Reconstructing Maqaṣid al-Shariah in Modern Legislation: An Analysis of the Application of Maqaṣid in National Lawmaking and the Integration of Public Welfare Values with the Positive Legal System

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Abstract
This article examines how the concept of Maqāṣid al-Sharīʿah, classically intended to guide individual juristic reasoning (ijtihād), has been reconstructed to fit modern, institutional, codified, and procedural legislative processes. The issue is significant given Indonesia's plural legal system, in which Islamic legal values coexist with national positive law, often generating tension between formal legality and substantive justice. The study employs a normative doctrinal legal method with statutory, conceptual, comparative, and philosophical approaches, drawing on primary, secondary, and tertiary legal materials gathered through library research and analyzed qualitatively through legal interpretation and comparative-conceptual analysis. The findings show that the modern reconstructions of Ibn ʿĀshūr and Jasser Auda have transformed Maqāṣid from a basis for individual rulings into a systemic framework applicable across three stages of national lawmaking: legislative preparation, norm formulation, and regulatory evaluation. This approach is examined in three empirical domains, namely Islamic family law, comparative Islamic criminal law, and Islamic financial regulation, each reflecting a distinct pattern of institutionalizing Maqāṣid-based reasoning. The study also identifies key design challenges, namely the risk of rigid literalism on the one hand and unaccountable discretion on the other, and proposes a normative convergence between Maqāṣid and Pancasila as a bridge for integrating the value of maṣlaḥah into the positive legal system without undermining legal certainty. The article recommends strengthening transparent procedural mechanisms, including a dedicated Maqāṣid impact assessment within academic papers accompanying bills, along with interdisciplinary collaboration in the legislative drafting process.

I. INTRODUCTION

Islamic legal theory (*uṣūl al-fiqh*) has long recognized that the rulings (*aḥkām*) of the Sharīʿah are not arbitrary commands but are oriented toward discernible purposes, a doctrine captured in the concept of Maqāṣid al-Sharīʿah (Kamali, 1999). First articulated in rudimentary form by al-Juwaynī and al-Ghazālī (Al-Ghazali, 1429/2022) and later systematized with unprecedented rigor by Abū Isḥāq al-Shāṭibī in *al-Muwāfaqāt* (Al-Shatibi, 2006), the doctrine holds that every Sharīʿah ruling ultimately protects a set of essential human interests, namely religion, life, intellect, lineage, and property, organized hierarchically into *ḍarūriyyāt* (essentials), *ḥājiyyāt* (complementary needs), and *taḥsīniyyāt* (embellishments) (Al-Raysuni, 2006; Masud, 2005).

The context in which this idea arose, however, differs drastically from that of the modern nation-state. Modern legislation is created through parliaments and drafting bodies, codified in advance, applied consistently, and legitimized through procedures of representation rather than individual reasoning, whereas classical Maqāṣid was intended to direct individual jurists in case-by-case adjudication (Auda, 2008). In plural legal systems such as Indonesia's, where Islamic legal values coexist with nationalized positive law, legislation is commonly criticized for privileging formal legality, that is, procedural correctness in enactment, over substantive justice and public benefit (Sarib & Mokodenseho, 2023). However, a purely maqāṣid-driven legislative process runs the risk of replacing the predictability that positive law is meant to provide with discretion (Amaliah et al., 2025).

This is more than a theoretical concern. Indonesia's legal system combines civil law traditions inherited from Dutch colonial rule, Islamic family law, and religious court jurisdiction. As a result, Islamic legal reasoning cannot be directly incorporated into law without first being adapted to a codified and hierarchical

statutory structure (Mokodensoho et al., 2024). According to Amaliah et al. (2025), Indonesian scholars view Maqāṣid al-Sharīʿah as a methodological framework for analyzing legislation during the drafting process rather than as a set of substantive legal norms. The focus thus moves from what the Sharīʿah says about a given situation to whether a law effectively protects the Sharīʿah's essential aims, regardless of its doctrinal basis.

The significance of this topic extends beyond Islamic legal studies. Contemporary legal theory continues to investigate the conflict between formal legality, which emphasizes legal certainty and procedural consistency, and substantive justice, which requires the law to promote fairness and the public good. According to Zaprulkhan (2018), Maqāṣid al-Sharīʿah, which originated in a distinct legal tradition, provides a framework for combining substantive principles with legal accountability. Jasser Auda's systems approach reinterprets Maqāṣid to address modern institutional problems, overcoming the constraints of classical *fiqh*. This reconstruction, rather than the traditional framework, introduces notions more appropriate for modern legislative practice (Auda, 2008, 2015).

The relationship between Islamic law and the state in Indonesia has a long and complex history. During the colonial period, the Dutch administration alternated between recognizing Islamic law as the living law of Muslim communities and subordinating it to customary law under the so-called reception theory, which held that Islamic law applied only insofar as it had been received into local custom (Lukito, 2013). After independence, the relationship between Islam and the state was negotiated in the drafting of the constitution and the formulation of Pancasila as the philosophical foundation of a religiously plural nation. Islamic law subsequently entered the national legal system not as a comprehensive state law but through selective legislation in fields such as marriage, religious courts, endowments, zakat, pilgrimage, Islamic banking, and the special autonomy of Aceh (Butt & Lindsey, 2018; Lindsey, 2012).

This selective incorporation has produced what scholars have called an Indonesian form of Sharia, shaped by national legislation, administrative regulation, and judicial practice rather than by the classical schools alone (Hooker, 2008). The Compilation of Islamic Law, promulgated through a presidential instruction in 1991, is a prominent example: it codified rules of marriage, inheritance, and endowment drawn from various juristic sources and adapted them to Indonesian conditions, and it has become the principal reference for religious court judges (Nurlaelawati, 2010; Republic of Indonesia, 1991). Anthropological research has shown that Indonesian judges, scholars, and officials engage in public reasoning that combines Islamic, customary, and national legal norms, often invoking considerations of public welfare and equality (Bowen, 2003). Maqāṣid-based reasoning is thus not foreign to Indonesian legal practice; the question is how it can be institutionalized in a transparent and accountable way.

The scholarly literature on Maqāṣid has expanded considerably in recent decades. Classical scholarship has been reinterpreted by historians of Islamic legal theory, who have traced the development of *maṣlaḥah* from a limited juristic tool into a broader principle of legal change (Hallaq, 1997; Opwis, 2010). Contemporary scholars have proposed functional and systems-oriented approaches to Maqāṣid (Attia, 2007; Auda, 2008; Kamali, 2008), while reformist thinkers have emphasized the need to understand the Qur'an's moral objectives as the basis of legal reasoning (Rahman, 1982). At the same time, critical scholars have questioned whether Sharīʿah, as a moral and juristic tradition, can be transplanted into the legislative machinery of the modern state without fundamental transformation (Hallaq, 2009, 2013). These debates show that the application of Maqāṣid to modern legislation is not merely a technical question but a theoretical one, concerning the relationship between religious normativity and state law.

This article examines how Maqāṣid al-Sharīʿah has been reconstructed by modern scholars to address the demands of codified, institutional lawmaking; at which stages of the national legislative process such reasoning can be meaningfully applied; and which mechanisms allow the value of *maṣlaḥah* embedded in Maqāṣid to be integrated into a positive legal system without eroding legal certainty. The discussion focuses on three empirical domains: family law, Islamic criminal law, and Islamic financial regulation. Each domain represents a distinct institutionalization of Maqāṣid-based reasoning within a positive legal order (Arafat & Asmuni, 2025; Ipansyah & Hafidzi, 2025; Syahriani et al.,

2024).

The article contributes to legal theory in three ways. First, it clarifies the conceptual shift required to convert a philosophy of individual adjudication into a framework for institutional legislation. Second, it provides lawmakers in Muslim-majority and religiously diverse states with a structured account of when Maqāṣid-based examination adds analytical value and where it may overreach. Third, it examines the relationship between substantive justice and formal legality in comparative legal theory, using the Maqāṣid literature as a case study to demonstrate how a substantive normative framework can be disciplined rather than discarded.

The novelty of this article lies in its integration of three elements that are usually discussed separately: the historical development of *maṣlaḥah* reasoning in Islamic legal theory, the institutional framework of Indonesian lawmaking under the Law on the Formation of Legislation, and comparative experience with the incorporation of Islamic legal objectives into state law. By combining these elements, the article moves beyond general calls to apply Maqāṣid in legislation and proposes a concrete procedural mechanism, the Maqāṣid impact assessment, that can be embedded in existing legislative practice while respecting constitutional limits.

II. RESEARCH METHOD

This study employs a normative doctrinal legal research method using statutory, conceptual, comparative, and philosophical approaches (Hutchinson & Duncan, 2012). The research relies on primary, secondary, and tertiary legal materials collected through library research (Soekanto & Mamudji, 1986). Primary legal materials include relevant legislation and classical sources of Islamic law, while secondary materials consist of books, journal articles, and previous studies on Maqāṣid al-Sharīʿah, modern legislation, and Indonesia's positive legal system. Indonesian statutes such as the Marriage Law, the Compilation of Islamic Law (*Kompilasi Hukum Islam*), and Sharia banking regulations are treated as examples of law that incorporate Maqāṣid-oriented reasoning within a positive legal framework.

The statutory approach focuses on legislation that either incorporates Islamic legal norms or regulates the process of lawmaking. The former includes the Marriage Law and its amendment, the Compilation of Islamic Law, the Sharia Banking Law, and the legal framework for Aceh's special autonomy and its Islamic criminal code (Republic of Indonesia, 1974, 1991, 2006, 2008, 2019; Government of Aceh, 2014). The latter consists of the Law on the Formation of Legislation and its amendments, which establish the hierarchy of legal norms, the stages of lawmaking, and the requirement of an academic paper accompanying bills (Republic of Indonesia, 2011). Selected decisions of the Constitutional Court, particularly those concerning family law, are examined as examples of how substantive values enter positive law through judicial review (Constitutional Court of the Republic of Indonesia, 2012).

Materials were gathered from academic databases, published monographs, and peer-reviewed journal articles. Qualitative content analysis was used to identify recurring conceptual categories, namely legislative planning, norm formulation, regulatory evaluation, and the relationship between *maṣlaḥah* and positive law, which structure the discussion. The selection of secondary sources prioritized works that explicitly engage the intersection of Maqāṣid theory and positive lawmaking rather than works confined to classical *fiqh* exegesis, so that the analysis remains oriented toward the institutional legislative question rather than doctrinal jurisprudence. When comparative material is introduced, such as the application of Islamic criminal law in Saudi Arabia, Iran, Malaysia, and Indonesia (Arafat & Asmuni, 2025), it is used descriptively to demonstrate variation in institutional pathways rather than to rank jurisdictions normatively.

The study is qualitative and interpretive, aiming to clarify concepts and evaluate norms rather than to produce statistical generalizations. Consistent with doctrinal legal research methodology, the article does not test a causal hypothesis but reconstructs an argument from within the internal logic of the literature it surveys, cross-checking claims across sources where more than one study addresses the same instrument or case; for example, the treatment of marriage registration in Ipansyah and Hafidzi (2025) is cross-referenced against the more recent study by Cholis and Masuwd (2026) specifically dedicated to that issue.

III. RESULTS AND DISCUSSION

A. Results

The results show that the classical doctrine of Maqāṣid al-Sharīʿah, built by al-Ghazālī and systematized by al-Shāṭibī around the five essentials and the three levels of necessity, provides a hierarchy for reconciling competing legal interests, but was designed for individual juristic reasoning rather than for institutional lawmaking (Al-Raysuni, 2006; Kamali, 1999).

The study also finds that the modern reconstructions of Ibn ʿĀshūr and Jasser Auda transformed Maqāṣid into a comprehensive philosophy of law. Ibn ʿĀshūr distinguished general from specific objectives, while Auda introduced a systems approach that evaluates rulings as an interconnected network. On this basis, Indonesian scholarship has proposed a Maqāṣid-based legislative model operating across three stages of lawmaking: legislative preparation, norm formulation, and regulatory evaluation (Amaliah et al., 2025; Auda, 2008; Ibn ʿAshur, 2006).

Furthermore, the study finds that the institutionalization of Maqāṣid-based reasoning follows distinct patterns in three domains. In family law it justifies administrative requirements such as marriage registration; in comparative criminal law its application depends on each state's constitutional framework and degree of legal pluralism; and in Islamic financial regulation it has become the most advanced institutional model through the role of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) (Arafat & Asmuni, 2025; Cholis & Masuwd, 2026; Syahriani et al., 2024).

In Indonesian practice, Maqāṣid-compatible reasoning appears in legislation, such as the uniform minimum marriage age; in judicial review, such as the Constitutional Court's decision on the civil status of children born outside a registered marriage; and in the religious courts' interpretation of the Compilation of Islamic Law, although it is rarely articulated explicitly in Maqāṣid terminology (Constitutional Court of the Republic of Indonesia, 2012; Nurlaelawati, 2010; Republic of Indonesia, 2019).

Finally, the study identifies that integrating *maṣlaḥah* into modern legislation requires avoiding two opposing risks, rigid literalism and unaccountable discretion, and that the normative convergence between Maqāṣid and Pancasila offers a constitutional bridge for such integration in Indonesia (Masriani, 2023; Sarib & Mokodenseho, 2023).

The comparative analysis further shows that the incorporation of Islamic legal objectives into state law depends on constitutional and statutory design, as illustrated by the interpretive approach of the Egyptian Supreme Constitutional Court and the statutory role of Sharia advisory bodies in Malaysian Islamic finance (Laws of Malaysia, 2013; Lombardi, 2006). Within Indonesia, the requirement that bills be accompanied by an academic paper, together with the Constitutional Court's emphasis on meaningful public participation, provides an institutional entry point for transparent Maqāṣid-based reasoning (Constitutional Court of the Republic of Indonesia, 2021; Republic of Indonesia, 2011). The study also identifies critiques that define the limits of this approach, particularly concerns about the transformation of the Sharīʿah by the modern state and the indeterminacy of Maqāṣid concepts (Duderija, 2014; Hallaq, 2013).

B. Discussion

1. The Classical Doctrine of Maqāṣid al-Sharīʿah and the Evolution of Maṣlaḥah

Al-Ghazālī identified five essential values (*al-ḍarūriyyāt al-khams*), namely religion, life, intellect, lineage, and property, as the primary goals of the Sharīʿah (Al-Ghazali, 1429/2022). Al-Shāṭibī built on this concept in *al-Muwāfaqāt*, arguing that Sharīʿah rulings achieve these objectives through three levels of necessity: *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt* (Al-Shatibi, 2006). According to Al-Raysuni (2006), this hierarchy serves as a guiding principle for reconciling competing legal interests by prioritizing the level of necessity. According to Masud (2005), the framework represents the Sharīʿah's greater purpose of promoting public benefit (*maṣlaḥah*) and preventing harm (*mafsadah*), with the five essentials as its core practical objectives.

The classical framework was further developed by later scholars such as ʿIzz al-Dīn ibn ʿAbd al-Salām. To address contemporary societal challenges, modern scholars have proposed additional objectives such as human dignity, environmental protection, public health, and state welfare (Kamali, 1999). According to Al-Shatibi (2006), the major goals of the Sharīʿah are to avert harm and promote benefit, enabling jurists to rely on *maṣlaḥah mursalah* in the absence of clear textual instruction. He also maintained that where private and public interests collide, the public interest should take precedence. This idea has become a fundamental tenet of modern Maqāṣid-based legislative reasoning, in which legislators

must balance the rights of individuals against the wider public interest (Kamali, 1999).

It is important to emphasize that the classical doctrine was never uniform. Kamali's survey of the Maqāṣid literature reveals significant disagreement among classical and post-classical jurists over the precise number and ranking of the essentials, whether *maṣlaḥah mursalah* is an independent source of law or merely an interpretive method, and how far analogy from the five essentials can be extended to novel circumstances (Kamali, 1999). For this reason, contemporary reconstructions of Maqāṣid prioritize institutional translation over a single established classical viewpoint.

The concept of *maṣlaḥah* lies at the heart of Maqāṣid theory, yet its scope and authority were contested throughout the history of Islamic legal thought. Historians of legal theory have shown that the early jurists approached *maṣlaḥah* cautiously because of concern that unrestricted appeals to public benefit would allow human reason to override revealed texts (Hallaq, 1997). Al-Ghazālī accepted *maṣlaḥah mursalah* only under restrictive conditions: the interest at stake had to be necessary (*ḍarūrī*), definite (*qaṭʿī*), and universal (*kullī*), and it had to be consistent with the objectives of the Sharīʿah as known from the texts (Al-Ghazali, 1429/2022). These conditions were intended to prevent arbitrary reasoning while allowing the law to address situations not covered by explicit texts.

Opwis (2010) demonstrates that the concept of *maṣlaḥah* developed between the tenth and fourteenth centuries into a principle through which jurists could justify legal change in response to new circumstances. Different jurists used *maṣlaḥah* in different ways: some incorporated it into analogical reasoning by treating the protection of the essential interests as the ratio of rulings, others treated it as an independent source, and al-Shāṭibī elevated the objectives of the law to the level of certain, inductively established principles that frame the interpretation of particular rulings (Al-Shatibi, 2006; Masud, 2005). The historical record therefore reveals not a single theory but a spectrum of approaches, ranging from cautious restriction to systematic elevation.

Two figures illustrate the range of positions. Al-Juwaynī, the teacher of al-Ghazālī, was among the first to classify the purposes of rulings according to levels of necessity, laying the foundation for the later hierarchy of essentials, needs, and embellishments (Kamali, 1999). At the other end of the spectrum, the Ḥanbalī jurist Najm al-Dīn al-Ṭūfī argued that considerations of public interest could prevail over particular textual indications in the field of social transactions, although not in matters of worship, a position that later reformers frequently invoked and that critics regarded as dangerously permissive (Opwis, 2010). Between these positions, most jurists accepted that public interest could guide the law where texts were silent, while insisting that it could not contradict clear and certain texts (Hallaq, 1997; Kamali, 2003). For modern legislators, this spectrum is instructive: it suggests that Maqāṣid reasoning is most secure where it fills gaps and interprets general principles, and most contested where it is used to set aside established rules.

This history matters for modern legislation in two ways. First, it shows that the use of *maṣlaḥah* to justify new rules is an authentic part of the Islamic legal tradition rather than a modern invention. Second, it shows that the tradition itself was aware of the risk of arbitrariness and developed criteria to discipline reasoning based on public benefit. Modern legislators who invoke Maqāṣid can draw on both lessons: the legitimacy of purposive reasoning and the necessity of constraints that make such reasoning accountable (Kamali, 2003, 2008).

2. Modern Reconstruction: Ibn ʿĀshūr and Jasser Auda

Reformist scholars of the twentieth century sought to make Maqāṣid al-Sharīʿah a comprehensive philosophy of Islamic law rather than merely a foundation for particular rulings. Ibn ʿĀshūr argued that the purposes of the Sharīʿah should be studied as a separate discipline, distinguishing between general objectives (*al-maqāṣid al-ʿāmmah*) that serve society as a whole and specific objectives (*al-maqāṣid al-khāṣṣah*) linked to particular areas of law. This dichotomy is analogous to the present division between constitutional principles and sector-specific legislation. By viewing basic purposes as a substantive theory describing the wider purpose of law, Ibn ʿĀshūr extended Maqāṣid from classical *fiqh* to modern legal theory (Ibn ʿAshur, 2006).

Jasser Auda's reconstruction uses systems theory to identify six key features: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness (Auda, 2008). This approach

differs from the traditional hierarchical taxonomy. It views Sharīʿah rulings as part of a network whose cumulative effects on society ultimately determine Maqāṣid evaluation. The unit of analysis thus shifts from a single rule to a system of rulings and their cumulative social effect, which is conceptually comparable to the holistic examination that modern regulatory impact assessment demands of legislators (Auda, 2008).

Zaprulkhan (2018) contends that Auda's systems approach constitutes a substantial paradigm change in contemporary Islamic legal philosophy rather than a mere extension of Ibn ʿĀshūr's theories. By including systems-theory notions such as wholeness, openness, and multidimensionality, Auda expands the analytical framework of Maqāṣid beyond standard *fiqh*. This technique is particularly suited to modern legislative procedures, in which regulatory drafting and policy evaluation require systemic and multidimensional analysis rather than case-by-case adjudication. The Indonesian translation of Auda's work has helped spread this systems-based perspective among Indonesian legal scholars and policymakers, adding to its growing influence on legislative studies and legal reform in Indonesia (Auda, 2015).

3. Islamic Law in the Indonesian Legal System: Constitutional and Institutional Context

Any proposal to apply Maqāṣid in national lawmaking must take account of the constitutional and institutional framework within which legislation is produced. Indonesia is neither a secular state that excludes religion from public life nor an Islamic state that adopts Sharīʿah as its constitution. Its constitutional order is founded on Pancasila, whose first principle affirms belief in the One Supreme God, and on the 1945 Constitution, which guarantees religious freedom and establishes a democratic and law-based state (Butt & Lindsey, 2018). Within this framework, Islamic legal norms become binding as state law only when they are enacted through the ordinary legislative process or recognized through specific statutes.

The Law on the Formation of Legislation establishes the hierarchy of legal norms, from the Constitution through laws, government regulations, presidential regulations, and regional regulations, and sets out the stages of planning, drafting, deliberation, enactment, and promulgation (Republic of Indonesia, 2011). It also requires that bills be accompanied by an academic paper (*naskah akademik*) that explains the philosophical, sociological, and juridical foundations of the proposed regulation. This requirement provides an institutional entry point for Maqāṣid-based reasoning: the philosophical and sociological foundations of a bill can include an analysis of the essential interests that the bill seeks to protect and the public welfare it aims to achieve.

The incorporation of Islamic law has followed different institutional paths in different fields. In family law, national statutes and the Compilation of Islamic Law govern Muslim marriage, divorce, and inheritance, applied by religious courts (Nurlaelawati, 2010; Republic of Indonesia, 1974, 1991). In Islamic finance, a dedicated statute establishes the legal basis for Sharia banking and assigns a role to the National Sharia Council of the Indonesian Ulema Council in determining Sharia compliance (Republic of Indonesia, 2008). In criminal law, Islamic norms apply only in Aceh under its special autonomy, through regional regulations known as qanun (Government of Aceh, 2014; Republic of Indonesia, 2006). These different paths show that Indonesia has no single model for incorporating Islamic law, and that any Maqāṣid-based legislative framework must be adapted to the institutional features of each field (Cammack & Feener, 2012; Lindsey, 2012).

4. A Maqāṣid-Based Legislative Model in Indonesia

Drawing on this reconstruction, contemporary Indonesian research has introduced a Maqāṣid-oriented legislative framework structured around three phases of lawmaking, namely legislative preparation, norm formulation, and regulatory evaluation, supported by four overarching tenets: commitment to public welfare, protection of fundamental rights, active public participation, and policy sustainability (Amaliah et al., 2025). In the preparation phase, the framework advocates a Maqāṣid-centered evaluation of proposed legislative priorities (the National Legislation Program and its regional counterparts), ensuring that bills are ranked partly on their contribution to safeguarding essential interests rather than merely on political expedience.

During the norm formulation phase, the framework encourages drafters to test alternative formulations of a provision against the tiered hierarchy of *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt*, choosing the formulation that best preserves the higher-order interest when compromises are

necessary. In the evaluation phase, it requires post-enactment regulatory review to determine whether a statute has in fact fulfilled the essential interests it was intended to protect, instead of limiting post-enactment scrutiny to procedural compliance (Amaliah et al., 2025).

According to the empirical survey of Indonesian legal policy formation by Mokodensoho et al. (2024), *fiqh*- and Maqāṣid-derived reasoning has a discernible, albeit uneven and largely informal, influence on the substantive content of Islamic legal policy at each stage, even when the formal legislative record does not explicitly invoke Maqāṣid terminology. Whereas legal positivism reduces legislative success to the formal validity of enactment, this model reintroduces a substantive standard of coherence between formal legality and substantive justice while retaining the procedural requirements of constitutional lawmaking (Sarib & Mokodenseho, 2023).

5. Three Analytical Adjustments for Institutional Lawmaking

Applying Maqāṣid al-Sharīʿah to institutional lawmaking rather than to individual rulings requires three analytical adjustments. First, the focus of evaluation should move from isolated legal provisions to statutes or regulatory frameworks as integrated systems, reflecting Auda's principle of wholeness (Auda, 2008). From this perspective, a provision may successfully protect one essential objective while unintentionally compromising another. For instance, legislation intended to safeguard religion by criminalizing certain conduct may, if enacted without adequate procedural safeguards, adversely affect the protection of life or intellect through excessive penalties or restrictions on legitimate religious discourse. Such competing objectives can only be identified when legislation is evaluated as a coherent system.

Second, the classical hierarchy of *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt* should be understood as a flexible framework for balancing competing legal interests rather than as a rigid checklist applied uniformly to every legislative proposal. Al-Raysuni (2006) emphasizes that al-Shāṭibī intended this hierarchy to guide the resolution of conflicts among legal claims by identifying their relative importance, not to function as a mechanical standard for evaluating every provision regardless of context.

Third, Auda's principle of openness requires Maqāṣid-based legislative reasoning to incorporate knowledge from disciplines beyond Islamic jurisprudence, including economics, public health, and environmental science, since many contemporary regulatory issues such as data protection and digital financial services extend beyond the scope of the classical objectives (Auda, 2008; Kamali, 1999). Consequently, legislative drafting informed by Maqāṣid should involve interdisciplinary expertise: Maqāṣid provides the normative foundation for evaluating public policy, while technical experts contribute the empirical knowledge needed to formulate effective and contextually appropriate legislation.

6. Maqāṣid and the Methodology of Legal Interpretation

Maqāṣid reasoning is relevant not only to the making of legislation but also to its interpretation. In Indonesian legal methodology, judges are expected not only to apply statutes literally but also to discover law (*penemuan hukum*) when statutes are unclear, incomplete, or silent, using methods such as grammatical, systematic, historical, and teleological interpretation (Mertokusumo, 2014). Teleological interpretation, which reads a statute in light of its purpose, has an obvious affinity with Maqāṣid reasoning, which reads particular rulings in light of the objectives of the law (Al-Shatibi, 2006; Kamali, 2003).

This affinity suggests that a statute drafted with explicit Maqāṣid analysis would also facilitate its later interpretation. If the academic paper and the explanatory memorandum of a law identify the interests the law is meant to protect, judges can use this information to resolve ambiguities and fill gaps in a way that is faithful to the legislature's purposes. Conversely, where purposes are not stated, judges may supply their own understanding of public welfare, which increases the risk of inconsistency and of the unaccountable discretion identified by Sarib and Mokodenseho (2023). Explicit purposive drafting thus serves the value of legal certainty by guiding interpretation.

At the same time, teleological interpretation must respect the limits of the judicial role. Judges in a constitutional democracy interpret and apply law but do not replace legislative choices with their own policy preferences. Maqāṣid reasoning in adjudication should therefore be anchored in the purposes expressed in legislation and the constitution, rather than in independent judicial conceptions of the Sharīʿah. This principle aligns the use of Maqāṣid in Indonesian courts with the

broader requirements of the rule of law (Butt & Lindsey, 2018).

7. Family Law: Legislation, Judicial Review, and the Religious Courts

Applied research in Indonesian family law demonstrates both the potential and the limits of Maqāṣid-based legislative reasoning. A prominent example concerns marriage registration, where scholars examine the tension between the validity of marriage under classical *fiqh* and the administrative requirements of positive law. From a Maqāṣid perspective, compulsory registration is justified as a mechanism to protect lineage (*ḥifẓ al-nasl*) while safeguarding the rights and welfare of women and children. Although unregistered marriages may remain religiously valid, they often create legal disadvantages concerning inheritance, child custody, and access to public services; registration is therefore viewed not as a bureaucratic innovation but as a legal instrument consistent with the objectives of the Sharīʿah (Cholis & Masuwd, 2026). In a similar vein, Ipansyah and Hafidzi (2025) argue that issues of marital guardianship, polygamy, and the legal status of children born outside marriage should be reassessed in light of justice, public welfare, and human dignity, and that digital marriage registration, electronic evidence in paternity disputes, and cross-border family relations require a more dynamic interpretation of the Compilation of Islamic Law.

Two developments in Indonesian family law illustrate how purposive reasoning compatible with Maqāṣid has shaped positive law. The first concerns the minimum age of marriage. The Marriage Law of 1974 originally set different minimum ages for men and women, a distinction that was challenged before the Constitutional Court as discriminatory and harmful to girls. Following the Court's decision, the legislature amended the law in 2019 to establish a uniform minimum age of nineteen years for both men and women (Republic of Indonesia, 1974, 2019). From a Maqāṣid perspective, this reform can be justified by the protection of life (*ḥifẓ al-nafs*), because early marriage is associated with health risks for young mothers and their children; the protection of intellect (*ḥifẓ al-ʿaql*), because early marriage often interrupts education; and the protection of lineage (*ḥifẓ al-nasl*), because stable families depend on the maturity of spouses.

The second development concerns the legal status of children born outside a registered marriage. In 2012, the Constitutional Court held that the provision of the Marriage Law limiting the civil relationship of such children to their mothers must be read to include a civil relationship with the biological father if paternity can be proven through science and technology or other evidence (Constitutional Court of the Republic of Indonesia, 2012). The decision was controversial among some religious scholars, who were concerned about its implications for lineage and inheritance, yet it was defended on the ground that children should not bear the consequences of their parents' conduct and are entitled to protection. This debate illustrates both the potential and the tension of purposive reasoning: the protection of the child's welfare and dignity can be grounded in the objectives of the Sharīʿah, but its application must be reconciled with established juristic rules on lineage (Ipansyah & Hafidzi, 2025).

These examples show that Maqāṣid-compatible reasoning has entered Indonesian law through both legislation and judicial review, often without explicit reference to Maqāṣid terminology. Making such reasoning explicit and systematic in the legislative process would allow it to be scrutinized, debated, and refined rather than remaining implicit and contested (Bowen, 2003; Mokodensoho et al., 2024).

The religious courts constitute another important arena in which Maqāṣid-compatible reasoning enters Indonesian law. These courts apply national legislation and the Compilation of Islamic Law in matters of marriage, divorce, inheritance, endowments, and Islamic economic disputes. Research on their practice shows that judges do not simply apply the Compilation mechanically; they interpret its provisions in light of juristic texts, customary considerations, and the welfare of the parties, particularly women and children (Nurlaelawati, 2010). In inheritance cases, for example, judges have sometimes used devices such as mandatory bequests to protect family members who would otherwise be excluded, reflecting an orientation toward justice and welfare.

This judicial practice demonstrates that purposive reasoning already operates within Indonesian Islamic law, but it also reveals the risks identified in this study. When judges rely on considerations of welfare without explicit reasoning, outcomes may vary between courts and become difficult to predict (Sarib & Mokodenseho, 2023). The Compilation itself, as a presidential instruction rather than a statute, occupies an ambiguous position in the hierarchy

of legal norms, which has prompted proposals to elevate it into legislation (Ipansyah & Hafidzi, 2025; Republic of Indonesia, 1991). Such reform would provide an opportunity to apply the Maqāṣid impact assessment proposed in this study, ensuring that the purposes of each provision are articulated and that judicial interpretation is guided by legislative reasons.

8. Islamic Criminal Law: Comparative Patterns and Aceh's Qanun Jinayat

Comparative studies of Islamic criminal law in Saudi Arabia, Iran, Malaysia, and Indonesia show that the implementation of Maqāṣid differs according to each country's legal and institutional framework. Saudi Arabia and Iran apply Islamic criminal law more comprehensively, whereas Malaysia and Indonesia adopt a partial approach within plural legal systems that retain secular criminal legislation inherited from colonial traditions. Saudi Arabia's *taʿzīr* system allows broader judicial discretion in pursuing *maṣlaḥah*, while Iran relies on a more codified structure despite similar doctrinal foundations. In Indonesia, application is limited and regionally varied, most notably through Aceh's *Qanun Jinayat*, which operates alongside the national Criminal Code. These findings indicate that Maqāṣid-oriented legislation cannot be understood as a single institutional model; its design depends on constitutional framework, legal pluralism, and political feasibility (Arafat & Asmuni, 2025).

The application of Islamic criminal law in Aceh provides a distinctive Indonesian case for examining Maqāṣid-based legislation. Under the law on the governance of Aceh, the province was granted authority to implement Islamic law in various fields, including criminal law, through regional regulations (Republic of Indonesia, 2006). The Qanun on Islamic Criminal Law adopted in 2014 regulates offenses such as the consumption of alcohol, gambling, seclusion between unmarried men and women, adultery, sexual harassment, and rape, and prescribes punishments that include caning, fines, and imprisonment (Government of Aceh, 2014).

Proponents justify the qanun as an expression of the objectives of the Sharīʿah, particularly the protection of religion, intellect, and lineage, and as a fulfillment of the aspirations of the Acehnese people within the framework of special autonomy. Critics, however, have raised concerns about the compatibility of certain provisions with constitutional rights and national criminal law, the potential for discriminatory enforcement, and the protection of victims of sexual violence (Lindsey, 2012). Comparative research on Islamic criminal law in Muslim countries similarly shows that the institutional design of enforcement, including procedural safeguards and judicial discretion, strongly affects whether the objectives of the law are achieved (Arafat & Asmuni, 2025).

From the perspective of this study, the Aceh case illustrates the importance of the analytical adjustments discussed above. A Maqāṣid-based evaluation that considered the legislation as a whole system would examine not only whether the qanun protects religion or lineage in principle, but also whether its provisions and enforcement protect the life, dignity, and security of all persons affected, including victims and vulnerable groups. Such an evaluation would also consider the relationship between regional regulations and national law within the constitutional hierarchy (Republic of Indonesia, 2011). This systemic perspective is consistent with Auda's (2008) principle of wholeness and with the emphasis on post-enactment evaluation in the Maqāṣid-based legislative model.

9. Islamic Finance Regulation as an Institutional Model

Islamic financial regulation provides the clearest example of institutionalized Maqāṣid-based governance within Indonesia's positive legal system. The DSN-MUI applies Maqāṣid not only to address issues lacking explicit textual guidance but also to evaluate whether financial regulations effectively promote *maṣlaḥah* and safeguard essential interests. Contemporary rulings on products such as *murābaḥah* financing and *ṣukūk* are justified through the protection of property and the prevention of economic harm rather than relying solely on textual analogy, reflecting al-Shāṭibī's concept of *maṣlaḥah mursalah* (Al-Shatibi, 2006; Syahriani et al., 2024). Although DSN-MUI fatwas are not binding by themselves, they become legally enforceable once incorporated into regulations issued by the financial authorities. This arrangement shows that a Maqāṣid-oriented advisory body can shape the substance of positive law without exercising direct legislative power, offering a model that could be adapted to drafting and regulatory evaluation in other areas of law (Syahriani et al., 2024).

This model deserves closer examination because it represents the most developed institutional channel through which Maqāṣid

reasoning enters Indonesian positive law. The Sharia Banking Law establishes that Islamic banks must operate in accordance with Sharia principles, defines Sharia principles as principles of Islamic law in banking activities based on fatwas issued by the institution authorized to issue fatwas in the field of Sharia, and requires each Islamic bank to have a Sharia supervisory board (Republic of Indonesia, 2008). Through this statutory scheme, the fatwas of the National Sharia Council acquire legal relevance once they are incorporated into regulations of the financial authorities.

This arrangement creates a division of labor between religious and state institutions. The National Sharia Council evaluates the Sharia compliance of products and contracts, drawing on juristic reasoning that includes Maqāṣid considerations such as the prevention of harm, the protection of property, and fairness in exchange (Syahriani et al., 2024). The financial authorities, in turn, translate these determinations into binding regulations and supervise their implementation. The result is a hybrid model in which religious expertise informs the content of law while the authority to make binding rules remains with the state.

The strengths of this model are its clarity of roles and its capacity to accommodate innovation, since new products can be evaluated through a defined procedure. Its weaknesses include the risk that Sharia compliance is understood formally, focusing on contract structures rather than on substantive outcomes such as fairness, financial inclusion, and social welfare. Scholars of Maqāṣid have therefore argued for evaluating Islamic finance not only by legal form but by its contribution to the objectives of the Sharīʿah (Kamali, 2008; Syahriani et al., 2024). This argument parallels the distinction between formal legality and substantive justice in general legislation, and it suggests that the Islamic finance model could be strengthened by incorporating outcome-oriented evaluation of the kind proposed in this study.

10. Comparative Experiences: Egypt and Malaysia

Comparative experience shows that the incorporation of Islamic legal objectives into state law can take very different forms. In Egypt, the constitution declares the principles of the Islamic Sharīʿah to be the principal source of legislation. The Supreme Constitutional Court has interpreted this clause in a way that distinguishes between rulings that are certain in both authenticity and meaning, which legislation may not contradict, and rulings that are open to interpretation, in which the legislature may choose among interpretations in light of the objectives of the Sharīʿah and the public interest (Lombardi, 2006). This interpretive approach effectively uses a Maqāṣid-oriented method to reconcile constitutional Islamic clauses with modern legislation, giving the legislature substantial latitude while preserving a core of non-negotiable norms.

Malaysia illustrates a different path, particularly in Islamic finance. Its legal framework for Islamic financial institutions establishes a statutory duty of Sharia compliance, provides for a central Sharia advisory council whose rulings bind financial institutions and courts on matters of Islamic finance, and imposes governance requirements on Sharia committees within institutions (Laws of Malaysia, 2013). Maqāṣid reasoning features prominently in the deliberations of Sharia advisory bodies, which evaluate financial products not only by formal contractual compliance but also by their consistency with the objectives of justice, the avoidance of harm, and the protection of wealth (Syahriani et al., 2024).

These experiences highlight two lessons for Indonesia. First, constitutional and statutory design determines how much room Maqāṣid reasoning has in lawmaking: a constitutional clause can make Islamic objectives a criterion of judicial review, as in Egypt, while a statutory scheme can give binding force to the rulings of a Sharia body within a specific sector, as in Malaysia. Second, in both cases, Maqāṣid reasoning is channeled through institutions with defined competences, which limits the risk of arbitrary appeals to public welfare. Indonesia's constitutional framework does not make Sharīʿah a general criterion of validity, but its sectoral arrangements, particularly in Islamic finance, resemble the Malaysian model in assigning a defined role to Sharia advisory institutions (Lindsey, 2012; Syahriani et al., 2024).

11. Design Challenges: Literalism versus Unaccountable Discretion

A major challenge in integrating *maṣlaḥah* into modern legislation is avoiding two opposing risks: rigid literalism and unaccountable discretion. Literalism treats Maqāṣid as a fixed checklist that ignores changing social realities, while unaccountable discretion allows appeals to public

welfare to override statutory provisions without transparent or reviewable justification (Amaliah et al., 2025). Sarib and Mokodenseho (2023) show that judicial reliance on *maṣlaḥah* has, in some cases, produced decisions that are difficult to reconcile with statutory law because the underlying reasoning was not openly documented. Their findings highlight the need to establish procedural safeguards during the legislative process before Maqāṣid-based reasoning is applied in judicial decision-making.

Transparent and accountable mechanisms for incorporating *maṣlaḥah*-based reasoning into the legislative process are therefore necessary. Amaliah et al. (2025) recommend using Maqāṣid as an assessment criterion in regulatory impact analysis, ensuring legislative debate and public participation, and requiring clear written reasoning open to review. A practical approach is to require the academic paper (*naskah akademik*) accompanying a bill to include a dedicated Maqāṣid impact assessment that identifies the essential interests protected, evaluates potential conflicts with other interests, and explains why the proposed regulation represents the most appropriate balance among competing public interests.

12. Critiques and Limits of Maqāṣid-Based Legislation

A balanced assessment must also consider the critiques of Maqāṣid-based approaches to modern legislation. The first critique concerns the relationship between Sharīʿah and the modern state. Hallaq (2009, 2013) argues that the Sharīʿah developed as a moral and juristic tradition embedded in communities and scholarly institutions, and that its incorporation into the legislative and bureaucratic machinery of the modern state transforms it fundamentally, subordinating it to the sovereignty and logic of the state. From this perspective, the codification of Islamic law, including Maqāṣid-based legislation, risks producing state law with an Islamic label rather than a continuation of the Sharīʿah tradition.

The second critique concerns the indeterminacy of Maqāṣid. Because the objectives of the law are formulated at a high level of generality, they can be invoked to justify very different, even opposing, rulings. Critics warn that Maqāṣid may become a rhetorical device that legitimizes the preferences of decision-makers rather than a genuine method of reasoning (Duderija, 2014). This concern is closely related to the risk of unaccountable discretion discussed above, and it underscores the need for transparent criteria and procedures.

The third critique comes from reformist thinkers who argue that the classical five essentials are too narrow to capture the moral vision of the Qur'an, which emphasizes justice, equality, and human dignity (Rahman, 1982). Contemporary scholars have responded by proposing expanded lists of objectives, including human dignity, freedom, justice, and environmental protection (Attia, 2007; Auda, 2008; Kamali, 2008). However, the expansion of the objectives increases the scope for judgment and therefore for disagreement.

These critiques do not invalidate the project of Maqāṣid-based legislation, but they define its limits. Maqāṣid cannot substitute for democratic deliberation, constitutional rights, and procedural safeguards; it can only inform them. In the Indonesian context, where legislation derives its authority from the constitution and democratic procedures rather than from religious authority, Maqāṣid is best understood as a source of substantive reasons that legislators may consider, rather than as a binding standard that overrides the constitutional order (Butt & Lindsey, 2018; Lukito, 2013). Recognizing these limits enhances rather than diminishes the credibility of Maqāṣid as a contribution to lawmaking.

13. Maqāṣid, Constitutional Rights, Public Deliberation, and Pancasila

A further question concerns the relationship between Maqāṣid and constitutional rights. Some scholars argue that the objectives of the Sharīʿah, particularly the protection of life, intellect, dignity, and property, provide an Islamic foundation for human rights, and that Maqāṣid-based reasoning can therefore strengthen rather than threaten constitutional guarantees (Kamali, 2008). Others caution that the enforcement of religious norms by the state may conflict with the freedom of belief and the equal citizenship of non-Muslims and of Muslims who interpret their religion differently, and argue that Sharīʿah can retain its normative force in society precisely because the state remains neutral among religious interpretations (An-Na'im, 2008).

The approach proposed in this study takes both positions seriously. Maqāṣid-based reasoning is treated as a source of substantive reasons concerning human welfare that can be expressed in terms accessible to all citizens, rather than as a claim that the state should enforce

a particular religious interpretation. This approach is consistent with theories of deliberative democracy, according to which the legitimacy of law depends on its justification through public reasons in inclusive deliberative processes (Habermas, 1996). It is also consistent with the Indonesian Constitutional Court's emphasis on meaningful public participation in the formation of legislation, articulated in its review of the Job Creation Law, which requires that the public have the right to be heard, to have their views considered, and to receive explanations of how their views were treated (Constitutional Court of the Republic of Indonesia, 2021).

In practical terms, a Maqāṣid impact assessment would be subject to public consultation alongside other components of the academic paper. Religious organizations, academics, civil society groups, and affected communities would be able to comment on the identification of protected interests and the proposed balancing. Such deliberation would allow Maqāṣid reasoning to be tested against other perspectives, including constitutional rights and empirical evidence, thereby strengthening both the quality and the legitimacy of legislation.

Comparative studies show that Maqāṣid al-Sharīʿah and Pancasila share normative purposes such as upholding human dignity, preserving life, and improving collective prosperity. Masriani (2023) contends that the Maqāṣid principle of *maṣlaḥah ʿāmmah* (public welfare) closely corresponds to Pancasila's commitment to social justice for all Indonesians, despite their different historical and intellectual roots: Maqāṣid originated in Islamic legal philosophy, whereas Pancasila was developed as the national ideology of a diverse society. Their common emphasis on public welfare provides a solid platform for incorporating Islamic legal concepts into Indonesia's constitutional framework.

This convergence has significant implications for legislative development in Indonesia. Because Pancasila is already the supreme normative foundation for national legislation, Maqāṣid-based evaluation can function as a complementary approach to achieving substantive justice and public welfare rather than as an exclusive Islamic legal standard (Masriani, 2023). Framing Maqāṣid in this way allows its values to inform legislative decisions while respecting Indonesia's constitutional principles and religious plurality, thereby reducing the political difficulties associated with explicitly religious legislative criteria.

The relationship between Maqāṣid and Pancasila also has a methodological dimension. In Indonesian legal theory, Pancasila functions as the fundamental norm of the state and the source of all sources of law, which means that every statute must be consistent with its values of belief in God, humanity, unity, democracy, and social justice. A Maqāṣid impact assessment framed in terms of these shared values would therefore not introduce a new criterion of validity but would elaborate how a proposed law advances values already recognized by the constitutional order. For Muslim legislators and citizens, the assessment would show how the law is consistent with the objectives of their religion; for citizens of other faiths, it would show how the law serves human welfare in terms they can share. In this way, Maqāṣid reasoning can contribute to the overlapping consensus that sustains a religiously plural democracy (Bowen, 2003; Masriani, 2023).

14. Toward a Maqāṣid Impact Assessment

The proposal for a Maqāṣid impact assessment can be situated within the broader international practice of regulatory impact assessment. Regulatory impact assessment is a systematic process of identifying and evaluating the expected effects of proposed regulations, using consistent analytical methods, in order to inform decision-makers and improve the quality of regulation (OECD, 2020). Its core elements include problem definition, the identification of objectives, the consideration of alternatives, the assessment of costs and benefits, consultation, and monitoring and evaluation.

There are clear structural parallels between regulatory impact assessment and the Maqāṣid-based legislative model. Both are oriented toward the purposes of regulation, both require the comparison of alternatives, and both emphasize the evaluation of outcomes after enactment (Amaliah et al., 2025; OECD, 2020). The distinctive contribution of Maqāṣid lies in its substantive normative framework: whereas conventional impact assessment often focuses on economic costs and benefits, Maqāṣid directs attention to a broader set of human interests, including religious, intellectual, familial, and moral dimensions, and provides a hierarchy for resolving conflicts among them (Al-Raysuni, 2006; Auda, 2008).

Integrating Maqāṣid into regulatory impact assessment would therefore enrich the evaluative

criteria used in Indonesian lawmaking without creating an entirely separate procedure. It would also help address a common weakness of academic papers accompanying bills, which are sometimes prepared as formalities rather than as genuine analyses of the problems and options. A structured assessment combining empirical evidence with explicit normative reasoning would improve the deliberative function of the academic paper and make the reasons for legislation more transparent to the public (Republic of Indonesia, 2011; Sarib & Mokodenseho, 2023).

Building on the preceding analysis, this study proposes that the Maqāṣid impact assessment be structured as a component of the academic paper that accompanies bills under the Law on the Formation of Legislation (Republic of Indonesia, 2011). The assessment would proceed in four steps. First, it would identify the essential interests affected by the proposed regulation, using an expanded understanding of the objectives that includes religion, life, intellect, lineage, property, and contemporary objectives such as dignity, justice, and the environment (Auda, 2008; Kamali, 2008). Second, it would evaluate the expected positive and negative effects of the regulation on each interest, drawing on empirical evidence from relevant disciplines. Third, it would identify conflicts among interests and justify the proposed balance by reference to the hierarchy of necessities and the priority of public over private interests (Al-Raysuni, 2006; Al-Shatibi, 2006). Fourth, it would propose indicators for post-enactment evaluation.

Table 1 summarizes the proposed structure of the assessment.

Table 1. Proposed Structure of a Maqāṣid Impact Assessment in the Legislative Process

Stage of lawmaking	Assessment question	Output
Planning	Which essential interests does the bill address, and how urgent is the need?	Justification for legislative priority
Drafting	How do alternative formulations affect each protected interest?	Preferred formulation with reasons
Deliberation	Which interests conflict, and how is the balance justified?	Public record of reasoning and participation
Evaluation	Has the statute protected the intended interests in practice?	Indicators and periodic review

Source: Developed by the author from Amaliah et al. (2025) and Auda (2008).

The value of this procedure lies in transparency. By requiring legislators and drafters to state which interests are at stake and why a particular balance is chosen, the assessment makes Maqāṣid-based reasoning visible and open to critique, thereby addressing the concerns about indeterminacy and discretion (Duderija, 2014; Sarib & Mokodenseho, 2023). Because the assessment is framed in terms of public welfare and human interests, it can be debated by citizens of different religious backgrounds, consistent with the constitutional framework of Pancasila (Masriani, 2023).

15. Maqāṣid and Contemporary Challenges: Digital Society, Public Health, and the Environment

The usefulness of the Maqāṣid framework for modern legislation depends on its capacity to address problems that classical jurists did not encounter. Three fields illustrate this capacity. The first is the digital society. Legislation on personal data protection, online content, and digital financial services affects interests that can be connected to the classical objectives: the protection of property in the case of financial fraud, the protection of lineage and honor in the case of privacy and reputation, and the protection of intellect in the case of misinformation (Auda, 2008; Kamali, 2008). Yet these connections require analogical extension and empirical understanding of technology, which reinforces the need for interdisciplinary expertise in Maqāṣid-based drafting.

The second field is public health. Health regulation, including the control of addictive substances, vaccination programs, and emergency measures during pandemics, involves the protection of life, which classical theory places among the highest necessities. At the same time, such regulation may restrict religious practice, economic activity, or personal freedom, raising conflicts among protected interests that must be balanced through the hierarchy of necessities and the principle that the prevention of harm takes priority in situations of necessity (Al-Raysuni, 2006; Kamali, 2003). The third field is the environment. Contemporary scholars have argued for recognizing the protection of the environment as an objective of the Sharīʿah in its own right, given its importance for the survival of present and future generations (Attia, 2007; Auda, 2008). Environmental legislation informed by this objective would emphasize precaution,

intergenerational responsibility, and the prohibition of waste.

These examples show that the Maqāṣid framework can be extended to contemporary problems, but they also show that such extension depends on judgment and evidence rather than on mechanical application. This confirms the central argument of this study: Maqāṣid is most valuable in modern legislation when it is used as a structured framework for transparent reasoning about human interests, supported by interdisciplinary knowledge and subject to public deliberation.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

This study shows that the reconstruction of Maqāṣid al-Sharīʿah offers a useful normative framework for modern legislation by shifting its application from individual legal rulings to institutional lawmaking. While classical doctrine defined the fundamental goals of Islamic law, contemporary scholars such as Ibn ʿĀshūr and Jasser Auda have broadened its scope into a dynamic, systems-oriented approach compatible with modern legislative processes. Maqāṣid-based reasoning has been incorporated into Indonesian law, including family law and Islamic financial regulation, to protect public welfare, justice, and human dignity through sound legal structures.

The study further suggests that the successful integration of Maqāṣid into Indonesia's legislative system requires transparent and accountable procedures rather than doctrinal interpretation alone. Aligning Maqāṣid with the constitutional objectives of Pancasila creates a normative bridge between legal certainty and substantive fairness in a pluralistic legal system. Maqāṣid al-Sharīʿah thus serves as a supplementary evaluative framework that enhances the quality, legitimacy, and public orientation of modern legislation rather than replacing positive law.

The Indonesian experience examined in this study shows that Maqāṣid-compatible reasoning already shapes positive law through legislation, judicial review, religious court practice, and the regulation of Islamic finance, but that it usually remains implicit. Making this reasoning explicit through a structured Maqāṣid impact assessment embedded in the academic paper accompanying bills would enhance transparency, guide judicial interpretation, and allow public deliberation, while comparative experience from Egypt and Malaysia confirms that the effectiveness of such reasoning depends on clear institutional channels and defined competences. At the same time, the critiques of Maqāṣid-based legislation, concerning the transformation of the Sharīʿah by the modern state and the indeterminacy of its objectives, define the limits within which this approach can legitimately operate in a constitutional democracy.

Theoretically, this study contributes to the debate on the relationship between Islamic legal theory and the modern state by showing that Maqāṣid can be reconceived as a framework for public reasoning within a constitutional democracy, rather than as a competing source of sovereign authority. This reconception responds to critiques that emphasize the transformation of the Sharīʿah under the modern state, by accepting that Maqāṣid-based reasoning in legislation must operate within democratic procedures and constitutional limits. The study is limited by its reliance on doctrinal and secondary sources; it does not examine empirically how legislators and drafters actually use Maqāṣid concepts in Indonesian lawmaking.

B. Suggestions

Incorporating Maqāṣid-based review into bill drafting requires clear procedural norms that address public welfare, competing interests, and potential social consequences, for instance through a dedicated Maqāṣid impact assessment in the academic paper accompanying each bill. Legislators, legal scholars, and policymakers should also encourage interdisciplinary collaboration by combining Islamic legal science with expertise in economics, public policy, technology, environmental studies, and other relevant fields. In addition, the Ministry of Law and the legislative drafting bodies of the House of Representatives and regional legislatures could develop guidelines and training on the use of Maqāṣid analysis in academic papers, while universities, particularly Islamic universities, could contribute expertise and develop curricula that combine Islamic legal theory with legislative drafting and policy analysis. Religious institutions such as the National Sharia Council and Islamic organizations can participate in public consultation, offering Maqāṣid-based perspectives as contributions to deliberation rather than as binding determinations. Further empirical research is needed to measure the

usefulness of Maqāṣid-oriented legislative reasoning in enhancing the quality and responsiveness of Indonesia's legal system.

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