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Reconstructing Maqasid al-Shariʿah for Modern Legislation: A Procedural Model for Integrating Public Welfare into Indonesian Lawmaking

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Abstract

This article examines how maqāṣid al-sharīʿah*, classically designed to guide the individual reasoning (*ijtihād*) of jurists, can be reconstructed to fit modern legislative processes that are institutional, codified, and procedural. The question is significant in Indonesia's plural legal system, in which Islamic legal values coexist with national positive law and frequently generate tension between formal legality and substantive justice. The study applies normative legal research with statutory, conceptual, comparative, and philosophical approaches to the Law on the Formation of Legislation, decisions of the Constitutional Court, the Marriage Law, the Compilation of Islamic Law, Islamic financial regulation, and classical and contemporary* uṣūl al-fiqh *literature. The findings show that the reconstructions of Ibn ʿĀshūr and Jasser Auda have shifted* maqāṣid *from a basis for case-specific rulings to a systemic framework applicable to three stages of lawmaking: planning, norm formulation, and post-enactment evaluation. Analysis of family law, comparative Islamic criminal law, and Islamic financial regulation reveals three distinct patterns of institutionalisation. The central challenge lies in two opposing risks: rigid literalism and unaccountable discretion. The article proposes a* Maqāṣid *Impact Assessment model embedded in the academic paper (*naskah akademik*), meaningful public participation, and regulatory evaluation, and it positions the normative convergence between* maqāṣid *and Pancasila as a bridge for integrating public welfare into positive law without sacrificing legal certainty.*

I. INTRODUCTION

Islamic legal theory (*uṣūl al-fiqh*) has long recognised that the rulings (*aḥkām*) of the sharia are not arbitrary commands but are oriented toward discernible purposes. This insight is captured in the doctrine of *maqāṣid al-sharīʿah*, the higher objectives of Islamic law (Kamali, 1999). First articulated in rudimentary form by al-Juwaynī and al-Ghazālī and later systematised by Abū Isḥāq al-Shāṭibī in *al-Muwāfaqāt* (Al-Shatibi, 2006), the doctrine holds that every sharia ruling ultimately protects a set of essential human interests, namely religion, life, intellect, lineage, and property, arranged hierarchically as necessities (*ḍarūriyyāt*), complementary needs (*ḥājiyyāt*), and embellishments (*taḥsīniyyāt*) (Al-Raysuni, 2006; Masud, 2005). The doctrine has become one of the most influential frameworks in contemporary Islamic legal thought, invoked in debates on finance, family law, bioethics, environmental policy, and constitutional reform (Auda, 2008; Duderija, 2014).

The setting in which the doctrine emerged, however, differs fundamentally from that of the modern nation-state. Classical *maqāṣid* reasoning was intended to guide individual jurists in determining rulings for particular questions, often in the absence of explicit textual guidance. Modern legislation, by contrast, is produced by parliaments and drafting bodies, codified in advance, applied uniformly, and legitimised through procedures of representation rather than through the authority of individual scholarship (Hallaq, 2009). The transition from jurist-centred law to state-centred legislation has therefore raised a foundational question: can a doctrine designed for individual reasoning be translated into a framework for institutional lawmaking without losing either its substantive commitments or the predictability that modern law requires?

The question is particularly acute in Indonesia. The Indonesian legal system combines a civil-law tradition inherited from Dutch colonial rule, customary law (*adat*), and Islamic law, which governs family matters for Muslims and is administered by the Religious Courts (Lindsey, 2012; Butt & Lindsey, 2018). Islamic legal values have entered national legislation in several domains, most visibly in marriage, inheritance, endowment (*waqf*), zakat, halal product assurance, and Islamic banking. Yet these values cannot be incorporated directly into law; they

must be adapted to a codified and hierarchical statutory structure governed by the Law on the Formation of Legislation and subject to review by the Constitutional Court (Hosen, 2007; Mokodenseho et al., 2024). Indonesian scholars increasingly treat *maqāṣid* not as a set of substantive rules but as a methodological framework for analysing legislation during the drafting process, so that the central question shifts from what the sharia prescribes in a given matter to whether a proposed law effectively protects the essential interests that the sharia aims to secure (Amaliah et al., 2025).

The scope of Islamic legal values in national legislation has expanded considerably since the 1970s. The Marriage Law of 1974, the Religious Judicature Law of 1989, and the Compilation of Islamic Law of 1991 established the foundations of Islamic family law as state law. Since the democratic transition of 1998, legislation has extended to zakat management, *waqf*, the hajj, Islamic banking, sharia securities, halal product assurance, and Islamic boarding schools (*pesantren*). Each of these statutes required legislators to translate religious norms into legal provisions that operate within a national and religiously plural constitutional order. The accumulation of such legislation means that the question of how Islamic values should be reasoned about in lawmaking is no longer theoretical; it is a recurring practical problem for drafters, legislators, and courts.

At the same time, Indonesian legislation is frequently criticised for privileging formal legality, that is, procedural correctness in enactment, over substantive justice and public benefit (Sarib & Mokodenseho, 2023). The Constitutional Court's decisions on the Job Creation Law, which required "meaningful participation" in lawmaking, illustrate that procedural shortcomings in legislation have become a constitutional issue (Constitutional Court of the Republic of Indonesia, 2021). A purely *maqāṣid*-driven legislative process, however, carries the opposite risk: that the predictability positive law is meant to provide will be replaced by open-ended appeals to public welfare. The tension between these risks mirrors a classic debate in general legal theory on the relationship between legality and justice, from Radbruch's (2006) formula on "statutory lawlessness" to Fuller's (1969) account of the inner morality of law.

The existing literature has established the relevance of *maqāṣid* to Indonesian legislation but leaves three gaps. First, most studies remain at the level of principle, asserting that legislation should serve *maṣlaḥah* without specifying where in the legislative process and through what instruments *maqāṣid* reasoning should operate (Masriani, 2023; Zaprulkhan, 2018). Second, there has been limited comparative attention to how *maqāṣid* is institutionalised differently across legal domains. Third, the risk that *maqāṣid* reasoning may undermine legal certainty has been acknowledged but not addressed through concrete procedural safeguards.

This article addresses these gaps by posing three research questions. First, how has *maqāṣid al-sharīʿah* been reconstructed by modern scholars to meet the demands of codified, institutional lawmaking? Second, at which stages of the Indonesian legislative process can *maqāṣid* reasoning be meaningfully applied, and what patterns of institutionalisation are visible in family law, Islamic criminal law, and Islamic financial regulation? Third, what mechanisms can integrate the value of *maṣlaḥah* embedded in *maqāṣid* into the positive legal system without eroding legal certainty? The article argues that *maqāṣid* can contribute to legislation only if it is disciplined by procedure, and it proposes a *Maqāṣid* Impact Assessment model anchored in existing Indonesian legislative instruments.

II. RESEARCH METHODS

This study employs normative (doctrinal) legal research using statutory, conceptual, comparative, and philosophical approaches (Hutchinson & Duncan, 2012). Doctrinal research is appropriate because the research questions concern the meaning, coherence, and design of legal norms and institutions rather than the measurement of social behaviour. The research relies on primary, secondary, and tertiary legal materials collected through library research (Soekanto & Mamudji, 1986).

The selection of legal domains for analysis was purposive. Family law, criminal law, and financial regulation were chosen because they represent three different relationships between Islamic norms and state law: in family law, Islamic norms are directly applied by state courts to Muslims; in criminal law, Islamic norms operate only in a regionally limited form; and in financial regulation, Islamic norms are mediated through an advisory religious body and a state regulator. This variation allows the analysis to identify how institutional arrangements shape the use of *maqāṣid* reasoning.

Primary legal materials include Law No. 12 of 2011 on the Formation of Legislation as amended by Law No. 13 of 2022; Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019; the Compilation of Islamic Law; Law No. 21 of 2008 on Sharia Banking; and decisions of the Constitutional Court, particularly Decision No. 46/PUU-VIII/2010 on the status of children born outside marriage, Decision No. 22/PUU-XV/2017 on the minimum marriage age, and Decision No. 91/PUU-XVIII/2020 on the Job Creation Law. Classical Islamic legal sources include the works of al-Ghazālī, al-Shāṭibī, and Ibn ʿĀshūr. Secondary materials consist of books and peer-reviewed articles on *maqāṣid*, Indonesian legal development, and legislative theory.

The statutory approach examines how Indonesian legislation regulates the stages of lawmaking and incorporates Islamic legal values. The conceptual approach analyses the concepts of *maqāṣid*, *maṣlaḥah*, legal certainty, and legislative quality. The comparative approach is used descriptively to show how *maqāṣid* is institutionalised differently across legal domains and jurisdictions, drawing on existing comparative studies (Arafat & Asmuni, 2025); it does not rank jurisdictions normatively. The philosophical approach examines the relationship between substantive justice and formal legality in both Islamic and general legal theory.

The analysis proceeded in three stages. First, the literature on classical and modern *maqāṣid* was analysed to identify the conceptual adjustments required for institutional lawmaking. Second, the Indonesian legislative process and three legal domains were examined to determine where and how *maqāṣid* reasoning operates. Third, the findings were synthesised into a procedural model. Qualitative content analysis was used to identify recurring categories, namely legislative planning, norm formulation, regulatory evaluation, and the relationship between *maṣlaḥah* and positive law. Claims were cross-checked across sources where more than one study addressed the same instrument or case. Consistent with doctrinal methodology, the article does not test a causal hypothesis but reconstructs and evaluates arguments within the internal logic of the legal materials.

III. RESULTS

A. From Individual Ijtihād to Institutional Legislation: Three Analytical Adjustments

The first result is that applying *maqāṣid* to institutional lawmaking requires three analytical adjustments to the classical doctrine. The first adjustment concerns the *unit of evaluation*. Classical *maqāṣid* reasoning evaluated individual rulings. Legislative evaluation must assess statutes as systems of interrelated provisions, consistent with Auda's (2008) principle of wholeness. A provision may protect one essential interest while unintentionally compromising another. For example, legislation intended to protect religion by criminalising certain forms of expression may, without adequate procedural safeguards, adversely affect the protection of life or intellect through disproportionate penalties or restrictions on legitimate religious discourse. Such conflicts become visible only when legislation is evaluated as a whole.

The second adjustment concerns the *function of the hierarchy*. The classical ranking of *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt* should be understood as a framework for balancing competing interests rather than as a checklist applied uniformly to every legislative proposal. Al-Raysuni (2006) emphasises that al-Shāṭibī intended the hierarchy to resolve conflicts among legal claims by identifying their relative importance. In legislation, this means that the hierarchy becomes relevant primarily when a proposed provision creates trade-offs, for instance between economic development (protection of property) and environmental health (protection of life), or between administrative order and access to rights.

The third adjustment concerns *epistemic openness*. Auda's principle of openness requires *maqāṣid*-based legislative reasoning to incorporate knowledge from disciplines beyond jurisprudence, including economics, public health, and environmental science, because many contemporary regulatory issues, such as data protection, digital financial services, and climate adaptation, cannot be assessed using classical categories alone (Auda, 2008; Kamali, 2008). *Maqāṣid* thus provides the normative criteria for evaluating legislation, while empirical disciplines provide the evidence needed to determine whether a proposed law will actually protect those interests. This division of labour has institutional consequences: *maqāṣid*-informed

drafting requires interdisciplinary expertise rather than reliance on jurists alone.

B. Points of Entry in the Indonesian Legislative Process

The second result is that the Indonesian legislative process already contains formal points of entry for *maqāṣid* reasoning, although these are rarely used explicitly. Law No. 12 of 2011, as amended, structures lawmaking into planning, drafting, deliberation, ratification, and promulgation, and it requires that a bill be accompanied by an academic paper (*naskah akademik*) containing philosophical, sociological, and juridical foundations. The philosophical foundation must explain how the regulation reflects the values of Pancasila and the 1945 Constitution; the sociological foundation must demonstrate that the regulation responds to social needs; and the juridical foundation must address legal problems and gaps. The amended law also strengthens public participation, responding to the Constitutional Court's demand for meaningful participation that includes the right to be heard, the right to have one's views considered, and the right to receive an explanation of how those views were addressed (Constitutional Court of the Republic of Indonesia, 2021).

These requirements create three natural points of entry. At the planning stage, bills are prioritised in the National Legislation Program (*Prolegnas*) and its regional counterparts. Amaliah et al. (2025) propose that bills be ranked partly according to their contribution to protecting essential interests rather than solely on political expedience. At the drafting stage, the academic paper offers a structured place in which drafters can assess alternative formulations against the hierarchy of interests and justify the chosen formulation. At the evaluation stage, post-enactment review can determine whether a statute has actually protected the interests it was intended to protect rather than limiting scrutiny to procedural compliance. Mokodenseho et al. (2024) find that fiqh and *maqāṣid* reasoning already influences Islamic legal policy informally at each of these stages, but because the reasoning is not documented in a structured form, it cannot be examined, contested, or reviewed.

Table 1. Entry Points for Maqāṣid Reasoning in the Indonesian Legislative Process

Legislative Stage	Existing Legal Instrument	Potential Maqāṣid Function	Current Limitation
Planning	National and regional legislation programmes (*Prolegnas/Propemperda*)	Prioritising bills according to their contribution to essential interests	Prioritisation largely political; criteria not documented
Drafting	Academic paper (*naskah akademik*) with philosophical, sociological, and juridical foundations	Assessing alternative formulations against the hierarchy of interests; identifying trade-offs	Foundations often formulaic; no structured welfare assessment
Deliberation	Public participation requirements and Constitutional Court standard of meaningful participation	Testing welfare claims through public reasoning and consultation (*shūrā*)	Participation often procedural; responses to input rarely documented
Evaluation	Post-enactment monitoring and review of legislation	Assessing whether essential interests are actually protected	Evaluation focuses on implementation compliance rather than outcomes

As Table 1 shows, the instruments exist, but they are not designed to capture welfare reasoning in a structured and reviewable form. The problem is therefore not the absence of entry points but the absence of a method for using them.

C. The Academic Paper as an Underused Instrument of Welfare Reasoning

The academic paper deserves particular attention because it is the instrument most capable of carrying structured welfare reasoning. Legally, it is required for bills submitted to the House of Representatives and for regional regulations, and its format is prescribed in an annex to the Law on the Formation of Legislation. The format requires a description of the theoretical and empirical basis of the regulation, an evaluation of related legislation, the philosophical, sociological, and juridical foundations, and the scope and content of the proposed regulation. In principle, this structure already invites the kind of analysis that *maqāṣid* reasoning requires: identification of the problem the law addresses, the interests affected, the

values that justify intervention, and the expected consequences.

In practice, however, academic papers frequently treat the philosophical foundation as a formulaic recitation of Pancasila and constitutional provisions, the sociological foundation as a general description of social conditions, and the juridical foundation as a list of related statutes. Rarely do they identify trade-offs between competing interests, consider alternative regulatory options, or present evidence about the likely effects of the proposed provisions on different groups. When Islamic legal values are involved, academic papers may cite Qur'anic verses or fatwas to demonstrate religious legitimacy without analysing how the proposed norms will affect the interests those sources aim to protect. The result is that the academic paper performs a legitimating rather than an analytical function.

This finding is significant for the design of reform. It suggests that the primary obstacle to integrating *maqāṣid* reasoning into legislation is not the absence of legal authority or institutional space, but the quality of analysis within existing instruments. A reform that specifies the analytical content of the academic paper, rather than one that creates new institutions, is therefore the most promising and least disruptive path. It also suggests that reviewing bodies, including the legislative drafting agencies of the government and the House, should be empowered to return academic papers that do not contain substantive analysis of the interests affected.

D. Family Law: Maqāṣid as Justification for Protective Regulation

The third result concerns patterns of institutionalisation in specific domains. Indonesian family law offers the clearest example of *maqāṣid* reasoning being used to justify protective state regulation that goes beyond classical fiqh. Marriage registration illustrates the point. Classical fiqh does not make registration a condition of validity, and unregistered marriages may remain religiously valid. Yet unregistered marriages often leave women and children without legal proof of their status, with consequences for inheritance, maintenance, custody, and access to public services. From a *maqāṣid* perspective, compulsory registration is justified as a protection of lineage and of the rights and welfare of women and children (Cholis & Masuwd, 2026). Registration is thus framed not as a bureaucratic innovation but as a legal instrument consistent with the objectives of the sharia.

The Constitutional Court has engaged with similar reasoning. In Decision No. 46/PUU-VIII/2010, the Court held that a child born outside a legally registered marriage has a civil relationship with the biological father where paternity can be proven by science and technology or other legal evidence. The decision was controversial among some religious authorities, but it can be read as protecting the interests of the child, a concern that resonates with the *maqāṣid* objectives of protecting lineage and life (Butt & Lindsey, 2018). Similarly, Decision No. 22/PUU-XV/2017 found the differentiated minimum marriage age for women unconstitutional, leading to Law No. 16 of 2019, which raised the minimum age for women to nineteen. The legislative justification emphasised the protection of children's health, education, and well-being, objectives that correspond to the protection of life, intellect, and lineage.

Proposals to reform the Compilation of Islamic Law further reflect this pattern. Ipansyah and Hafidzi (2025) argue that issues of guardianship, polygamy, and the status of children born outside marriage should be reassessed in light of justice, public welfare, and human dignity, and that developments such as digital marriage registration and electronic evidence in paternity disputes require dynamic interpretation. Nurlaelawati (2010) shows that judges of the Religious Courts already negotiate between the Compilation, classical fiqh, and social realities. The pattern in family law is thus one in which *maqāṣid* serves as a justification for protective regulation that departs from classical formal requirements in order to secure classical substantive objectives.

The family-law pattern also reveals a recurring institutional sequence. Protective change has typically begun with social problems documented by civil-society organisations and researchers, such as the consequences of child marriage or unregistered marriage, has then been addressed through constitutional litigation or judicial practice, and has only later been codified by the legislature. In this sequence, *maqāṣid* reasoning appears mainly as an after-the-fact justification for reforms that were driven by litigation and advocacy. A procedural model that brings welfare reasoning into the drafting stage would allow the legislature to anticipate such problems rather than respond to them years later,

reducing the period during which vulnerable family members remain unprotected.

E. Comparative Islamic Criminal Law: Maqāṣid under Legal Pluralism

The fourth result concerns criminal law, where the institutionalisation of *maqāṣid* is shaped by constitutional structure and legal pluralism. Comparative analysis shows that Saudi Arabia and Iran apply Islamic criminal law more comprehensively, whereas Malaysia and Indonesia adopt partial approaches within plural legal systems that retain criminal codes inherited from colonial traditions (Arafat & Asmuni, 2025). The *maqāṣid* principles used to justify criminal provisions also vary. Saudi Arabia's *taʿzīr* system allows broad judicial discretion in pursuing *maṣlaḥah*, while Iran relies on a more codified structure despite shared doctrinal foundations.

In Indonesia, Islamic criminal law operates in limited and regionally specific forms, most notably through Aceh's *Qanun Jinayat*, which operates alongside the national Criminal Code under Aceh's special autonomy (Arafat & Asmuni, 2025). This arrangement represents a distinctive model shaped by legal pluralism and regional autonomy rather than nationwide implementation. The comparative evidence indicates that *maqāṣid*-oriented legislation cannot be understood as a single institutional model; its design depends on constitutional framework, the degree of pluralism, and political feasibility. The criminal law domain also highlights the risks of *maqāṣid* reasoning. Where the protection of religion is invoked to justify criminal penalties, the hierarchy of interests requires that such penalties be weighed against the protection of life, dignity, and intellect, and that procedural safeguards ensure proportionality. Without such balancing, *maqāṣid* reasoning may be invoked selectively to legitimise measures that undermine other essential interests.

F. Islamic Financial Regulation: Maqāṣid through Advisory Institutions

The fifth result concerns Islamic financial regulation, which provides the most institutionalised example of *maqāṣid* reasoning in Indonesian law. The DSN-MUI applies *maqāṣid* not only to address matters lacking explicit textual guidance but also to evaluate whether financial products and regulations promote *maṣlaḥah* and protect essential interests (Syahriani et al., 2024). Contemporary fatwas 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.

The institutional significance lies in how this reasoning becomes law. DSN-MUI fatwas are not binding legislation in themselves, but Law No. 21 of 2008 on Sharia Banking provides that sharia principles are determined through fatwas issued by an authorised institution and then incorporated into regulations of the financial authorities. This creates a two-step model in which a *maqāṣid*-oriented advisory body shapes the substance of positive law without exercising legislative power, while legal force derives from the regulator's formal enactment. The model demonstrates that *maqāṣid* reasoning can be institutionalised in a way that preserves legal certainty: the reasoning is documented in fatwas, the resulting norms are promulgated through regular legal channels, and compliance is supervised by a state authority.

Table 2. Patterns of Maqāṣid Institutionalisation in Three Legal Domains

Domain	Dominant Maqāṣid Objective	Mode of Institutionalisation	Strength	Risk
Family law	Protection of lineage, life, and dignity	Statutory reform and judicial interpretation justified by substantive objectives	Protects vulnerable family members beyond formal fiqh requirements	Contestation by religious authorities when departure from classical rules is visible
Criminal law	Protection of religion, life, and public order	Regional legislation under special autonomy; varied comparative models	Accommodates pluralism and local legitimacy	Selective invocation of welfare to justify disproportionate penalties
Financial regulation	Protection of property and prevention of economic harm	Advisory fatwas incorporated into regulations of state authorities	Documented reasoning and formal promulgation preserve legal certainty	Formal compliance may displace substantive welfare evaluation

Table 2 summarises the three patterns. Each demonstrates a different relationship between *maqāṣid* reasoning and legal form, and each carries specific strengths and risks. Together they show that the question is not whether *maqāṣid* can be institutionalised, but how its institutionalisation can be made transparent, balanced, and accountable.

G. Constitutional Adjudication as a Site of Welfare Reasoning

A further result is that the Constitutional Court has become an important, though implicit, site of welfare reasoning concerning legislation that touches Islamic law. The Court does not apply *maqāṣid* as a legal standard; its standards are the provisions of the 1945 Constitution. Yet several of its decisions on family law and religious matters employ reasoning that is functionally similar to *maqāṣid* balancing. In the decision on children born outside marriage, the Court weighed the formal requirements of marriage law against the constitutional rights of the child and concluded that the protection of the child required recognising a civil relationship with the biological father. In the decision on the minimum marriage age, the Court weighed equality and the protection of children against the legislature's earlier choice and required legislative change. In both cases, the Court's reasoning can be reconstructed in *maqāṣid* terms: the protection of lineage and life justified departing from a formal rule that, in practice, harmed those interests.

This functional similarity has two implications. First, it shows that welfare reasoning is already part of constitutional adjudication, and that legislation which documents its welfare reasoning carefully is better prepared to withstand constitutional review. A statute accompanied by a reasoned assessment of the interests at stake gives the Court a basis for deferring to legislative judgment; a statute whose academic paper is generic invites the Court to substitute its own assessment. Second, it shows that the Court's reasoning, while protective, occurs after enactment and only in response to litigation. Many legislative choices affecting essential interests are never litigated. A procedural model that brings welfare reasoning forward into the drafting stage would therefore complement, rather than duplicate, constitutional review. The Court's insistence on meaningful participation in the Job Creation decision points in the same direction by locating part of the constitutional quality of legislation in the process through which it is made (Constitutional Court of the Republic of Indonesia, 2021).

H. Regional Regulations and the Politics of Welfare Claims

The institutionalisation of Islamic values in Indonesian law has not occurred only through national legislation. Since decentralisation, numerous regional regulations (*peraturan daerah*) inspired by Islamic norms have been enacted, covering matters such as religious dress, Qur'anic literacy requirements, zakat collection, alcohol control, and public morality. Bush (2008) describes these regulations as a symptom of broader political dynamics rather than an anomaly, and Buehler (2016) shows that they were frequently promoted by politicians from nationalist as well as Islamic parties in response to electoral incentives and the influence of local religious networks. Many such regulations were justified by reference to public welfare and social order, but the justifications were rarely accompanied by evidence or by analysis of their effects on the rights and livelihoods of affected groups.

The regional experience is instructive for the design of *maqāṣid* reasoning in lawmaking. It shows that welfare claims can be mobilised for political purposes and that the language of public interest is easily invoked but rarely tested. It also shows that the absence of structured reasoning makes it difficult for reviewing authorities, whether the Ministry of Home Affairs in executive review or the Supreme Court in judicial review of regional regulations, to assess whether a regulation genuinely serves public welfare or merely symbolises religious commitment. A *maqāṣid* analysis applied seriously would require such regulations to identify which essential interests they protect, at which level, at whose expense, and on what evidence. Some regulations would survive this analysis; others would not. In either case, the debate would move from symbolic politics to reasoned justification, which is the function the proposed model seeks to perform.

IV. DISCUSSION

A. The Dual Risk: Rigid Literalism and Unaccountable Discretion

The central design challenge in integrating *maṣlaḥah* into legislation is avoiding two opposing risks. The first is rigid literalism, which treats *maqāṣid* as a fixed checklist of five interests to be ticked off mechanically, ignoring changing social realities and the need to balance interests in context. The second is unaccountable discretion, which allows appeals to public welfare to override statutory provisions or justify new ones without transparent and reviewable reasoning (Amaliah et al., 2025). The first risk drains *maqāṣid* of its capacity to respond to new problems; the second drains positive law of its predictability.

Classical jurists were aware of the second risk. Al-Ghazālī's restrictive conditions for *maṣlaḥah*

mursalah were designed precisely to prevent jurists from invoking welfare to override the law according to personal preference (Opwis, 2010). Hallaq (1997) notes that al-Shāṭibī's theory was viewed with caution for similar reasons. In modern legislation, the risk takes institutional form: welfare claims may be used by legislators or officials to justify measures that serve particular political interests. Sarib and Mokodenseho (2023) show that judicial reliance on *maṣlaḥah* has sometimes produced decisions that are difficult to reconcile with statutory law because the reasoning was not openly documented.

The solution suggested by both classical and modern experience is procedural discipline. In classical law, discipline was provided by methodological conditions and by the scholarly community's scrutiny of reasoning. In modern legislation, discipline must be provided by procedures that require welfare reasoning to be articulated, evidenced, exposed to public scrutiny, and reviewed. Fuller's (1969) insistence on the congruence between declared rules and official action, and Radbruch's (2006) affirmation of the general priority of legal certainty, point in the same direction: substantive values must be integrated in ways that do not undermine the formal qualities that make law usable and fair.

B. The Maqāṣid Impact Assessment Model

Building on these findings, this article proposes a *Maqāṣid* Impact Assessment (MIA) as a structured component of the academic paper accompanying a bill and of post-enactment evaluation. The MIA consists of five steps.

The first step is *identification of affected interests*. Drafters identify which essential interests, interpreted in contemporary terms following Auda (2008) and Ibn ʿĀshūr (2006), are affected by the proposed regulation: religion (including freedom of religion and the integrity of religious institutions), life (including health and safety), intellect (including education and access to information), lineage and family, property (including livelihoods and economic security), and dignity. This step converts abstract objectives into concrete legislative questions.

The second step is *classification of the level of interest*. For each affected interest, drafters determine whether the regulation concerns necessities, needs, or embellishments. A regulation that affects the basic livelihood of vulnerable groups touches on the necessity level of property; a regulation that improves administrative convenience typically concerns needs or embellishments. This classification provides a principled basis for prioritising interests when they conflict (Al-Raysuni, 2006).

The third step is *identification of trade-offs and alternatives*. Drafters identify where the regulation protects one interest at the expense of another and consider alternative formulations that reduce the conflict. This step responds to Auda's principle of wholeness and corresponds to the requirement in regulatory impact assessment that alternatives, including non-regulatory options, be considered (Radaelli, 2005).

The fourth step is *evidence and participation*. Claims about the effects of the regulation on essential interests must be supported by evidence from relevant disciplines and tested through public participation. The Constitutional Court's standard of meaningful participation provides a legal basis for requiring that the views of affected groups be heard, considered, and answered (Constitutional Court of the Republic of Indonesia, 2021). In Islamic terms, this step reflects the principle of consultation (*shūrā*) and the recognition that knowledge of *maṣlaḥah* in contemporary societies is distributed across communities and disciplines.

The fifth step is *justification and review*. Drafters must state in writing why the chosen formulation represents the most appropriate balance of interests. After enactment, the statute is evaluated against the same criteria to determine whether the intended interests were in fact protected. The written justification makes the reasoning reviewable by the legislature, the courts, and the public, thereby converting *maṣlaḥah* from a discretionary claim into an accountable argument.

Table 3. Structure of the Maqāṣid Impact Assessment

Step	Guiding Question	Legal Anchor	Safeguard Against
Identification of affected interests	Which essential interests does the regulation affect?	Philosophical and sociological foundations of the academic paper	Narrow focus on a single interest
Classification of level	Does the effect concern necessities, needs, or embellishments?	Juridical and sociological analysis in the academic paper	Treating minor conveniences as essential interests

Step	Guiding Question	Legal Anchor	Safeguard Against
Trade-offs and alternatives	Where does protecting one interest harm another, and what alternatives reduce the conflict?	Drafting guidelines; deliberation	Rigid literalism and one-dimensional reasoning
Evidence and participation	What evidence supports the welfare claims, and how have affected groups responded?	Public participation requirements; meaningful participation standard	Unaccountable discretion and elite capture
Justification and review	Why is the chosen formulation the best balance, and did it work?	Academic paper; post-enactment evaluation; judicial review	Undocumented reasoning and irreversible policy error

Table 3 summarises the model. Its key feature is that it does not create a new institution or a separate religious test for legislation. It operates within existing legislative instruments and uses criteria that can be articulated in terms accessible to all citizens. This is essential in a constitutional democracy in which legislation must be justified to a religiously diverse public.

C. Maqāṣid and Pancasila: A Normative Bridge

The MIA would be politically and constitutionally problematic if it were presented as an exclusively Islamic test for national legislation. Indonesia is not a religious state, and its legislation must be justified by reference to Pancasila and the 1945 Constitution. Comparative analysis shows, however, that *maqāṣid* and Pancasila share normative purposes: the protection of human dignity, the preservation of life, the advancement of knowledge, the protection of family, and the promotion of collective prosperity. Masriani (2023) argues that the *maqāṣid* principle of public welfare (*maṣlaḥah ʿāmmah*) corresponds closely with the Pancasila commitment to social justice for all Indonesians, despite their distinct historical and intellectual roots.

This convergence allows *maqāṣid* to function as a complementary evaluative framework rather than an exclusive religious standard. Because Pancasila is the highest normative foundation for national legislation, *maqāṣid*-based evaluation can contribute to legislative reasoning to the extent that its criteria can be expressed as reasons accessible to all citizens. The protection of life, intellect, family, property, and dignity are such reasons. Framing *maqāṣid* in this way respects constitutional principles and religious plurality and reduces the political difficulties associated with explicitly religious criteria. It also reflects the Islamic legal principle that the actions of authorities over the people are bound by public welfare (*taṣarruf al-imām ʿalā al-raʿiyyah manūṭ bi al-maṣlaḥah*), a principle that concerns the welfare of all citizens rather than Muslims alone.

The bridge is not merely rhetorical. In practice, the philosophical foundation of the academic paper already requires drafters to explain how a regulation reflects the values of Pancasila. The MIA would give structure to this requirement by specifying the interests to be considered and the method for balancing them. For legislation in areas where Islamic law has specific relevance, such as family law, Islamic finance, zakat, and *waqf*, the MIA would allow drafters to draw explicitly on *maqāṣid* reasoning. For general legislation, the same criteria would apply in their constitutional formulation.

D. Applying the Model: Two Illustrative Legislative Domains

The operation of the *Maqāṣid* Impact Assessment can be illustrated through two domains in which Indonesian legislation has drawn explicitly on Islamic values: halal product assurance and zakat management. These illustrations are not evaluations of particular statutes but demonstrations of how the model would structure legislative reasoning.

In halal product assurance, legislation seeks to protect the religious interest of Muslim consumers in consuming permissible products. A *maqāṣid* analysis would begin by identifying this interest as connected to the protection of religion and, through the safety and hygiene dimensions of certification, to the protection of life. It would then identify affected interests that may be in tension with this objective: the livelihoods of micro and small enterprises, which may face certification costs and administrative burdens (protection of property at the level of necessity for poor producers), and the interests of non-Muslim producers and consumers in a plural society. The trade-off step would ask whether alternative formulations, such as self-declaration schemes for micro enterprises, subsidised certification, or phased implementation, could protect the religious interest while reducing harm to livelihoods. The evidence and participation step would require data on the costs of certification and consultation with affected producers. The

justification step would require drafters to explain why the chosen balance is appropriate and to commit to evaluating whether certification actually improves consumer protection without excluding small producers from the market. This structure would not determine the outcome, but it would make the reasoning visible and contestable.

In zakat management, legislation seeks to organise the collection and distribution of zakat in order to realise its objectives of poverty alleviation and social solidarity. A *maqāṣid* analysis would identify the protection of property and life of the poor at the level of necessity, the protection of religion in ensuring that zakat is collected and distributed in accordance with sharia, and the interests of civil-society zakat institutions that have historically performed these functions. The trade-off step would examine the balance between state coordination, which may improve accountability and coverage, and the autonomy of community institutions, which may enjoy greater trust and local knowledge. The evidence step would require data on distribution outcomes, administrative costs, and public trust. The review step would assess whether the legislation actually increased the amount and effectiveness of zakat reaching eligible recipients. In both illustrations, the model shifts debate from abstract claims about whether a law is "Islamic" or "secular" toward concrete questions about which interests are affected, how they are balanced, and whether the law achieves its purposes.

The illustrations also show how the model engages non-religious expertise. Assessing the effect of certification costs on small enterprises requires economic analysis; assessing zakat distribution outcomes requires social-policy data. The jurist's role is to articulate the objectives and their relative priority, while other disciplines provide evidence of effects. This division of labour reflects Auda's (2008) principle of openness and Kamali's (2008) insistence that *maqāṣid* reasoning must be informed by knowledge of contemporary realities.

E. Maqāṣid, Constitutional Rights, and the Protection of Minorities

A model that integrates *maqāṣid* into legislation must address the relationship between the objectives of the sharia and constitutional rights, particularly the rights of religious minorities and of Muslims who hold minority interpretations. Auda's (2008) reinterpretation of the essentials offers a basis for convergence: the protection of religion can be understood as the protection of freedom of belief; the protection of intellect as the protection of freedom of thought and access to knowledge; and the protection of honour as the protection of human dignity. Kamali (2008) similarly argues that dignity is implicit in the objectives of the sharia. On this reading, *maqāṣid* and constitutional rights share a common concern with protecting the conditions under which human beings can live with security, dignity, and agency.

Convergence, however, is not automatic. Classical formulations of the protection of religion were sometimes invoked to justify restrictions on apostasy, blasphemy, or heterodox groups. A *maqāṣid* analysis in a constitutional democracy must therefore treat the protection of religion as applying to all citizens' religious interests, not only to the interests of the majority or of a particular orthodoxy. The trade-off step of the proposed model is crucial here: where a regulation protects the religious sensibilities of one group by restricting the religious practice or expression of another, the model requires drafters to identify this conflict explicitly, to rank the interests according to their level, and to consider less restrictive alternatives. Because the freedom to hold and practise one's religion concerns the level of necessity, while protection from offence typically concerns a lower level, the hierarchy itself provides a principled reason to favour less restrictive measures.

This reading is consistent with the Indonesian constitutional framework, which guarantees freedom of religion while permitting limitations prescribed by law for the protection of the rights of others, morality, religious values, security, and public order. The proposed model does not resolve the long-standing debates surrounding such limitations, but it requires that any limitation be justified through an explicit balancing of interests rather than by general appeals to religious harmony. In this respect, *maqāṣid* reasoning disciplined by procedure can strengthen, rather than threaten, constitutional protection.

F. Institutional Conditions and Limits

The model depends on several institutional conditions. First, drafters require interdisciplinary competence. *Maqāṣid* reasoning cannot be conducted solely by jurists or solely by technocrats; it requires collaboration among Islamic legal scholars, legal drafters, economists, public-health experts, and others relevant to the

subject matter (Auda, 2008; Kamali, 2008). Second, the academic paper must be treated as a substantive document rather than a formality. In practice, academic papers are often prepared under time pressure and contain generic statements. The MIA would only be effective if legislatures and reviewing bodies insist on substantive analysis. Third, judicial review must be capable of engaging with welfare reasoning without substituting the court's view of welfare for that of the legislature. The Constitutional Court's emphasis on meaningful participation suggests that courts can review the quality of the process of reasoning without dictating its outcome.

The model also has limits. It cannot resolve deep disagreements about the content of welfare, particularly where religious and secular conceptions diverge. It cannot prevent all misuse of welfare claims. Its value lies in making reasoning visible and contestable, which is a necessary but not sufficient condition for good legislation. The experience of Islamic financial regulation shows a further risk: once a procedure of sharia approval becomes established, formal compliance with the procedure may displace substantive evaluation of welfare (Syahriani et al., 2024). The MIA should therefore be accompanied by post-enactment evaluation that examines outcomes rather than merely confirming that the procedure was followed.

G. Objections and Responses

Four objections may be raised against the proposed model. The first is that integrating *maqāṣid* into national lawmaking compromises the religious neutrality of the state. The response is that the model does not require legislation to be justified by religious authority; it requires legislation to be justified by reference to essential human interests that can be articulated in constitutional terms accessible to all citizens. The *maqāṣid* tradition serves as one source of these criteria, alongside Pancasila and constitutional rights, and it is especially relevant in domains where Islamic law already has legal force. In general legislation, the criteria operate in their constitutional formulation. This is consistent with the Indonesian constitutional settlement, which is neither theocratic nor strictly secular but recognises the role of religion in public life while guaranteeing the equal citizenship of all (Hosen, 2007; Butt & Lindsey, 2018).

The second objection comes from the opposite direction: that translating *maqāṣid* into a procedural assessment dilutes its religious character and subordinates the sharia to state bureaucracy. The response is that *maqāṣid* reasoning has always required institutional and methodological discipline. Classical jurists developed strict conditions for welfare reasoning precisely to prevent its misuse (Opwis, 2010). The proposed model does not replace religious scholarship; it creates a structured space in which scholarly reasoning about objectives can inform legislation and be tested against evidence and public deliberation. Islamic financial regulation demonstrates that religious authority and state legislation can coexist through such structured interaction (Syahriani et al., 2024).

The third objection is that the model adds bureaucratic burden to an already slow legislative process. The response is that the model builds on documents and procedures that already exist: the academic paper, public participation, and post-enactment evaluation. It requires these documents to contain substantive analysis rather than generic statements. The additional effort is likely to be offset by improved legislative quality and reduced risk of constitutional challenge, as the experience of the Job Creation Law demonstrates. The model can also be applied proportionately, with more detailed analysis for legislation that significantly affects essential interests and lighter analysis for technical or administrative regulations.

The fourth objection is that *maqāṣid* is too indeterminate to guide legislation, because reasonable people disagree about what welfare requires. The response is that the model does not claim to eliminate disagreement. Its aim is to structure disagreement by identifying which interests are at stake, how they are ranked, what evidence supports competing claims, and how decision-makers justify their choices. Indeterminacy is a feature of all substantive legal standards, including constitutional rights, and it is managed through reasoned justification and review rather than through mechanical rules. Fuller's (1969) account of law as a purposive enterprise suggests that the articulation of purposes is itself a condition of good law.

H. Implications for Courts and Regulatory Agencies

Although the model focuses on the legislative stage, it has implications for institutions that apply and review legislation. For the Religious Courts, a statute accompanied by a documented assessment of the interests it seeks to protect

provides interpretive guidance. When judges confront situations not anticipated by the legislature, such as new forms of digital evidence in paternity disputes or novel arrangements in the division of marital property, they can interpret statutory provisions in light of the documented objectives rather than relying on undocumented assumptions about legislative intent. This aligns teleological interpretation, already familiar in Indonesian legal practice, with the *maqāṣid* tradition's emphasis on purposes (Nurlaelawati, 2010; Ipansyah & Hafidzi, 2025).

For the Constitutional Court and the Supreme Court, documented welfare reasoning provides a basis for calibrated review. Courts can examine whether the legislature identified the relevant interests, considered alternatives, engaged affected groups, and offered a reasoned justification, without substituting their own judgment about the best policy. This form of process-oriented review respects the separation of powers while ensuring that legislation affecting essential interests is not enacted carelessly.

For regulatory agencies, including the Financial Services Authority and ministries that issue implementing regulations, the model offers a template for regulatory impact analysis that incorporates welfare considerations. Implementing regulations often determine the practical effects of legislation more than the statute itself. Applying the same assessment steps at the level of implementing regulations would ensure that the objectives documented at the legislative stage are carried through into practice. In Islamic financial regulation, where DSN-MUI fatwas are already incorporated into regulations, the model would add a systematic evaluation of whether the incorporated norms actually achieve their welfare objectives, addressing the risk that formal sharia compliance becomes an end in itself.

I. Contribution to Legal Theory

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, identifying three adjustments concerning the unit of evaluation, the function of the hierarchy, and epistemic openness. Second, it offers lawmakers in Muslim-majority and religiously diverse states a structured account of when *maqāṣid* analysis adds value and where it may overreach, together with a concrete procedural model. Third, it contributes to the general debate on the relationship between substantive justice and formal legality by showing how a substantive normative framework can be disciplined rather than discarded. The *maqāṣid* tradition, often presented as a source of flexibility, is shown here to be compatible with, and indeed dependent upon, procedural accountability.

V. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

This study shows that reconstructing *maqāṣid al-sharīʿah* offers a useful normative framework for modern legislation, provided that its application is transferred from individual rulings to institutional lawmaking and disciplined by procedure. Classical doctrine defined the fundamental objectives of Islamic law, while modern scholars, notably Ibn ʿĀshūr and Jasser Auda, broadened its scope into a dynamic, systems-oriented approach compatible with modern legislative processes. The Indonesian legislative process already provides entry points for *maqāṣid* reasoning at the planning, drafting, deliberation, and evaluation stages, but these are not used in a structured and reviewable manner. Analysis of family law, comparative Islamic criminal law, and Islamic financial regulation reveals three patterns of institutionalisation, each with distinct strengths and risks.

The central challenge is to avoid both rigid literalism and unaccountable discretion. The proposed *Maqāṣid* Impact Assessment addresses this challenge by requiring identification of affected interests, classification of their level, analysis of trade-offs and alternatives, evidence and participation, and written justification subject to review. Aligning *maqāṣid* with the constitutional values of Pancasila provides a normative bridge that allows welfare reasoning to inform legislation in a pluralistic legal system without sacrificing legal certainty. *Maqāṣid al-sharīʿah* thus functions as a complementary evaluative framework that enhances the quality, legitimacy, and public orientation of legislation rather than replacing positive law.

The findings also carry a broader lesson for the study of Islamic law in modern states. Much contemporary debate oscillates between calls for the formal application of sharia rules and calls for their replacement by secular norms. The analysis in this article suggests a third path, in which the purposes of the sharia inform legislation through transparent reasoning that is accountable to constitutional standards and to the public. This path neither reduces Islamic law to symbolic legitimation nor imposes it as an unexaminable

command. It treats the *maqāṣid* tradition as a resource for public reasoning about the common good, a role consistent with both its classical aspiration and the demands of constitutional democracy.

B. Recommendations

First, the government and the House of Representatives should develop guidelines that integrate a structured welfare assessment, consistent with the *Maqāṣid* Impact Assessment, into the preparation of academic papers, particularly for legislation in domains where Islamic law is directly relevant. Second, legislative drafting bodies should institutionalise interdisciplinary collaboration by involving Islamic legal scholars together with experts in economics, public policy, health, technology, and the environment. Third, post-enactment evaluation should assess whether statutes actually protect the interests they were intended to protect, rather than limiting review to procedural compliance. Fourth, future research should empirically examine how academic papers currently address welfare considerations and test the feasibility of the proposed model in specific legislative processes.

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