *JURIS (Jurnal Ilmiah Syariah)*, 20(2), 210–223. <https://doi.org/10.31958/juris.v20i2.4281>
- Ali, H., & Ruslan, R. (2018). Preservation of Local Wisdom Culture (Local Genius) as an Effort to Establish the Character of the Nation. *Proceedings of the Annual Civic Education Conference (ACEC 2018)*, 178–182. <https://doi.org/10.2991/acec-18.2018.43>
- Ardyansyah, M. F., Syah, A. L. A., & Amalia, S. F. (2025). Maqashid Syari'ah dalam Kebijakan Publik: Analisis Implementasi Prinsip Islam dalam Kebijakan Pemerintah di Indonesia. *Muta'allim: Jurnal Pendidikan Agama Islam*, 4(3), 227–240. <https://doi.org/10.18860/mjpai.v4i3.12639>
- Atikah, I., Rizkia, N. D., Basri, B., Monteiro, J. M., Jaelani, E., & Silapurna, E. L. (2024). *Pengantar Metode Penelitian Hukum Sosio-Legal*. CV Widina Media Utama. <https://repository.penerbitwidina.com/publications/569735/>
- Auda, J. (2008). *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. International Institute of Islamic Thought (IIIT). <https://doi.org/https://doi.org/10.2307/j.ctvkc67tg>
- Auda, J. (2013). *Al-Maqasid Untuk Pemula* ('Ali 'Abdelmon'im, Trans.). SUKA Press.
- Auda, J. (2015). *Membumikan Hukum Islam Melalui Maqasid Syariah* (Rasidin & 'Ali 'Abdelmon'im, Trans.). PT. Mizan Pustaka.
- Biantoro, O. F. (2021). Fenomena Kesurupan dalam Agama Islam. *Al-Jadwa: Jurnal Studi Islam*, 1(1), 102–115. <https://doi.org/10.38073/aljadwa.v1i1.1032>
- Fajar, M., & Achmad, Y. (2010). *Dualisme Penelitian Hukum: Normatif dan Empiris*. Pustaka Belajar.
- Hidayat, R. (2021). Tanggung Jawab dan Peran Orang Tua Terhadap Pendidikan Anak Dalam Pandangan Islam. *Al Hikmah: Journal of Education*, 1(2), 141–152. <https://doi.org/10.54168/ahje.v1i2.17>
- Kementrian Pendidikan dan Kebudayaan. (2020). *Profil Budaya dan Bahasa Kabupaten Malang, Provinsi Jawa Timur* (D. Wi. Hadi, Ed.). Pusat Data dan Teknologi Informasi.
- Kusumawati, Y. A., Angkawijaya, Y., & Wibowo, B. S. (2025). Digital Tools to Promote Bantengan Art: Kebo Putro Joyo Anom Case Study. *SEEIJ (Social Economics and Ecology International Journal)*, 9(2), 114–124. <https://doi.org/10.21512/seeij.v9i2.12740>
- Mawardi, A. I. (2010). *Fiqh Minoritas: Fiqh Al-Aqalliyat dan Evolusi Maqashid al-Syari'ah dari Konsep ke Pendekatan*. LKiS.

- Metekohy, O. (2021). Perlindungan Hak Anak Menurut Konvensi Hak Anak Tahun 1989 Ditengah Krisis Global Covid-19. *TATOHI: Jurnal Ilmu Hukum*, 1(9), 908–917. <https://doi.org/10.47268/tatohi.v1i9.811>
- Nashichuddin, M., Rifki, M. G., & Lifca P., P. (2018). Makna dan Transmisi Mantra Pemanggilan Arwah Kesenian Jawa Bantengan Daerah Mburing Malang Jawa Timur. *Jurnal Pendidikan Bahasa Indonesia*, 6(1), 57–64. <https://doi.org/10.30659/j.6.1.57-64>
- Nazaruddin, N., & Kamilullah, F. (2020). Maqashid As-Syariah Terhadap Hukum Islam Menurut Imam As-Syatibi dalam Al-Muwafaqat. *Jurnal Asy-Syukriyyah*, 21(1), 106–123. <https://doi.org/10.36769/asy.v21i1.101>
- Ngazizah, I. F., Yawace, H., Abdillah, K., & Abidin, M. Z. (2025). Effectiveness Of Child Protection Law In Fulfilling The Right To Child Custody (Hadhanah) In Kudus Indonesia. *Jurnal Hukum IUS QULA IUSTUM*, 32(2), 265–286. <https://doi.org/10.20885/iustum.vol32.iss2.art1>
- Pahutar, A. A., Ritonga, M., & Hanafi, A. H. (2024). Konsep Maqasid Syariah dalam Mengatasi Tantangan Sosial dan Budaya di Era Globalisasi. *Dakwatul Islam*, 9(1), 59–86. <https://doi.org/10.46781/dakwatulislam.v9i1.1316>
- Qonitati, S., & Sudrajat, A. (2020). Mekanisme Survival Seni Bantengan Lama Versus Baru Dalam Persaingan. *Paradigma*, 8(1), 1–21.
- Rahmi, N. (2023). Sejarah dan Perkembangan Maqashid Syariah Serta Karya Ulama Tentangnya Sebelum Imam Syatibi. *Jurnal AL-AHKAM*, 14(1), 54–69. <https://doi.org/10.15548/alahkam.v14i1.6143>
- Romli, M., & Pertiwi, T. K. (2025). Peran Puspaga Semanggi Dalam Pelayanan Masyarakat di Kota Surabaya. *Abimanyu: Journal of Community Engagement*, 6(2), 77–82.
- Ruggiero, R. (2022). Article 3: The Best Interest of the Child. In Z. Vaghri, J. Zermatten, G. Lansdown, & R. Ruggiero (Eds.), *Monitoring State Compliance with the UN Convention on the Rights of the Child* (Vol. 25, pp. 21–29). Springer International Publishing. https://doi.org/10.1007/978-3-030-84647-3_3
- Saddam Askara. (2025). Maqasid Syariah Sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda. *Journal Review of Islamic and Social Studies*, 1(1), 29–36. <https://doi.org/10.64845/riss.v1i1.35>
- Saiban, K. (2019). *Metode Penetapan Hukum Islam: Membangun Madzhab Fiqih Kontemporer di Indonesia*. Setara Press.
- Santyaningtyas, A. C., & Noor, M. Z. M. (2016). Preserving of Traditional Culture Expression in Indonesia. *Asian Social Science*, 12(7), 59–65. <https://doi.org/10.5539/ass.v12n7p59>
- Sawitri, Khasanah, U., Bagea, I., Fatmasari, R. K., & Renawati, P. W. (2024). Cultural Semiotics Analysis of Traditional Bantengan Art: Exploring Function, Symbolic Meaning, Moral Significance, and Existence. *RETORIKA: Jurnal Ilmu Bahasa*, 10(1), 101–112. <https://doi.org/10.22225/jr.10.1.2024.101-112>

- Shidarta. (2024). *Ilmu-Ilmu Empiris tentang Hukum Penerapannya pada Kajian Sosio-Legal*. Kencana.
- Sopannah, A., Hermawati, A., Bahri, S., & Rusdianti, I. S. (2024). From Traditional-Ritual Activities to Financial Report: Integrating Local Wisdom in Bantengan Financial Bookkeeping. *Journal of Risk and Financial Management*, 17(12), 529. <https://doi.org/10.3390/jrfm17120529>
- Sopannah, A., Hermawati, A., Bahri, S., Utami, R. N., & Sulistyan, R. B. (2024). Nilai Kearifan Lokal Kesenian Bantengan dalam Implementasi Akuntansi. *Jurnal Reviu Akuntansi Dan Keuangan*, 14(3), 804–816. <https://doi.org/10.22219/jrak.v14i3.36298>
- Sulaiman, A., Masrukhin, M. Y., Sunaryo, A., & Zaman, A. R. B. (2025). Ideology, Maqāṣid, and Politics: The Paradox of Al-Qaraḍāwī's Islamist Thought. *Ajy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, 59(2), 171–190. <https://doi.org/10.14421/ajish.v59i2.1615>
- Sunarto, M. Z. (2025). Child Protection in The Perspective of Multiculturalism: Bridging Traditional Values and Modern Legal Policy. *Hakam : Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam*, 9(1). <https://doi.org/10.33650/jhi.v9i1.13602>
- Witasari, O., & Yahya, M. S. (2021). Pendidikan Keluarga dalam Al-Qur'an (Surah Luqman ayat 12-19). *Arfannur*, 2(2), 87–104. <https://doi.org/10.24260/arfannur.v2i2.164>
- World Health Organization. (2022). *WHO Global Standard for Safe Listening Venues & Events*. World Health Organization.



THE AMBIVALENCE AND SOCIAL ENFORCEMENT OF WIDOWER 'IDDAH NORMS IN MADURA (A Critical Islamic Law Perspective on Living Fiqh And The Limits Of 'Urf)

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ABSTRACT

This article examines the socio-legal construction of widower's iddah in Madura from an Islamic law perspective. It focuses on how widower mourning, although not formally codified in detail in the Kompilasi Hukum Islam, becomes a socially recognized and enforced norm in local Muslim communities. The study aims to analyze the ambivalence and social enforcement of widower's iddah and to assess whether it constitutes a legitimate expression of 'urf and living fiqh or an excessive form of communal moral control. This research employed an empirical socio-legal design with a qualitative case study approach in Banyuwates and Ketapang, Sampang Regency. Data were collected through in-depth interviews, observation, and field notes with 42 informants, including widowers, younger and older community members, religious leaders, and community leaders. The findings show that a widower's iddah functions as a morally binding norm shaped by kinship relations, communal morality, and local religious reasoning. Its enforcement is supported by Madurese values such as *tengka*, *malo*, *todus*, and *ajhina abhâ*, as well as informal sanctions such as gossip, labeling, distancing, and reputational pressure. The study concludes that a widower's iddah may be accepted as a valid 'urf only when it remains proportional, ethical, and consistent with *maqasid al-shari'ah*; otherwise, it risks becoming unjustifiable social coercion. Its legitimacy collapses when social enforcement turns that framework into excessive communal control that negates the widower's legally permissible right to remarry.

Keywords : *widower iddah; living fiqh; 'urf; Madura; Islamic family law*

ABSTRAK

Artikel ini mengkaji konstruksi sosio-legal *'iddah* duda di Madura dalam perspektif hukum Islam. Fokus kajian ini adalah mengenai masa berkabung duda, yang tidak dikodifikasi secara rinci dalam *Kompilasi Hukum Islam*, justru hidup sebagai norma sosial yang diakui dan ditegakkan dalam masyarakat muslim. Artikel ini bertujuan untuk menganalisis ambivalensi dan penegakan sosial *'iddah* bagi duda serta menilai apakah praktik tersebut merupakan ekspresi *'urf* dan *living fiqh* yang sah atau justru bentuk kontrol moral komunal yang berlebihan. Penelitian ini menggunakan desain sosio-legal empiris dengan pendekatan studi kasus kualitatif di Banyuwates dan Ketapang, Kabupaten Sampang. Data dikumpulkan melalui wawancara mendalam, observasi, dan catatan lapangan terhadap 42 informan yang terdiri atas duda, kalangan muda dan tua, tokoh agama, serta tokoh masyarakat. Hasil penelitian menunjukkan bahwa *'iddah* duda berfungsi sebagai norma moral yang mengikat dan dibentuk oleh relasi kekerabatan, moralitas komunal, dan nalar keagamaan lokal. Penegakannya ditopang oleh nilai-nilai Madura seperti *tengka*, *malo*, *todus*, dan *ajhina abhâ*, serta sanksi informal berupa gosip, pelabelan, penajuhan sosial, dan tekanan reputasional. Penelitian ini menyimpulkan bahwa *'iddah* duda dapat diterima sebagai *'urf* yang sah hanya jika dijalankan secara proporsional, etis, dan selaras dengan *maqasid al-shari'ah*; jika tidak, ia berisiko berubah menjadi paksaan sosial yang sulit dibenarkan. Legitimasi tersebut runtuh ketika penegakan sosial mengubah kerangka iddah menjadi kontrol komunal yang berlebihan yang meniadakan hak duda yang secara hukum Islam diperbolehkan untuk menikah lagi.

Kata Kunci : *iddah duda; living fiqh; 'urf; Madura; hukum keluarga Islam*

INTRODUCTION

The discourse of *'iddah* in Islamic law has long been cantered on women, especially in relation to divorce and widowhood. This orientation is also reflected in the Indonesian *Kompilasi Hukum Islam* (KHI), which regulates the waiting period for wives in considerable detail (article 153). By contrast, the legal position of a husband after the death of his wife is not elaborated with the same degree of precision. Article 170 paragraph (2) of the KHI only states that a husband whose wife dies should observe a mourning period “according to propriety” (*menurut kepatutan*) (Ditjen Pembinaan Kelembagaan Islam, 1991). This provision is normatively meaningful but juridically open-ended. It acknowledges that a widower is not entirely outside the moral framework of bereavement, yet it does not clearly define the duration, scope, or concrete consequences of such mourning.

From the perspective of Islamic family law, this open-endedness raises an important question: how does a norm with minimal formal regulation become socially binding in Muslim society? This issue becomes especially significant when Islamic law is understood not merely as a body of statutory rules, but also as a living normative order. Ehrlich (Fuchs, 2021) argued that the centre of gravity of law lies in the norms embedded in social life. Likewise, Moore demonstrated that communities may generate and enforce their own binding norms within what she called semi-autonomous social fields (Lemons et al., 2025). In Islamic legal studies, this social vitality can be approached through the notion of *living fiqh*, namely the ways in which fiqh-based values are interpreted, localized, embodied, and enforced in everyday life (Wimra et al., 2023). However, Islamic law does not accept custom uncritically. The validity of *'urf* depends on its compatibility with broader Sharī'ah principles and objectives, including justice, benefit, dignity, and social balance (Auda, 2008; Kamali, 2008).

The Madurese case is particularly important because it presents a socio-legal paradox. Madura is often associated with strong patriarchal values and male-cantered authority structures (Anhary, 2023; Dartiningsih, 2022). However, this study finds the opposite in an important moral domain: in some Madurese Muslim communities, a widower who remarries too soon after his wife's death is not necessarily regarded as exercising a normal male privilege, but may instead be seen as improper, insensitive, or even taboo. This paradox is analytically significant because it shows that patriarchy does not automatically translate into unlimited male autonomy.

In practice, a widower's *iddah* in Madura functions not merely as a private expression of grief, but as a socially recognized and socially enforced norm. A widower may be expected to postpone remarriage, maintain public restraint, and avoid conduct deemed inappropriate after his wife's death. These expectations are tied to local moral values concerning shame, propriety, and family honour, and may be reinforced through gossip, rebuke, kinship pressure, social distancing, and other informal sanctions. The legal issue, therefore, is not simply whether widower mourning exists, but whether its authority and enforcement can be justified within Islamic law as a valid *'urf* that supports *maqasid al-shari'ah*.

Previous studies have provided important insights, but they have not fully addressed this problem. Much of the literature on *'iddah* and *iḥdād* remains cantered on women, both in classical fiqh and in modern Islamic family law (Azzulfa & Cahya A., 2021; Sofian & Abdi, 2023). In the Indonesian context, discussions on male mourning have generally focused on doctrinal reciprocity, legal reform, or the implementation of KHI Article 170(2) (Abdullah et al., 2023; Ahmad, 2023; Asiyah et al., 2023). Existing work shows that the KHI recognizes a mourning period for husbands, yet its social application remains uneven and highly dependent on local interpretation. Other studies on Madurese society discuss patriarchy, moral order, and kinship-based authority (Sa'diyah & Nurhayati, 2024). However, they do not specifically examine how widower mourning becomes socially binding through informal sanctions, nor do they critically test its validity through the doctrine of *'urf*. As a result, a widower's *iddah* remains insufficiently positioned as a serious issue of Islamic family law in its own right.

Accordingly, at least three gaps remain. First, a widower's *iddah* is still often treated as a derivative issue within broader debates on women's *iddah*. Second, the mechanism of social enforcement remains under-theorized. Third, the norm's ambivalence has not been adequately examined. The unresolved Islamic law question is whether a widower's *iddah* in Madura qualifies as *'urf sahib* that supports Sharī'ah objectives, or whether, in certain circumstances, it becomes excessive moral control expressed in religious language.

This article addresses that gap by offering a critical Islamic law reading of widower's *iddah* norms in Madura. The state of the art of this study lies in connecting three analytical layers that are often discussed separately: widower mourning as an empirical social norm, its operation as *living fiqh* through communal recognition and sanction, and its evaluation through the framework of *'urf* and *maqasid al-shari'ah*. The originality of this article is therefore both empirical and theoretical. Empirically, it shifts attention from the formal regulation of

widowhood to the social life of Islamic family norms affecting widowers. Theoretically, it argues that the validity of custom must be assessed in relation to Shari'ah purposes, proportionality, justice, and the balance between collective moral order and personal dignity.

This research is situated in Madura, particularly in Muslim communities where widowers' *iddah* norms continue to function as socially recognized standards after a wife's death. Madura is selected because it provides an analytically significant socio-legal setting in which Islamic values, kinship honor, communal morality, patriarchy, and informal sanctions intersect visibly and durably. Accordingly, the objective of this study is to analyze the ambivalence and social enforcement of widower's *iddah* norms in Madura and to formulate a critical Islamic law assessment of whether such norms represent a legitimate customary embodiment of Shari'ah values or an excessive form of communal moral control.

RESEARCH METHOD

This study employed an empirical socio-legal design with a qualitative case study approach. It was conducted in Banyuwates and Ketapang, Sampang Regency, because in these two settings widowers' *iddah* norms remained socially meaningful and were enforced through kinship relations, communal morality, and local religious authority. The researcher served as the primary research instrument in the field. The research subjects consisted of individuals and social actors who possessed direct experience, knowledge, or authority regarding widower mourning practices. A total of 42 informants participated in this study, comprising widowers as the main actors, younger and older community members, community leaders, and religious leaders. They were selected purposively based on their relevance to the research problem.

The data consisted of both primary and secondary sources. Primary data were collected through in-depth interviews, observation, and field notes. The interviews were conducted to explore how widowers' *iddah* norms were understood, justified, enforced, and negotiated in everyday social life. Observation was used to capture social responses to widower remarriage, including communal expectations, moral judgment, and forms of informal sanction. Secondary data were obtained from the *Kompilasi Hukum Islam*, classical and contemporary literature on *'iddah*, *ihdad*, *'urf*, and *maqasid al-shari'ah*, as well as relevant socio-legal studies. These materials were used to provide the normative and analytical framework for interpreting the empirical findings.

The data were analysed qualitatively through data reduction, categorization, thematic interpretation, and critical Islamic law analysis. Field data were first organized into major themes, including the social construction of widower's *iddah*, mechanisms of informal sanction, and the local moral values underlying the norm. These themes were then interpreted through a socio-legal perspective to explain how widower mourning functioned as *living fiqh*. In the final stage, the findings were examined through the doctrines of *'urf* and *maqasid al-shari'ah* in order to assess whether widower's *iddah* in Madura operated as a valid customary embodiment of Islamic legal values or as an excessive form of communal moral control. To enhance the credibility of the findings, the study employed source triangulation and continuous comparison between field data and legal analysis.

FINDINGS AND DISCUSSION

The Social Construction of Widower 'Iddah: Strength, Flexibility, and Local Norm

Field findings showed that a widower's *iddah* in Banyuwates and Ketapang was not understood as a formal legal obligation in the same sense as a woman's *iddah* in classical *fiqh* or in the *Kompilasi Hukum Islam*. Rather, it was socially constructed as a morally binding norm governing a husband's conduct after the death of his wife. In both locations, the norm was transmitted through family advice, kinship expectations, religious discourse, and everyday communal interaction. Informants generally understood that a widower should not remarry immediately after his wife's death. Although no single uniform legal formula was invoked, social understandings of a "proper" waiting period were clearly ((some informants mentioned 40 days, 100 days, 1 year, or even 1,000 days) 40 days, 100 days, 1 year, and even 1000 days) recognized, and remarriage considered too close to the wife's death was widely viewed as improper. widower's *iddah* functioned less as a codified rule than as a socially reproduced moral expectation embedded in communal life.

Local standards of appropriateness shaped the practical content of this norm. In both sites, widowers were expected to maintain restraint, avoid hastily arranging a new marriage, and display conduct considered fitting to bereavement. The exact time limit was defined through social judgment about whether a widower had shown sufficient respect for his deceased wife and her family. In some accounts, the issue was not merely the number of days or months, but whether the widower was seen as "too quick," "not yet proper," or insufficiently attentive to the emotional and social consequences of remarriage. This indicates

that the widower's iddah was constructed through moral timing. Its force lay in a shared communal sense of when remarriage ceased to be interpreted as disrespectful.

The findings also revealed that a combination of religious sensibility and social pressure drove compliance with widower's iddah norms. Informants referred to respect for the deceased wife, consideration for the feelings of her family, the preservation of family honor, and the avoidance of gossip or moral suspicion as major reasons for compliance. A widower was therefore not viewed merely as an individual managing personal grief, but as a social actor whose conduct reflected upon the dignity of the deceased and the moral standing of both families. In this sense, a widower's iddah emerged as a fusion of Islamic moral sensibility and customary reasoning. The open-ended formulation of mourning "according to propriety" was effectively filled by communal expectations, which gave the norm practical force even without detailed legal codification.

Important local variation nevertheless appeared between the two research sites. In Banyuwates, widower's iddah operated as a stronger and more collectively guarded norm: social expectations were more explicit, kinship monitoring was tighter, and early remarriage was more likely to be judged as disrespectful or taboo. In Ketapang, by contrast, the norm remained socially meaningful but was applied more flexibly and was more open to contextual negotiation. Although restraint after a wife's death was still expected, the threshold of what counted as "too soon" appeared more elastic and dependent on social circumstances. From a socio-legal perspective, these findings indicate that widower's iddah in both Banyuwates and Ketapang functioned as a form of living fiqh sustained through communal recognition rather than state-centered enforcement. At the same time, the comparison shows that such living fiqh was not uniform; its force depended on local configurations of kinship, morality, and religious interpretation.

Patriarchy and Paradox: Why Widower Remarriage Becomes Taboo

Field data revealed a clear distinction between what is considered legally permissible and what is socially appropriate. Informants in Banyuwates and Ketapang generally did not deny that a widower is permitted to remarry under Islamic law. However, they repeatedly emphasized that remarriage so soon after a wife's death is "improper," "too soon," or "socially inappropriate." This phenomenon suggests that the issue is not the legality of remarriage per se, but the moral timing of remarriage. In socio-legal terms, this pattern reflects a form of moral regulation, in which societal norms do not prohibit an act in principle

but rather prescribe the conditions under which it can be considered acceptable in practice (Barkan, 2023; Oorschot, 2021). Thus, a legal act is filtered through standards of propriety, self-control, and respect for the deceased wife.

This finding becomes even more significant when placed within the broader gender order of Madurese society. Patriarchy is generally understood not only as a system of male domination but also as a structure that regulates authority, obligation, and symbolic expectations surrounding gender roles (Sanauddin, 2025). Similarly, Connel shows that gender order not only privileges men but also disciplines them through socially valued models of masculinity. In this study, widowers do not have unlimited freedom after their wives die (Jablonka, 2022).

A widower who remarries too soon may be judged as insensitive, disrespectful, or lacking moral seriousness. Furthermore, this relates to the *tengka*, *malo*, and *ajhina abha'* (obligatory values) held in high regard by Madurese society. Widowers show respect to their deceased wives, to protect the feelings of their wives' families, and to maintain their personal and family reputations. Violating these norms threatens potential conflict, with *carok* (a worst-case scenario), demonstrating that social control operates through reputational vulnerability and moral internalization. In Black's terms, sanctions here are informal and not state-centered (Syahrudin, 2023), while in Bourdieu's sense, they also involve symbolic pressures that shape actions through honor, shame, and social recognition (Fáber, 2025).

Viewed through the lens of living law and living *fiqh* (Islamic jurisprudence), this paradox becomes clearer. Ehrlich argued that law lives in social practice before it emerges in formal doctrine (Fuchs, 2021), while Moore demonstrated that communities can enforce norms in semi-autonomous social spheres (Yunus et al., 2026). In the context of Islamic law, this means that rights recognized in doctrine can still be socially mediated through local norms of propriety, mourning, and respect within the community. Therefore, the taboo against widower remarriage limits the exercise of legal rights through socially expected obligations. Widowers often comply with these rules even without formal legal coercion. The paradox lies not in the absence of patriarchy. However, in its ambivalent operation, the same social order that grants men privileges in many spheres also subjects them to moral discipline to maintain their dignity, honor, and societal legitimacy.

Actors and Social Enforcement Mechanisms

Field data indicates that the widower's 'iddah' norm in Banyuwates and Ketapang is enforced by a network of social actors operating through everyday moral policing. The

primary actors involved are the deceased wife's family, the widower's family, older community members, neighbors, religious leaders, and community leaders. However, their roles are not identical. Family members, especially the wife's side, are often the first and most emotional evaluators of the widower's behavior after the loss of his wife. Elderly community members and neighbors act as everyday observers who interpret and disseminate judgments about whether the widower's behavior remains within the bounds of propriety. Community leaders determine the level of punishment and the measures to be applied against mourners who violate the rules. In contrast, religious leaders issue statements that define what constitutes appropriate mourning behavior. In this context, the enforcement of the widower's 'iddah' operates as a semi-autonomous social sphere, where norms are generated, interpreted, and enforced through communal interaction rather than state coercion (Atadjanov, 2026).

This enforcement process is supported by a local moral vocabulary that provides cultural legitimacy to social judgments. Informants refer, explicitly or implicitly, to values such as *tengka* (modesty), *malo* and *todus* (shame), and *ajhina abhâ'* (family honor) when evaluating the behavior of widowers. These values serve as a moral grammar for interpreting remarriage after a wife's death. A widower who remarries too soon is seen not only as making a personal decision, but also as acting without sufficient propriety, without proper shame, and in a way that could damage the honor of his deceased wife's family. In this context, compliance is driven not only by fear of punishment in the narrow sense but also by a desire to avoid being morally classified as lacking *tengko* or *malo*. This compliance reflects a form of social control in which communal norms shape behavior through shame, reputation, and symbolic recognition rather than through formal law (Karibandi, 2021; Momen et al., 2025).

The enforcement mechanisms themselves are generally informal, gradual, and relational. The data show that widowers are rarely confronted with explicit prohibitions. Instead, control is exerted through advice, reminders, teasing, gossip, moral reprimands, reputational labeling, and subtle forms of social exclusion. A widower who is perceived to have remarried "too soon" may become the object of negative talk, be judged shameless, be socially neglected, or lose moral standing in the community. In more serious cases, the consequences can extend beyond gossip to social ostracism or deterioration of relations within kin groups. This pattern suggests that the norm derives much of its power from reputational vulnerability: the widower complies with the norm not only because it is considered morally correct, but because violating it would subject him to social consequences

that could affect his everyday standing. As Black argues, informal sanctions may be particularly effective precisely because they are embedded in ordinary social relationships and difficult to avoid (As-Suvi & Zainullah, 2022).

The findings also suggest that the intensity of enforcement differs between the two locations. In Banyuwates, moral judgments circulate more quickly, kinship surveillance is more stringent, and early remarriage is more readily perceived as a serious issue of propriety and family honor. In Ketapang, the enforcement process is relatively more flexible and more mediated by circumstances. Although social disapproval persists, a widower's actions are considered a grave affront to the dignity of his deceased wife's family, and this disapproval can escalate into open hostility between families. Thus, the widower's iddah functions as a living form of fiqh (Islamic jurisprudence), whose practical authority depends on the ability of local actors to transform moral opinion into social pressure. These norms are effective not because they are codified in detail, but because they are supported by a culturally resonant system of community values of shame, honor, and judgment.

The Social Functions and Ambivalence of Widower 'Iddah

Field findings indicate that the widower's iddah period in Banyuwates and Ketapang is maintained because it is believed to serve an important social function. The iddah period is understood as a moral instrument that prevents remarriage from appearing abrupt, insensitive, or socially offensive. It also serves as a transitional period during which the widower's status shifts from husband to bereaved before he can be socially accepted as entering a new marital relationship. The findings suggest that this norm is valued because it symbolically regulates grief, kinship sensitivity, and public decorum.

At the collective level, this norm also serves an integrative function. Informants indicated that delaying remarriage helps reduce tensions between the widower and the deceased wife's family, especially in situations where emotional vulnerability remains high. By enforcing a morally recognized grace period before remarriage, the community creates space for mourning, adjusts kinship expectations, and reduces the risk that the new marriage will be interpreted as an affront to the deceased woman's dignity. From a sociological perspective, this reflects the integrative role of norms in maintaining social balance and preventing open conflict (Mahmud et al., 2026). In this study, the widower's iddah serves as a moral regulatory mechanism that stabilizes interfamily relations and reaffirms communal standards of propriety during times of grief.

However, the same norms that create social order also reveal a strong element of ambivalence. The data indicate that the widower's iddah can maintain respect and harmony, but can also generate coercive pressure if enforced too rigidly. In some cases, the widower's restraint appears to be motivated by internal conviction and moral responsibility. However, in other cases, compliance is closely linked to fear of gossip, reputational damage, social exclusion, or prolonged family tension. This ambivalence means that the norm functions as a mechanism of symbolic domination, in which communal values are enforced through shame and social vulnerability (Stahl et al., 2024). Therefore, the ambivalence lies in the fact that the same moral language that protects dignity can also restrict individual freedom of action.

From an Islamic legal perspective, this ambivalence is analytically important. A custom may be socially beneficial and even generate some form of *maṣlaḥah*, but social utility alone does not automatically establish its normative legitimacy. The question is whether the norm remains proportionate, just, and consistent with the broader objectives of Sharia, including dignity, justice, and the avoidance of harm (Kamali, 2008; Sofian & Abdi, 2023). In this regard, the iddah of a widower in Banyuwates and Ketapang can be understood as a form of living fiqh (jurisprudence) that serves a real social function, particularly in maintaining honor and kinship harmony. However, the legitimacy of such norms cannot be accepted without criticism. When such norms facilitate respect and orderly transitions, they can support Sharia-oriented values; when they become excessive social pressure, they risk shifting from moral guidance to coercive control. This tension forms the basis of the subsequent discussion on the limits of *‘urf* in Islamic law.

The Iddah of Widowers: Between Living Fiqh and the Limits of ‘Urf in Islamic Law

The findings of this study indicate that the iddah of widowers in Banyuwates and Ketapang can be understood, at least initially, as a form of living fiqh. The iddah of widowers is not formulated as a detailed doctrinal rule like the iddah of women discussed in classical fiqh, but rather operates as a socially recognized norm grounded in Islamic moral reasoning. Informants generally consider it an appropriate way to honor a deceased wife, protect the family's dignity, and avoid behavior deemed ethically inappropriate after death. In this sense, the norm represents a social translation of Islamic values into local practices. This is consistent with the notion that Islamic law lives not only in formal texts but also in communal interpretations and customary moral actions (Yusuf et al., 2026). Thus, the iddah of widowers

in Madura can be read as living fiqh insofar as it reflects the social embodiment of resonant religious norms.

However, recognition of the iddah duda as a living fiqh does not automatically resolve the question of its legal legitimacy. In Islamic legal theory, customs (‘urf) can be considered normatively relevant, but only under certain conditions. Legal experts generally accept ‘urf when it does not conflict with clear legal texts, when it provides social benefits, and when it remains within the framework of justice and fairness (Asyur, 2005; Auda, 2008; Husain & Al-Mursi, 2009; Kamali, 2008; Zuhayliy, 1997). From this perspective, the widower’s iddah can qualify as a legitimate custom (‘urf ṣaḥīḥ) when it functions as a form of ethical control, expressing respect for the deceased wife, and maintaining harmony between families. In such cases, these norms can be linked to maqasid al-shari’ah, specifically the protection of dignity, social order, and the prevention of harm arising from behavior that is insensitive or disrupts social order (Yusril & Tanjung, 2024). Therefore, such norms cannot be ignored simply because they are not codified in detail; their legitimacy depends on whether they truly support Sharia-compliant values.

At the same time, data also suggests that such norms can exceed the limits of legitimate ‘urf when applied in a rigid, excessive, or humiliating manner. A custom that begins as moral guidance can lose its normative validity when it becomes disproportionately socially coercive. In some cases, widowers comply out of ethical conviction and respect; in others, they comply because the costs of violation are too high in terms of shame, ostracism, reputational damage, or lasting hostility between families. Here, the key issue is proportionality. Islamic law questions not only whether a norm is socially effective, but also whether it remains just, avoids harm, and does not impose a burden beyond what is reasonably sustainable. Suppose the widower’s iddah period is interpreted in such a way that effectively denies a widower’s legitimate right to remarry for an indefinite period or is socially punitive, the norm risks shifting from a legitimate custom to an excessive moral domination. In such circumstances, the language of propriety can conceal a form of coercion that is difficult to justify in Islamic legal terms.

Therefore, the legal status of the widower’s iddah in Madura must be understood as conditional, not absolute. This legal status can be accepted as living fiqh and as a legitimate expression of ‘urf when it functions as an ethical and proportionate norm of mourning, preserving dignity without negating legitimate rights. However, this legal status must be critically limited when it becomes socially punitive, humiliating, or oppressive. This is the

main contribution of this study to Islamic law: not all socially effective norms are automatically legitimate, and not all customary restrictions can be uncritically celebrated as compliant with Sharia. Therefore, the proper task of Islamic legal analysis is to distinguish between adat as a morally meaningful embodiment of religious values and adat as an excessive instrument of communal control. In the case of the widower's iddah, the boundary between the two becomes a crucial point in the debate about living fiqh and the limits of 'urf.

Overall, these findings suggest that the widower's iddah in Banyuwates and Ketapang is an effective social norm that sits between moral obligation, community pressure, and Islamic legal reasoning. Its strength lies precisely in its middle position between the influence of kinship, propriety, shame, and family honor, as well as the moral legitimacy of Islamic idioms of respect, self-control, and the protection of social dignity. Therefore, this study demonstrates that living fiqh cannot be understood simply as a social repetition of religious norms, but must also be critically examined in terms of how these norms are produced, enforced, and constrained. In the case of Madura, the widower's iddah can function as a meaningful ethical practice when it maintains respect for the deceased wife and harmony within the family; however, it becomes problematic when community enforcement transforms moral guidance into excessive social coercion. This article's contribution to Islamic law lies in clarifying that the validity of 'urf depends not only on its social acceptability but also on its proportionality, justice, and compatibility with the broader goals of Sharia.

CONCLUSION

This study demonstrates that the widower's iddah in Banyuwates and Ketapang, Sampang Regency, functions as a socially constructed and enforced norm, rather than a fully codified legal rule. While Islamic law does not prohibit widowers from remarrying, the exercise of this right is mediated by community standards of propriety, mourning, and family honor. In both research locations, the widower's iddah operates as a vibrant form of fiqh (Islamic jurisprudence), maintained through kinship expectations, moral judgments, and local religious reasoning. At the same time, the findings reveal important local variations: in Banyuwates, the norm is stronger and more strictly enforced, while in Ketapang, it is more flexible and context-dependent.

The study also found that the norm derives much of its strength from Madurese moral values, including *tengka*, *malo*, *todus*, and *ajhina abhâ'*, as well as from informal

sanctions such as gossip, social labeling, distancing oneself, and the threat of reputational damage. The widower's iddah is enforced not through formal legal coercion, but through everyday mechanisms of social control. The paradox of this case lies in the fact that, in a social environment widely associated with patriarchy, widowers in Madura are not granted unlimited freedom to remarry. Instead, they are subject to moral discipline when remarriage is deemed to violate the deceased wife's dignity, damage the family's honor, or disturb community decency.

From an Islamic legal perspective, this article argues that the widower's iddah can be recognized as a legitimate expression of *fiqh* and *'urf* only if it remains proportionate, ethical, and oriented towards the *maqasid al-shari'ah* (obligatory legal principles), specifically the protection of dignity, harmony, and the avoidance of harm. However, its legitimacy cannot be accepted without criticism. When societal law enforcement transforms norms into excessive pressure, humiliation, or punitive exclusion, they risk going beyond legitimate custom to unjustified social coercion. Therefore, the primary contribution of this study is to demonstrate that not all socially effective norms are automatically valid under Islamic law. The relevance of *'urf* law depends not only on social acceptance but also on its justice, proportionality, and consistency with the broader objectives of *Sharia*.

REFERENCES

- Abdullah, F., Putri, N. A., & Salhein, Y. (2023). Revisiting 'Iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse. *JURIS (Jurnal Ilmiah Syariah)*, 22(2), 275. <https://doi.org/10.31958/juris.v22i2.10320>
- Ahmad, L. F. (2023). *The Concept of Male Syibbul 'Iddah Perspective Mubâdalah and Mashlahab Mursalah* [masterThesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta]. <https://repository.uinjkt.ac.id/dspace/handle/123456789/73604>
- Anhary, T. P. (2023). Kajian Sosiologi Islam Terhadap Patriarki Dan Bias Gender Di Madura. *Al-Mada: Jurnal Agama, Sosial, Dan Budaya*, 6(2), Article 2. <https://doi.org/10.31538/almada.v6i2.3380>
- Asiyah, Hidayati, R., Zufriani, & Nur, S. (2023). Syibhul 'Iddah Bagi Suami dalam Perspektif Maqashid Al-Syariah. *NUR EL-ISLAM : Jurnal Pendidikan Dan Sosial Keagamaan*, 10(1), 25–41. <https://doi.org/10.51311/nuris.v10i1.491>
- As-Suvi, A. Q., & Zainullah, M. (2022). Sociology of Law in the Perspective of Roscoe Pound and Donald Black and its Relevance in the Indonesian Context. *Peradaban Journal of Law and Society*, 1(2), 82–95. <https://doi.org/10.59001/pjls.v1i2.39>
- Asyur, T. I. (2005). *Maqashid as-Syariah al-Islamiyah*. Wazirat al-Awqaf Maqashid as-Syariah Al-Islamiyah.
- Atadjanov, R. (2026). *A Common Theory of Law: Textbook on New Legal Approaches for Post-Soviet States*. T.M.C. Asser Press. <https://doi.org/10.1007/978-94-6265-711-3>
- Auda, J. (2008). *Maqâshid al-Shari'ah as Philosophy of Islamic Law; A Systems Approach*. The International Institute of Islamic Thought.
- Azzulfa, F. A., & Cahya A., A. R. (2021). Masa Iddah Suami Istri Pasca Perceraian. *Al-Mizan*, 17(1), 65–88. <https://doi.org/10.30603/am.v17i1.1959>
- Barkan, S. (2023). *Law and society: An introduction*. Routledge. <https://api.taylorfrancis.com/content/books/mono/download?identifierName=doi&identifierValue=10.4324/9781003288480&type=googlepdf>
- Dartiningih, B. E. (2022). *Budaya dan Masyarakat Madura*. Adab.
- Ditjen Pembinaan Kelembagaan Islam. (1991). *Kompilasi Hukum Islam*. Pustaka Widyatama.
- Fáber, Á. (2025). *Pierre Bourdieu: Theory and Politics*. Taylor & Francis.
- Fuchs, W. (2021). *Ehrlich's Living Law as a Concept of Multi-normativity*. <https://consensus.app/papers/ehrllich-%E2%80%99s-living-law-as-a-concept-of-multinormativity-fuchs/bcc8704b92c659d2b6ada7222ffaf3f3/>
- Husain, J., & Al-Mursi, A. (2009). *Maqashid Syari'ah*. Amzah.
- Jablonka, I. (2022). *A History of Masculinity: From Patriarchy to Gender Justice*. Penguin UK.

- Kamali, M. H. (2008). *Maqasid Al-Shariah Made Simple*. International Institute of Islamic Thought (IIIT).
- Karibandi, S. (2021). Role Of Law In Social Control. *Nyaayshastra L. Rev.*, 2, 1.
- Lemons, K., Sayeed, R., & Bensaid, H. (2025). Canadian Sharia: A Semi-Autonomous Social Field. *PoLAR: Political and Legal Anthropology Review*, 48(2), e70026. <https://doi.org/10.1111/plar.70026>
- Mahmud, A., Zaman, F., & Islam, M. R. (2026). Functionalist Perspective of Development: Durkheim and Parsons. In A. Mahmud, F. Zaman, & M. R. Islam (Eds.), *Sociological Theories of Development* (pp. 63–95). Springer Nature. https://doi.org/10.1007/978-981-95-4342-7_3
- Momen, A., Hossain, M., Rakib, M. A., & Hosain, M. J. (2025). Impact of the Family on Societal Regulation: Understanding Its Role in Social Control. *Social Sciences*, 4(5), 136–157.
- Oorschot, I. van. (2021). *The Law Multiple: Judgment and Knowledge in Practice*. Cambridge University Press.
- Sa'diyah, H., & Nurhayati, S. (2024). *Patriarki Dan Pendidikan Islam Di Madura* (A. M. B. Kurnia, Ed.). CV. Global Aksara Pers. <https://repository.iainmadura.ac.id/1290/>
- Sanauddin, N. (2025). Walby's Theory of Patriarchy: A Critical Review in the Context of Pakistan. *Social Science Review Archives*, 3(2), 950–959. <https://doi.org/10.70670/sra.v3i2.685>
- Sofian, G. Y., & Abdi, E. C. (2023). Komparasi Analisis Hukum `Iddah Dan Ihdad Perspektif CEDAW dan Perspektif Maqāṣid As-Syari'ah Kontemporer Jasser Auda. *As-Syifa: Journal of Islamic Studies and History*, 2(2), Article 2. <https://doi.org/10.35132/assyifa.v2i2.533>
- Stahl, G., Mu, G. M., Ayling, P., & Weininger, E. B. (2024). *The Bloomsbury Handbook of Bourdieu and Educational Research*. Bloomsbury Publishing.
- Syahrudin, E. (2023). *Perilaku Hukum: Suatu Pembelajaran Kritik Hukum dari Pandangan Sosial - KD*. Jejak Pustaka.
- Wimra, Z., Huda, Y., Bunaiya, M., & Hakimi, A. R. (2023). The Living Fiqh: Anatomy, Philosophical Formulation, and Scope of Study. *JURIS (Jurnal Ilmiah Syariah)*, 22(1), 185–198. <https://doi.org/10.31958/juris.v22i1.9491>
- Yunus, N. R., Fajar, A. S. M., & Karmawan. (2026). *The Interaction of State, Customary, and Religious Law in the Regulation of Marriage in Indonesia's New Criminal Code | AlFuadiy Jurnal Hukum Keluarga Islam*. <https://ejurnalqarnain.stisnq.ac.id/index.php/AF/article/view/1829>
- Yusril, M., & Tanjung, D. (2024). Metode Al-'Urf Dalam Menyimpulkan Hukum Islam. *Journal Smart Law*, 2(2), 231–242.

Yusuf, S. A. M., Yusliani, H., Emawati, Abdul Wahid Idrus, & Bk, C. A. (2026). Custom (Urf) And Law In Islamic History: Negotiating Local Practice And Divine Norms. *International Journal of Islamic Theology & Civilization (E-ISSN-3009-1551)*, 4(1), 56–70.

Zuhayliy, W. (1997). *Al-Fiqh al-Islami wa Adillatubu* (Vol. 10). Dar al-Fikr.