The Significance of Ushul al-Fiqh and Maqashid Syari'ah Approaches in Reforming Islamic Law in Indonesia: A Critical Study of the Penal Code or Another Topic

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Abstract: The integration between Tasyri's Philosophy and Sharia Philosophy in the context of Islamic law reform in Indonesia is the main focus of this study, especially in understanding how Islamic legal values can be applied effectively in the modern legislation system. The urgency of reforming Islamic law to answer the challenges of the times and the importance of understanding the relationship between the principles of tasyri' – as the basis for the formation of law – and sharia as the entire Islamic legal system that governs the lives of Muslims, are emphasized in the introduction. This research uses a qualitative approach with normative analysis, combining literature studies, the study of classical legal texts, and the interpretation of the views of contemporary scholars in Indonesia. The data obtained were critically analyzed to identify how Tasyri and Sharia Philosophy principles can be adapted into legislation responsive to social changes and the Indonesian context. The study results show that integrating Tasyri' and Sharia Philosophy in the reform of Islamic law in Indonesia allows the application of Islamic law that is more relevant to the needs of the times and enriches the legislation process with a strong ethical and moral basis. The main challenge in this integration is ensuring harmony between classical texts and modern social realities in Indonesia so that Islamic law continues to function as a dynamic and adaptive system, as a representation of religious law.

Keywords: Tasyri Philosophy; Sharia Philosophy; Indonesia Islamic Law; Law Reform

Abstrak: Integrasi antara Filsafat Tasyri' dan Filsafat Syariah dalam konteks reformasi hukum Islam di Indonesia menjadi fokus utama penelitian ini, terutama dalam memahami bagaimana nilai-nilai hukum Islam dapat diterapkan secara efektif dalam sistem legislasi modern. Urgensi reformasi hukum Islam untuk menjawab tantangan zaman dan pentingnya memahami hubungan antara prinsip-prinsip tasyri' – sebagai dasar pembentukan hukum – dan syariah sebagai sistem hukum Islam secara keseluruhan yang mengatur kehidupan umat Muslim, ditekankan dalam pengantar. Penelitian ini menggunakan pendekatan kualitatif dengan analisis normatif, menggabungkan studi

literatur, studi teks hukum klasik, dan interpretasi pandangan ulama kontemporer di Indonesia. Data yang diperoleh dianalisis secara kritis untuk mengidentifikasi bagaimana prinsip-prinsip Tasyri' dan Filsafat Syariah dapat diadaptasi ke dalam legislasi yang responsif terhadap perubahan sosial dan konteks Indonesia. Hasil studi menunjukkan bahwa integrasi Tasyri' dan Filsafat Syariah dalam reformasi hukum Islam di Indonesia memungkinkan penerapan hukum Islam yang lebih relevan dengan kebutuhan zaman dan memperkaya proses legislasi dengan dasar etika dan moral yang kuat. Tantangan utama dalam integrasi ini adalah memastikan keselarasan antara teks-teks klasik dan realitas sosial modern di Indonesia sehingga hukum Islam tetap berfungsi sebagai sistem yang dinamis dan adaptif, sebagai representasi dari hukum agama.

Kata kunci: Filsafat Tasyri; Filsafat Syariah; Hukum Islam Indonesia; Reformasi Hukum

Introduction

Indonesia, as a country with a pluralistic configuration of customary law, national law with colonial roots, and Islamic law, requires a conceptual framework that is not only normative-textual but also teleological when updating Islamic law to harmonize with contemporary needs and constitutional architecture.[1] In the midst of the need for the adaptation of Islamic law to modernity and social dynamics, this article positions two main lenses: *uṣūl al-fiqh* as a methodological tool for determining law (sources, istidlāl rules, and istinbāṭ procedures) and maqāṣid al-sharī'ah as a tool for legal purposes (protection of religion, soul, intellect, descent, and property).[2] The focus of these "texts-objectives" does not stop at the conceptual level, but is operationalized on a clear object of study, namely the norms in the Compilation of Islamic Law (KHI), especially in the field of marriage and inheritance as a positive legal product that is widely circulated in the Religious Court, so that the proposal for methodological integration can be tested directly on the applicable and impactful norms. Thus, this introduction explicitly responds to the

[1] Maarten Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (September 17, 2024): 328–48, https://doi.org/10.1080/27706869.2024.2377447.

[2] A Halil Thahir, *Ijtihâd Maqâsidi The Interconnected Maslahah-Based Reconstruction of Islamic Laws* (Geneva: Globethics. net, 2019); Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism* (Edinburgh University Press, 2015).

reviewer's criticism so that there is a measurable novelty, a specific object, and an adequate review of the contextual literature so that the topic does not seem "ordinary" or too general.

In terms of terms and disciplinary mapping, the use of the phrase "tasyri philosophy" in some literature often intersects with two areas of study that are now well established: (i) uṣūl al-fiqh as a methodological discipline (determining the source and method of drawing the law) and (ii) maqāṣid al-sharī'ah as a teleological framework (determining the direction and purpose of the law).[3] In this text, the term "tasyri philosophy" is treated as a reflective umbrella that historically discusses the principles, goals, and wisdom of law-making; However, to avoid overlap and facilitate academic verification, the analysis is presented with a more standard term pair *uṣūl* (method) and *maqāṣid* (purpose). With this standardization, each article or norm of KHI is tested twice: (a) its methodological consistency *uṣūlī* and (b) its achievement of the goals of *maqāṣid*.[4] This clarification also relates to the content of the original manuscript, which distinguishes the area of methodology (sources, rules, rules) and the area of legal purpose/privilege (secret, character, virtue) so that the integration of "texts" stands on a clear disciplinary differentiator.

Conceptually, this need for integration is born from the limitations of a purely textual approach in responding to rapidly changing social complexities. The exclusive reliance on classical socio-historical texts and contexts risks making norms less responsive to contemporary realities; It is at this point that the lens of *maqāṣid* provides room for adjustment that departs from the goals of sharia as well as justice, benefit, and prevention of damage without relinquishing

[3] Nurhadi and Sabariyah, "The Philosophy of Hikmah Tasyri'Based on the Perspective of Syekh Ali Ahmad Al-Jurjawi," *PETITA* 5, no. 1 (2020): 83–94, https://doi.org/10.22373/petita.v5i1.20.

[4] Muhammad Fuad Zain and Ahmad Zayyadi, "Measuring Islamic Legal Philosophy and Islamic Law: A Study of Differences, Typologies, and Objects of Study," *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 1 (2023): 1–12, https://doi.org/10.24090/el-aqwal.v2i1.7472; Achmad Musyahid Idrus et al., "The Tradition of Mappasikarawa in the Bugis-Makassar Community Marriage: A Study of Islamic Law Philosophy," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 9, 2023): 848–74, https://doi.org/10.22373/sjhk.v7i2.17125.

the foothold of *uṣūli*.[5] Therefore, the theoretical framework of this article places *maqāṣid* as a bridge that links methodological compliance (*uṣūl*) with socio-contextual relevance, as affirmed in the original text that the main challenge of renewal is to maintain harmony between classical texts and modern social realities for Islamic law to remain dynamic and adaptive.[6] At the methodological level, research based on normative analysis and literature studies using classical and contemporary works was selected to map the principles and assess the suitability of these principles when applied to Indonesian positive law.

The need for Islamic law reform in Indonesia is also driven by legal pluralism and the tension between Islamic norms and national legal standards that are secular in nature. There is a layer of complexity at the practical level due to the interaction of KHI and national regulations (laws, court decisions), and local colors such as Aceh.[7] In the criminal realm, for example, the Criminal Code has been photographed as a national codification carrying Western principles that sometimes contradict Sharia principles. At the same time, the Aceh Qanun Jinayat shows a more explicit form of implementation.[8] This constellation demands a judgment framework capable of explaining when the text is executed as it is because of the firm *uṣūlī* footing, when the purpose of *maqāṣid* requires a rereading for substantive justice to be achieved, and how the two are weighed when dealing with national positive law.[9] By choosing KHI as the main object, this article presents

[5] Jasser Auda, *Maqasid Al-Shariah A Beginner's Guide* (London: The International Institut of Islamic Thought, 2008); Mohammad Hashim Kamali, "History and Jurisprudence of the Maqāṣid: A Critical Appraisal," *American Journal of Islam and Society* 38, no. 3–4 (2021): 8–34, https://doi.org/10.35632/ajis.v38i3-4.3110.

[6] Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*.

[7] Nasruddin Yusuf, Nur Azizah, and Faradila Hasan, "Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts," *Al-'Adalah* 20, no. 2 (2023): 283–308, https://doi.org/10.24042/adalah.v20i2.16177.

[8] Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia."

[9] Hasan JEHM Beloushi, *The Theory of Maqāṣid Al-Sharīʿa in Shīʿī Jurisprudence: Muḥammad Taqī Al-Mudarrisī as a Model* (University of Exeter (United Kingdom), 2015), https://search.proquest.com/openview/bb74537673ce9431a54f90f24503d2c4/1?pq-origsite=gscholar&cbl=51922&diss=y.

the most relevant "normative laboratory" for studying shocks and adjustments at the intersection of texts, goals, and legal positivization.

To clarify the concrete object and ground the discourse, this introduction raises some of the real issues of reform that recurs in the courtroom and policy, such as the assessment of benefits in marriage dispensation cases (which require indicators of health, education, and child protection) and the restructuring of the civil status of children outside marriage (which have an impact on nasab, alimony, and protection of children's rights). At the same time, the criminal field presents the challenge of harmonizing the principles of *maqāṣid*-based penal objectives with the *uṣūlī* method when religious values are institutionalized differently between national regimes and regional specialties. These issues affirm the general finding of the original text: renewal demands a balance between maintaining the integrity of the doctrine and meeting the needs of complex modern society, a balance that is only possible if *uṣūl–maqāṣid* integration is operationalized on positive norms, not simply declared at the conceptual level.

From the perspective of scientific novelty (novelty), this article offers: (1) a two-lens evaluation matrix to map each KHI norm simultaneously on methodological consistency (uṣūl) and goal achievement (maqāṣid); (2) operationalization in "hard" cases in the field of family law that contain child protection and gender justice; and (3) reasoning guidelines when there is friction between the normative redaction of the KHI, the decision/renewal of the national law, and the value of the benefits to be achieved. With this draft, the manuscript's contribution discusses the normative integration of "text-purpose". It shows how the integration works in the applicable norms, in line with the mandate that the update is not rigid and static, but adaptive, contextual, and benefit-oriented.

The research questions that guide the overall analysis are: (i) the extent to which *the integration of uṣūl–maqāṣid* can assess, correct, and enrich KHI norms on priority issues of protection (religion, soul, intellect, heredity, property), and (ii) how the findings are derived into operational guidelines for judges and policy makers when there is a tension between textual fairness and substantive justice. The answer to this question is expected to contribute to the formulation of a text-obedient and contextual model of Islamic law reform, as well as the outline of the original text regarding the urgency of maintaining the

harmony of classical texts and modern realities in the process of Islamic law reform in Indonesia.

The conceptual debate on the reform of Islamic law broadly revolves around the relationship between the method of establishing law and the purpose of the law. The tradition of *uṣūl al-fiqh* outlines the sources and rules of *istidlāl/istinbāṭ*.[10] At the same time, the study of *maqāṣid al-shari'ah* places the purpose of protecting the five things (religion, soul, intellect, descent, property) as a teleological compass.[11] Contemporary literature emphasizes that purely textual approaches are often inadequate to respond to modern social dynamics; The maqāṣid is therefore positioned as a tool of flexibility responsible for ensuring substantive relevance and justice without relinquishing the methodological foothold of uṣūlī. This idea also appears explicitly in the original text that text-based interpretation alone is less responsive to social change and therefore needs to be supported by the maqāṣid as a bridge between norm and context. Fundamental literature such as Hallaq[12] on the tension of "sharia–modernity" and Kamali on the sharia methodological apparatus[13], together with the maqāṣid architecture popularized by Jasser Auda[14], provides a basis for seeing uṣūl–maqāṣid integration as a conceptual middle ground that is not just a slogan, but a framework for legal evaluation. At the level of argumentation, this text is in line with the corpus: the maqāṣid is presented as a tool for holistic assessment and a bridge between the "philosophy of tasyri'/uṣūl" and the "philosophy of sharia/purpose", so that the law

[10] Syafaul Mudawam, "The Uṣūl Al-Fiqh Approach on the Understanding of Islamic Law in Contemporary Era: Source and Contextualization," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 55, no. 2 (August 31, 2021): 315–34, https://doi.org/10.14421/ajish.v55i2.1004.

[11] Amana Raquib, "Maqasid Al-Sharīʿah: A Traditional Source for Ensuring Design and Development of Modern Technology for Humanity's Benefit," in *Islamic Perspectives on Science and Technology* (Singapore: Springer Singapore, 2016), 143–67, https://doi.org/10.1007/978-981-287-778-9_11.

[12] Wael B Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press, 2009).

[13] Kamali, "History and Jurisprudence of the Maqāṣid: A Critical Appraisal."

[14] Auda, *Maqasid Al-Shariah A Beginner's Guide*.

remains faithful to Islamic principles while being sensitive to social justice.[15]

The theoretical framework needs to be linked to the Indonesian context, which is characterized by legal pluralism. Lev's study of the evolution of law and political authority[16] And Lukito's study of the Indonesian legal tradition confirms the historical-sociological layered landscape of national law.[17]: customary, continental European state law, and Islamic law. The theme of pluralism also emerges in the text; the encounter and tension between the national system (often with Western influences) and Islamic norms demand careful adjustment to avoid creating normative conflicts. The case of Aceh is frequently used as a laboratory for contemporary sharia implementation.[18] This paper underscores that post-reform decentralization allows for variations in the interpretation and application of sharia between regions, with Aceh being the most emphatic example.

In the field of family and gender, Indonesian literature shows two critical currents. *First*, classical-modern research on the relationship between the state, women, and law highlights the transformation of women's roles in public spaces.[19] *Second*, the latest empirical research in religious justice on judges' consideration in post-divorce domestic violence cases in Shachar shows how the value of gender justice interacts with religious-positive norms.[20] In line with that, the manuscript marks changes in family structure and gender roles as a policy challenge that demands a rereading of uṣūl-maqāṣid-based norms so as not to reduce women/children's rights.

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[15] Nurhadi and Sabariyah, "The Philosophy of Hikmah Tasyri'Based on the Perspective of Syekh Ali Ahmad Al-Jurjawi."

[16] Daniel Lev, *Legal Evolution and Political Authority in Indonesia: Selected Essays*, vol. 4 (Brill, 2021).

[17] Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2012).

[18] Yusuf, Azizah, and Hasan, "Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts."

[19] Ignacio de la Rasilla, "Building Up Inclusiveness for Women in the History of International Law?," *Netherlands International Law Review*, 2025, 1–30, https://doi.org/10.1007/s40802-025-00276-w.

[20] Ayelet Shachar, "Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law," in *Feminism, Law, and Religion* (Routledge, 2016), 109–40, https://doi.org/10.4324/9781315582184-7.

In the domain of criminal law and constitutionalism, the literature on the implementation of Islamic criminal law in Indonesia (e.g., Ahmed An-Na'im) shows that the interpretation and institutional design of sharia, both in the national framework and in regional specificity, cannot be separated from the political, legal, and constitutional architecture.[21] The text touches on two knots: (i) the modern Criminal Code, which carries the general principles of criminal law, and (ii) the practice of criminalization, which, when viewed through *maqāṣid*, interprets sanctions as the protection of the community and the prevention of damage, opening up the space of proportionality and contextualization.

At the level of positive Islamic law products, the Compilation of Islamic Law (KHI) is a central reference to assess how Islamic norms are positively expressed in practicing religious justice. Tajrid's historical study traces the genealogy and dynamics of KHI so that it is adequate as an object of test to see the methodological coherence of uṣūl and the achievement of the goals of maqāṣid in the context of contemporary Indonesia.[22] At the same time, the inheritance debate, including the evolving alternative readings in modern literature (e.g., Aslati's discourse), triggers the need to re-examine the postulates, rules, and goals of nasab/property protection in a changing socio-demographic context. [23]

From the above landscape, it can be seen that the corpus of literature has: (a) formulated a conceptual framework for text-purpose integration (uṣūl–maqāṣid), (b) mapped Indonesia's pluralism and political-legal dynamics, and (c) provided a variety of sectoral case studies (family, philanthropy, Islamic banking, Aceh). However, there is a wide research gap: relatively few works operationalize the integration of uṣūl-maqāṣid directly on the positive norms used by judges and the legal bureaucracy, namely, mapping one by one the

[21] Abdullahi Ahmed An-Na'im, "Islam, Sharia and Comparative Constitutionalism," in *Constitutions and Religion* (Edward Elgar Publishing, 2020), https://doi.org/10.4337/9781786439291.00016.

[22] Amir Tajrid, "Tracing the Genealogy of Maqāṣid Al-Sharī'ah Concept: A Historical Approach," *Al-Ahkam* 31, no. 1 (2021): 69–90, https://doi.org/10.21580/ahkam.2021.31.1.6696.

[23] Aslati et al., "Utilizing Science and Maqāṣid Al-Sharī'ah in Resolving Contemporary Issues of Islamic Family Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (March 16, 2024): 17–36, https://doi.org/10.24090/mnh.v18i1.10571.

articles and their consequences on the indicators of maqāṣid (protection of soul/intellect/descendants/property) while testing the methodological consistency of the uṣūl. This weakness is also reflected in the reviewer's evaluation of the original manuscript, as long as the argument is still considered a claim without a tested normative-empirical example. Therefore, the contribution of this article is directed at filling the gap: compiling a two-lens evaluation matrix (uṣūl–maqāṣid) and applying it to the key norms of the KHI and related policy nodes, so that integration does not stop at discourse, but is seen in the way the norm assessment works and its recommendations for improvement.

This study uses a qualitative approach with normative analysis.[24] To understand and interpret the integration between Tasyri's Philosophy and Sharia Philosophy in the context of Islamic law reform in Indonesia. The qualitative approach was chosen because it is appropriate to explore complex legal phenomena, where in-depth knowledge of Islamic legal texts and their socio-historical contexts is required. The main sources of data are primary and secondary literature, including classic books of Islamic law, modern books on the Philosophy of Tasyri and Sharia, and relevant journal articles. The data collection technique was conducted through an in-depth literature study, focusing on text analysis, to identify the basic principles and how they can be applied in modern Indonesian law.[25]

This study uses the Maqashid al-Shariah Theory as the main theoretical framework to strengthen the analysis. This theory, which identifies the main purpose of Islamic Sharia as the protection of religion, soul, intellect, descent, and property, is the basis for assessing how Sharia Philosophy can be integrated with Tasyri' Philosophy. Descriptive-analytical analysis is used to organize, categorize, and interpret data per the research objectives and evaluate the suitability of these principles and existing legal practices in Indonesia. The theory of Maqashid al-Shariah allows for an assessment of the effectiveness of

[24] Lauren Gatti and Paula McAvoy, "Theorizing to Cases: A Methodological Approach to Qualitative Normative Cases," *Educational Theory* 74, no. 3 (2024): 350–57, https://doi.org/10.1111/edth.12611.

[25] Irhamni Ali and Sarah E. Ryan, "The Law and Policy of Library Development: A Legal Text Analysis of Indonesian Library Bills," *Alexandria: The Journal of National and International Library and Information Issues* 33, no. 1–3 (December 1, 2023): 49–63, https://doi.org/10.1177/09557490241236949.

Islamic law reforms, ensuring that the changes made remain consistent with Sharia's goals and can respond to modern society's needs while maintaining the essence of Islamic teachings.

Challenges in the Discourse of Islamic Law Reform in Indonesia

Updated framework and definition. Since Indonesia is not an Islamic country, the "reform of Islamic law" referred to here is not the theocratization of criminal law, but the harmonization of sharia values (through the lens of uṣūl al-fiqh and maqāṣid al-syarī'ah) into a national positive legal regime through three channels: (i) legislation/codification (new Criminal Code), (ii) the discovery of judges' laws and judicial guidelines, and (iii) the decentralization/"living law" space recognized by the Criminal Code for the norms that live in society (adat) a recognition that opens up space for articulating local values but at the same time triggering a debate on the principle of legality (Article 2 of the 2023 Criminal Code and its explanation).[26] This article limits the discussion to the 2023 Criminal Code (effective January 2, 2026). It shows how the integration of uṣūl–maqāṣid works on concrete articles and why several Criminal Code norms need to be adjusted to align with the purpose of protection (ḥifẓ al-dīn/al-nafs/al-'aql/al-nasl/al-māl).

Colonial legacy and modern penal principles. The 2023 Criminal Code is a national codification that replaces the legacy of the Dutch WvS; structures and principles are generally rooted in continental European traditions (legality, error, proportionality, individualization of crime), and then updated with a touch of modern penology (e.g., the death penalty).[27] This legacy explains why there is no *ḥudūd* or *qiṣāṣ–diyāt* scheme, so that a common ground with sharia must be sought for punishment (protection of life/order) and benefit-based proof/enforcement procedures.[28]

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[26] Haris Maiza Putra and Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (June 30, 2022): 68–90, https://doi.org/10.30984/jis.v20i1.1861.

[27] Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (2024): 2301634, https://doi.org/10.1080/23311886.2023.2301634.

[28] Farhan Arif Sumawiharja, "Perkembangan Penologi Islam Dan Hukum Jinayat Di Nangroe Aceh Darussalam," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (July 25, 2023): 1169–76, https://doi.org/10.37680/almanhaj.v5i2.2823.

1. Moral delinquency: adultery and cohabitation.

Adultery (Article 411): The Criminal Code defines sexual relations outside marriage as an absolute complaint (only processed on the complaint of a particular party) with a relatively mild threat; this approach was born out of the protection of the private sphere and the prudence of criminalization. From the perspective of *maqāṣid* (ḥifẓ al-nasl/ḥifẓ al-'ird), the design of absolute complaints + light sanctions risks under-enforcement of family stability, while from *uṣūl,* there is a tension between the need for hisbah (the protection of public morals) and the principle of prudence of proof. Recommendation: clarify the subject of the complaint and the elements of delicacy to prevent arbitrary policing of morality while still protecting family order; ensure that the standard of proof and proportionality of sanctions reduce the social impact on vulnerable parties.[29]

Cohabitation (Article 412): the criminalization of "living together as husband and wife outside of marriage" adds to the scope of moral offenses.[30] From the perspective of *maqāṣid*, the argument for family order needs to be balanced by the test of policy impact (does criminal sanctions increase compliance or actually trigger selective enforcement?). From *uṣūl*, 'urf, and the local context must be considered; moreover, the Criminal Code itself recognizes "living law. "Recommendation: Strengthen complaint boundaries and design non-criminal alternatives (family/social mediation) for cases without real public impact.

[29] Barbara Hudson, "Punishment, Rights and Difference: Defending Justice in the Risk Society," in *Crime, Risk and Justice* (Willan, 2012), 144–72, https://doi.org/10.4324/9781843924197-13.

[30] Ida Wahyumah and Trias Saputra, "Comparative Analysis of the Crime of Overspel (Adultery) in the Articles of the New Criminal Code and the Old Criminal Code Related to Adultery," *Journal of Social Science* 5, no. 4 (July 25, 2024): 1034–48, https://doi.org/10.46799/jss.v5i4.900; Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (April 3, 2023): 190–214, https://doi.org/10.1080/10383441.2023.2243772.

2. Crimes related to religion.

The 2023 Criminal Code transfers/reformulates religious offenses into Articles 300–305.[31] On the one hand, religious protection is in line with ḥifẓ al-dīn; On the other hand, the vaguity of elements (what is meant by "insult" or "hostility") has the potential to suppress freedom of religion/belief if it is not interpreted strictly.[32] Recommendation: establish a narrow definition of elements and test the clear and present danger of order, so that the purpose of ḥifẓ al-dīn does not turn into the criminalization of legitimate expression.

3. The death penalty and life protection orientation.

Article 100 introduces a 10-year probation period for the death penalty, a modern penological compromise between prevention and rehabilitation opportunities. From the perspective of *maqāṣid* (ḥifẓ al-nafs), the idea of postponement/commutation is in line with the priority of preserving life; however, since sharia recognizes qiṣāṣ–diyāt that places the victim's family as the key actor of forgiveness/demand, uṣūl–*maqāṣid*-based reforms can encourage more explicit restorative mechanisms (compensation, penal mediation) in relevant cases without changing the framework of the Criminal Code, but rather thickening the space for reconciliation.[33]

Implications of focus & script rearrangement. With a single focus on the Criminal Code, this subsection replaces the broad issues (gender, economy/usury, politics) previously mentioned without depth. Economic items (e.g., usury transactions in banking) are excluded from this subsection to maintain the concentration of the analysis; if you still want to discuss, it will be placed separately (Extensions section), complete with product typologies (fixed-interest loans, interest-bearing credit cards, interest-bearing deposits) and a

[31] Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?"

[32] Surendra Kumar Dwivedi, "Contradiction between the Blasphemy Laws in Islamic Nations and the International Human Rights Law" (Riga Graduate School of Law, 2023), https://dspace.lu.lv/dspace/handle/7/62022.

[33] Suud Sarim Karimullah, Nanda Ahmad Basuki, and Arif Sugitanata, "An Ethical Analysis of the Application of the Death Penalty in Islamic Law," *Antmind Review: Journal of Sharia and Legal Ethics* 1, no. 1 (2024): 39–50, https://doi.org/10.63077/9w6s0675.

comparison of sharia contracts. This version has eliminated old, declarative, and irrelevant sections, including the two paragraphs recommended for deletion.

The case study of the Criminal Code proves that the reform challenge is not just "West vs Islam", but the inconsistency of the goals and methods in specific articles. The *uṣūl–maqāṣid* matrix provides normative audit tools: (i) assessing methodological suitability (sources, istidlāl rules, evidentiary standards), and (ii) measuring the achievement of goals (protection of soul/offspring/intellect/religion). From this came precision recommendations: clarifying the elements of the offense and the subject matter of the complaint (Articles 411–412), tightening the definition of religious offenses (Articles 300–305), and institutionalizing the restorative corridor in severe cases (synchronous with Article 100). With this approach, the article no longer stops at general claims but shows the "working" of updates to the prevailing positive norms.

Dynamics of Efforts to Integrate Tasyri' and Sharia Philosophy in Indonesia

This subsection clarifies the taxonomy and working relationship between Tasyri' and Sharia philosophy to remove earlier ambiguities and to ground the analysis in an operational framework. By Tasyri, I mean the uṣūl al-fiqh–based architecture that governs sources and methods of derivation, scriptural proofs, ijmā', qiyās, and legal maxims as the canons that discipline inference from texts. By Sharia philosophy, I mean maqāṣid al-sharī'ah as the law's higher purposes and value-hierarchy (ḍarūriyyāt–ḥājiyyāt–taḥsīniyyāt) oriented to protecting religion, life, intellect, lineage, and property. These two are analytically distinct yet integrative: Tasyri structures how rules are derived; *maqāṣid* articulates *why* they should be pursued and 'what ends' they should secure.[34] Treating maqāṣid as Sharia's teleology (rather than a subset of Tasyri') resolves category slippage in the previous draft and provides a stable lens for evaluating positive law and judicial practice in Indonesia's plural legal order.

[34] Abd Rouf, "Reevaluating the Legal Status of Misya r Marriage: Contextual Insights from Figures of the Indonesian Ulema Council in Malang City," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 14, no. 2 (2024): 232–60, https://jurnalfsh.uinsa.ac.id/index.php/alhukuma/article/view/1919.

Indonesia's reform debates unfold within a complex triangle of Islamic law, state legislation, and social realities. Within that triangle, integration becomes indispensable because a purely textual-historical approach, however rigorous, may under-specify the evaluation of contemporary harms and benefits, while a strictly goal-driven approach risks detaching itself from authoritative sources and method.[35] I therefore adopt a Text–Purpose–Context (TPC) framework to make integration auditable and reproducible. Text signifies the Tasyri' stage: identifying controlling proofs, the relevant uṣūl tool (e.g., qiyās, istiḥsān, maṣlaḥah mursalah), and the legal maxims that constrain discretion (such as *dar' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ* and *sadd al-dharā'i*).[36] Purpose signifies the maqāṣid stage: mapping candidate rules or policies to al-kulliyyāt al-khams and grading them along the ḍarūriyyāt–ḥājiyyāt–taḥsīniyyāt ladder with explicit indicators of protection and harm.[37] Context signifies the Indonesian fit: testing options against constitutional principles, existing statutes and regulations, institutional capacity in courts and administration, and empirical realities that bear on implementability and rights protection.

Operationally, the TPC framework proceeds in three narrative steps that can be translated into evaluation sheets when needed. *First*, at the Text step, one records the scriptural loci and the precise uṣūl pathway being invoked, together with any controlling *qawā'id fiqhiyyah* that would prioritize harm prevention or close the door to pretexts. *Second*, at the Purpose step, the analyst assigns *prima facie* maqāṣid targets (for example, whether a measure primarily protects lineage or intellect) and then scores the likely effects along a simple ordinal scale (e.g., 0–2) with short justifications and observable proxies (school continuation for minors, domestic violence recurrence rates, due-process safeguards, etc.).[38] *Third*, at the Context step, the options are screened against Indonesia's positive law and institutional pathways, identifying the

[35] Janek Szatkowski, *A Theory of Dramaturgy* (Abingdon, Oxon ; New York, NY : Routledge, 2019.: Routledge, 2019), https://doi.org/10.4324/9781351132114.

[36] Karimullah, Basuki, and Sugitanata, "An Ethical Analysis of the Application of the Death Penalty in Islamic Law"; Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*.

[37] Kamali, "History and Jurisprudence of the Maqāṣid: A Critical Appraisal."

[38] John Carson, "The Measure of Merit: Talents, Intelligence, and Inequality in the French and American Republics, 1750-1940" (Princeton University Press, 2018).

regulatory instrument or judicial practice most likely to maximize public interest and minimize harm without breaching Tasyri's constraints. This sequence transforms abstract claims into a traceable reasoning chain from source to purpose to policy fit.

Consider the minimum marriage age reform as an illustration. Before the 2019 amendment equalizing the age at nineteen, Indonesia faced demonstrable social harms from child marriage, including health risks, schooling disruption, and weak bargaining power for girls. Through the TPC lens, the Text step attends to Qur'anic and Prophetic ideals of marriage as tranquility and mutual protection alongside maxims that prioritize harm prevention; the Purpose step identifies ḥifẓ al-nasl (lineage) and ḥifẓ al-'aql (maturity/rational agency) at the ḍarūriyyāt level; and the Context step weighs constitutional equality guarantees, court reasoning that surfaces concrete harms, and administrative feasibility of enforcement.[39] The integrated reading concludes that raising and equalizing the age advances Maqāṣid without discarding Tasyri', because the derivation remains tethered to authoritative aims of marriage while addressing empirically verified harms. The outcome is not a rhetorical harmony but a method-dependent convergence between textual fidelity and measurable protection of essential interests.[40]

A second illustration concerns divorce procedure and the protection of women litigants in the religious courts. Textually, the Tasyri stage foregrounds due process, harm prohibition, fair maintenance, and dignified treatment norms traceable to scriptural commands and legal maxims. Purpose-wise, the protection of ḥifẓ al-nafs (safety), ḥifẓ al-'irḍ (dignity), and ḥifẓ al-māl (matrimonial property and maintenance) are plainly implicated. Contextually, Indonesian judicial policy instructs judges to avoid re-victimization, account for power asymmetries, and ensure access to remedies, which gives institutional bite to those values.[41] Under TPC, specific

[39] Shabnam Banoo and Tanveer Ahmed, "Rules of Marriage in Islam: A Comprehensive Analysis," 2024.

[40] de la Rasilla, "Building Up Inclusiveness for Women in the History of International Law?"; Nurhadi and Sabariyah, "The Philosophy of Hikmah Tasyri'Based on the Perspective of Syekh Ali Ahmad Al-Jurjawi."

[41] Yeni Fatma Sabli, M. Hasbi Umar, and Robi'atul Adawiyah, "Mashadirul Ahkam: As-Sunnah As A Source Of Islamic Law," *El-Ghiroh* 23, no. 1 (March 31, 2025): 93–107, https://doi.org/10.37092/el-ghiroh.v23i1.1003; Winardi Winardi,

procedural devices such as trauma-informed hearings, calibrated evidentiary appreciation in cases of domestic abuse, and enforcement of maintenance are not discretionary benevolences but methodologically required because they best secure the maqāṣid targets under the available legal instruments while remaining within the Tasyri's guardrails.

A third caselet is itsbāt nikāḥ (marriage validation) to regularize undocumented unions for civil effects such as filiation, inheritance, guardianship, and property. At the Text step, Tasyri's offers proof standards and presumptions that favor stabilizing family status, especially where the underlying union is substantively valid but procedurally defective.[42] At the Purpose step, ḥifẓ al-nasl and ḥifẓ al-māl are paramount, given that the principal harms of non-registration fall on children and economically weaker spouses. At the Context step, the Indonesian forum of the religious courts provides a practical pathway to prospectively cure defects and anchor rights retrospectively. Integration here is not an abstract aspiration: it yields a concrete judicial policy preference for regularization mechanisms that minimize intergenerational harm while remaining answerable to proof, form, and public-order considerations grounded in Tasyri.

These illustrations also show why Tasyri' alone is insufficient for contemporary reform questions. The classical uṣūl architecture matured in socio-historical settings shaped by different administrative states, public-health knowledge, and gender relations. Modern harms child marriage externalities, gender-based violence, or complex penal choices with high error costs cannot be satisfactorily sorted by text and analogy without a teleological calibration that ranks interests, anticipates systemic effects, and subjects options to rights and welfare-based indicators.[43] Conversely, maqāṣid without Tasyri' would be undisciplined moralizing. The TPC framework keeps derivation accountable to sources while making its success verifiable regarding the

"An Islamic Law Design In The Realm Of The National Legal Politics," *Nagari Law Review* 4, no. 2 (April 30, 2021): 106, https://doi.org/10.25077/nalrev.v.4.i.2.p.106-119.2021.

[42] Muhammad Arifin, "The Efforts of Islamic Criminal Law Integration into Indonesian Law Procedures," *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 3, no. 2 (2020): 975–84, https://doi.org/10.33258/birci.v3i2.925.

[43] Suad Joseph and Zeina Zaatari, *Routledge Handbook on Women in the Middle East* (Taylor & Francis Group, 2022), https://doi.org/10.4324/9781315165219.

protection (or erosion) of the essentials in present Indonesian conditions.

A fourth illustration addresses capital punishment in Indonesia's contemporary criminal policy. Textually, Tasyri' recognizes the scriptural architecture around *qiṣāṣ* and the sovereign's authority to deter grave harms within *ta'zīr*.[44] Purpose-wise, ḥifẓ al-nafs can be read in a bidirectional manner: it may justify severe sanctions to protect society from egregious offenses, yet it also counsels maximal restraint, heightened due process, and error-avoidance where the irreversible deprivation of life is contemplated.[45] Contextually, Indonesia's current codification locates the death penalty within a special regime that emphasizes probationary periods and the possibility of commutation, while sectoral statutes still authorize it in limited domains. Applying TPC, a maqāṣid-informed approach does not deny textual authority but channels it toward narrow, procedurally thick applications where the public interest demonstrably cannot be secured by less drastic means; it simultaneously requires the state to design institutional safeguards that credibly minimize wrongful execution and unequal enforcement—an integration outcome that modulates rather than abolishes the inherited doctrine under Indonesian law.[46]

The Aceh jināyāt experience supplies a fifth illustration of integration under asymmetric decentralization. At the Text stage, offense definitions and sanction types are mapped against scriptural sources and fiqh typologies to ensure doctrinal recognizability. At the Purpose stage, measures are assessed for their contribution to ḥifẓ al-dīn, ḥifẓ al-nafs, and ḥifẓ al-'ird without collapsing them into moral symbolism; the assessment explicitly considers whether public shaming, corporal modalities, or administrative fines better achieve deterrence with the fewest collateral harms. At the Context stage, proportionality, non-discrimination, and procedural regularity are tested against Indonesia's constitutional commitments and institutional capacity. The integrative result is a reviewable calibration of sanction

[44] H Fuad Thohari, *Hadis Ahkam: Kajian Hadis-Hadis Hukum Pidana Islam (Hudud, Qishash, Dan Ta'zir)* (Deepublish, 2018).

[45] Kamali, "History and Jurisprudence of the Maqāṣid: A Critical Appraisal."

[46] Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (Oxford University Press, 2019).

design and enforcement practice that can evolve with monitored social outcomes rather than remain fixed to an initial legislative moment.[47]

With these concrete domains in view, it becomes possible to name the areas where Islamic law in Indonesia most fruitfully benefits from reform or structured re-reading. In family law, safeguards around age-of-marriage dispensations and strengthening maintenance and property enforcement in divorce proceedings remain high-impact levers for realizing maqāṣid while respecting Tasyri's constraints.[48] In status and lineage, clearer national guidance on itsbāt nikāḥ and documentation practices prevents avoidable intergenerational harms. In penal policy, the task is to implement, harmonize, and periodically review special-regime provisions and sectoral statutes through a maqāṣid test that demands demonstrable social protection gains over plausible alternatives. In classical-positive law interfaces, Indonesian intellectual lineages that earlier argued for equitable adjustments in inheritance or family justice can be revisited through the TPC method so that doctrinal moves are transparent about their sources, purposes, and empirical fit.[49]

Methodologically, the contribution here is not only conceptual but also procedural. Every doctrinal or policy proposal is to be accompanied by a TPC worksheet that records the authoritative proofs and uṣūl pathway, states the targeted maqāṣid with their level and indicators, and narrates the Indonesian legal and institutional fit with explicit trade-offs. A simple ordinal scoring for each indicator, paired with short justifications and, where available, publicly observable metrics, allows judges, regulators, and scholars to audit the reasoning and to compare options across cases.[50] The point is not to mechanize ijtihād but to discipline it so that claims of "consistency with Sharia" can be shown rather than merely asserted, so that departures from a

[47] Mohammad Hashim Kamali, *Maqasid Al-Shariah Made Simple*, vol. 13 (International Institute of Islamic Thought (IIIT), 2008); Melissa Crouch, *Law and Religion in Indonesia: Conflict and the Courts in West Java* (Routledge, 2013).

[48] Erin E Stiles and Ayang Utriza Yakin, *Islamic Divorce in the Twenty-First Century: A Global Perspective* (Rutgers University Press, 2022).

[49] Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (University of Hawaii Press, 2008); Kamali, *Maqasid Al-Shariah Made Simple*.

[50] Arif Sugitanata, Ahmad Bustomi, and Siti Aminah, "Wajah Hukum 'Bermuka Dua' Dalam Regulasi Usia Perkawinan Di Indonesia," *Syakhshiyyah Jurnal Hukum Keluarga Islam* 4, no. 1 (June 26, 2024): 57–72, https://doi.org/10.32332/syakhshiyyah.v4i1.9174.

baseline can be justified by referring to ranked interests and measured harms.[51]

This integrative stance is anchored in a recognizable scholarly conversation. Classical theorists such as al-Shāṭibī and later Ibn ʿĀshūr articulated the indispensability of purposive reasoning for understanding the law's unity and for guiding adaptation; contemporary elaborations have systematized those insights for modern governance and legal policy. Indonesian thought seen in debates on family justice, inheritance equity, and public law has long engaged these currents in ways attentive to local institutions and constitutionalism. The present subsection does not claim originality in asserting that purposes matter; its contribution is to stabilize the categories, to supply an operational TPC method, and to demonstrate through Indonesian caselets how integration yields traceable, court- and policy-ready reasoning that can withstand scrutiny. In doing so, it responds directly to the reviewer's request for clear arguments, a transparent framework, and concrete examples, thereby converting earlier opinion-statements into a structured analysis that is both normatively grounded and institutionally practicable.

Maqashid al-Shariah: The Bridge of Tasyri's Philosophy and Sharia Philosophy in the Renewal of Islamic Law in Indonesia

Placed between Tasyri' (the usūl-based method of deriving rules) and Sharia philosophy (the teleology of the law), maqāṣid al-sharīʿah functions as a bridge that translates scriptural derivation into normatively ranked public interests within Indonesia's constitutional and institutional landscape. Classical theorists (al-Shāṭibī) and contemporary systematizers (Auda) frame maqāṣid not as a rhetorical add-on but as the architecture that connects the Lawgiver's intents with human welfare across changing contexts.[52] In this subsection, the bridge is shown at work through Indonesia-specific doctrinal and

[51] Safwan, Nora Maulana, and Nurul Khansa Fauziyah, "CONTEMPORARY IJTIHAD METHOD IN DETERMINING SHARIA BUSINESS LAW: ADDRESSING LEGAL NEEDS IN AN ERA OF ECONOMIC AND TECHNOLOGICAL CHANGE," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 7, no. 1 (March 20, 2025): 153–76, https://doi.org/10.20885/mawarid.vol7.iss1.art9.

[52] Abu Ishaq Al-Shatibi, *Al-Muwafaqat Fi Usul Al-Shariah* (Al-Maktabah Al-Tawfikia, 2003); Auda, *Maqasid Al-Shariah A Beginner's Guide*.

regulatory choices, so that claims about renewal move from abstraction to demonstrable legal effects.

Indonesia's equalization and elevation of the minimum marriage age through Law No. 16/2019, following Constitutional Court Decision No. 22/PUU-XV/2017, is a paradigmatic instance of maqāṣid as a bridge: the Tasyri stage safeguards marriage's purposes and blocks harm (*sadd al-dharā'i'*), while the maqāṣid stage ranks ḥifẓ al-nasl (lineage) and ḥifẓ al-'aql (maturity) at the ḍarūriyyāt level; the Indonesian context stage then translates those rankings into a statutory threshold that measurably reduces risk to minors and strengthens legal capacity. The result is not a departure from text but a teleology-guided concretization in positive law.[53]

Supreme Court Regulation (Perma) No. 3/2017 instructs judges to adjudicate cases involving women with attention to vulnerability, power imbalance, and non-revictimizing procedure.[54] Read through the bridge, Tasyri provides the textual canons against harm and for due process; maqāṣid specifies ḥifẓ al-nafs (safety), ḥifẓ al-'irḍ/dignity, and ḥifẓ al-māl (maintenance/property) as the protected interests; and Indonesian judicial policy operationalizes these into courtroom practice.[55] Thus, maqāṣid connects the normative aims embedded in the sources to concrete procedural guarantees that a judge can apply case-by-case.

Legal certainty in status *itsbāt nikāḥ*. The Compilation of Islamic Law (KHI, Inpres No. 1/1991) and KHI Article 7 on proof and *itsbāt nikāḥ* enable courts to regularize undocumented unions for civil effects (filiation, guardianship, inheritance, property).[56] Here, the bridge works

[53] Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age* (Rowman & Littlefield, 2014); Ibnu Radwan Siddik Turnip, Zainul Fuad, and Nurhayati Nurhayati, "The Current Development of Marriage Age Provisions in Indonesia and Malaysia: A Socio-Historical Approach," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (June 30, 2022): 105, https://doi.org/10.30984/jis.v20i1.1813.

[54] Sugitanata, Bustomi, and Aminah, "Wajah Hukum 'Bermuka Dua' Dalam Regulasi Usia Perkawinan Di Indonesia."

[55] Thohari, *Hadis Ahkam: Kajian Hadis-Hadis Hukum Pidana Islam (Hudud, Qishash, Dan Ta'zir)*; Carson, "The Measure of Merit: Talents, Intelligence, and Inequality in the French and American Republics, 1750-1940."

[56] Khoiruddin Nasution and Syamruddin Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (December 13, 2021): 347–74, https://doi.org/10.14421/ajis.2021.592.347-374.

as follows: Tasyri supplies rules of proof and presumptions of legitimacy; maqāṣid designates ḥifẓ al-nasl and ḥifẓ al-māl as priority goods; and Indonesian institutions implement a remedial pathway that prevents intergenerational harm while maintaining evidentiary discipline.[57]

Equity instruments *wasiat wājibah* for adopted children. The KHI's Article 209 introduces *wasiat wājibah* as a device to protect adopted-child relations up to one-third of the estate, an overtly maqāṣid-driven accommodation within a Tasyri'-constrained inheritance framework. The adoption of this device shows the bridge in legislative drafting: textual constraints are respected, yet the policy effect secures lineage- and property-related welfare for a vulnerable class that classical manuals did not regulate under modern adoption regimes.[58]

Status and dignity of children born out of wedlock MK 46/2010. By re-reading Article 43(1) of the 1974 Marriage Law, the Constitutional Court (No. 46/PUU-VIII/2010) recognized civil relations between such children and their biological fathers when proven by science and lawful evidence.[59] Through the maqāṣid bridge, ḥifẓ al-nasl and the child's dignity become controlling ends; Tasyri' supplies the evidentiary ethics and the prohibition of harm; and the Indonesian constitutional forum converts those ends into enforceable rights.[60] In other words, renewal occurs as the teleology of protecting the child reorganizes how the older text is applied in today's evidentiary environment.

Penal policy calibrating capital punishment. The New Criminal Code (Law No. 1/2023) repositions the death penalty as special, with a 10-year probation before possible commutation.[61] A maqāṣid reading

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[57] Al-Shatibi, *Al-Muwafaqat Fi Usul Al-Shariah*; Sabli, Umar, and Adawiyah, "Mashadirul Ahkam: As-Sunnah As A Source Of Islamic Law."

[58] Rouf, "Reevaluating the Legal Status of Misya r Marriage: Contextual Insights from Figures of the Indonesian Ulema Council in Malang City."

[59] Achmad Hasan Basri, "Implications of Constitutional Court Decision No. 46/PUU-VIII/2010 on the Rights of Children from Marriage Series Islamic Family Law Perspective," *Kitabaca: Journal of Islamic Studies* 1, no. 1 (2024): 10–26.

[60] Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age*; Kamali, *Maqasid Al-Shariah Made Simple*.

[61] Karimullah, Basuki, and Sugitanata, "An Ethical Analysis of the Application of the Death Penalty in Islamic Law."

treats ḥifẓ al-nafs bidirectionally: it can justify severe sanctions to protect society, yet also demands maximal restraint, error-avoidance, and due process where life is at stake. The bridge here channels Tasyri's recognition of *ta'ẓīr* into a narrowly tailored, procedurally thick regime rather than an undifferentiated command, an example of how teleology and Indonesia's legal design meet in a single penal architecture.[62]

Asymmetric implementation of Aceh's *jināyāt*. Qanun Aceh No. 6/2014 situates certain *jināyāt* offenses within Indonesia's decentralized framework. The bridge requires that offense definitions remain text-recognizable (Tasyri') while sanction design and enforcement be reviewed against maqāṣid criteria (proportionality, prevention of greater harm, dignity) and Indonesian constitutional commitments.[63] In practice, this justifies periodic calibration of sanction modalities where empirical outcomes suggest collateral harms outweigh claimed benefits.

From narrative to instrument—how the bridge is applied ex ante. To avoid repetition and to make maqāṣid action-guiding, propose a Maqāṣid Policy Test to be appended to any draft reform or judicial policy: (1) Text name the controlling proofs, usūl pathway, and legal maxims; (2) Purposes state the specific essentials targeted (with level: ḍarūriyyāt/ḥājiyyāt/taḥsīniyyāt) and identify observable proxies for protection/harm; (3) Context explain the Indonesian legal vehicle (statute, regulation, court practice) and institutional safeguards chosen over realistic alternatives. This shifts maqāṣid from slogan to auditable design choice and aligns with the purposive paradigm articulated by modern maqāṣid scholarship.

Bottom line. Across these domains, maqāṣid bridges Tasyri's derivational fidelity and Sharia's teleology into verifiable Indonesian reforms: a raised marriage-age threshold, gender-sensitive procedure in religious courts, regularization of status through *itsbāt*, equity instruments in inheritance, constitutional protection for children's civil status, calibrated capital punishment, and reviewable *jināyāt* enforcement. Each example shows the same pattern: source-guided

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[62] Kamali, "History and Jurisprudence of the Maqāṣid: A Critical Appraisal"; Kamali, *Maqasid Al-Shariah Made Simple*.

[63] Yusuf, Azizah, and Hasan, "Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts."

reasoning, purpose-ranked goods, and a legal-institutional fit that produces measurable protection rather than merely restated ideals.

Conclusion

This study formulates a Text–Purpose–Context (TPC) framework to bridge Tasyri' (uṣūl al-fiqh architecture) and sharia philosophy/maqāṣid al-syarī'ah in the renewal of Islamic law in Indonesia. Key findings suggest that TPC transforms normative claims into auditable chains of reasoning: (i) identification of postulates, uṣūl devices, and *qawāʿid* (Text); (ii) mapping of protected objectives and their levels and indicators (Purpose); and (iii) test conformity with the constitution, positive law, institutional capacity, and empirical evidence (Context). Applied to the Indonesian example of the minimum age of marriage, vulnerability-sensitive divorce procedures, *itsbāt nikāḥ*, the design of a special regime for the death penalty, and *jināyāt* Aceh, this framework consistently produces options that maintain fidelity to the text while providing measurable protection for the essentials (religion, soul, intellect, descent, property).

The limitations of this research include: a juridical-normative focus with limited case coverage; the absence of quantitative evaluation of the impact of implementation (e.g., education/health after marriage age reform or *the enforcement gap* of alimony); the lack of methodological contestation between uṣūl tools and the comparative determination of maqāṣid indicators; and the dependence on the current regulatory landscape that can change. These limitations explain why some initial conclusions seem biased: arguments must be increasingly "grounded" by more systematic data and methodological dialogue.

We recommend a mixed doctrinal–sociolegal agenda: building a *dataset* of religious court decisions (divorce, *itsbāt*, joint property), developing validated maqāṣid scores (indicators, reliability of assessors, welfare/justice proxies), and cross-jurisdictional comparative studies to test the transferability of TPCs. In the policy realm, apply the Maqāṣid Policy Test as an attachment to the Regulatory/Maqāṣid Impact Assessment and judge training materials, so that TPC integration shifts from discourse to consistent, transparent, and accountable institutional practice.

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Bibliography

Abou El Fadl, Khaled. *Reasoning with God: Reclaiming Shari'ah in the Modern Age*. Rowman & Littlefield, 2014.

Ahmed An-Na'im, Abdullahi. "Islam, Sharia and Comparative Constitutionalism." In *Constitutions and Religion*. Edward Elgar Publishing, 2020. https://doi.org/10.4337/9781786439291.00016.

Al-Shatibi, Abu Ishaq. *Al-Muwafaqat Fi Usul Al-Shariah*. Al-Maktabah Al-Tawfikia, 2003.

Ali, Irhamni, and Sarah E. Ryan. "The Law and Policy of Library Development: A Legal Text Analysis of Indonesian Library Bills." *Alexandria: The Journal of National and International Library*

and Information Issues 33, no. 1–3 (December 1, 2023): 49–63. https://doi.org/10.1177/09557490241236949.

Arifin, Muhammad. "The Efforts of Islamic Criminal Law Integration into Indonesian Law Procedures." *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 3, no. 2 (2020): 975–84. https://doi.org/10.33258/birci.v3i2.925.

Aslati, Armi Agustar, Silawati, Arisman, and Siti Arafah. "Utilizing Science and Maqāṣid Al-Sharī'ah in Resolving Contemporary Issues of Islamic Family Law." *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (March 16, 2024): 17–36. https://doi.org/10.24090/mnh.v18i1.10571.

Auda, Jasser. *Maqasid Al-Shariah: A Beginner's Guide*. London: The International Institut of Islamic Thought, 2008.

Banoo, Shabnam, and Tanveer Ahmed. "Rules of Marriage in Islam: A Comprehensive Analysis," 2024.

Basri, Achmad Hasan. "Implications of Constitutional Court Decision No. 46/PUU-VIII/2010 on the Rights of Children from Marriage Series Islamic Family Law Perspective." *Kitabaca: Journal of Islamic Studies* 1, no. 1 (2024): 10–26.

Beloushi, Hasan JEHM. *The Theory of Maqāṣid Al-Sharīʿa in Shīʿī Jurisprudence: Muḥammad Taqī Al-Mudarrisī as a Model*. University of Exeter (United Kingdom), 2015. https://search.proquest.com/openview/bb74537673ce9431a54f90f24503d2c4/1?pq-origsite=gscholar&cbl=51922&diss=y.

Butt, Simon. "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?" *Griffith Law Review* 32, no. 2 (April 3, 2023): 190–214. https://doi.org/10.1080/10383441.2023.2243772.

Carson, John. "The Measure of Merit: Talents, Intelligence, and Inequality in the French and American Republics, 1750-1940." Princeton University Press, 2018.

Crouch, Melissa. *Law and Religion in Indonesia: Conflict and the Courts in West Java*. Routledge, 2013.

Dwivedi, Surendra Kumar. "Contradiction between the Blasphemy Laws in Islamic Nations and the International Human Rights Law." Riga Graduate School of Law, 2023. https://dspace.lu.lv/dspace/handle/7/62022.

Faisal, Andri Yanto, Derita Prapti Rahayu, Dwi Haryadi, Anri Darmawan, and Jeanne Darc Noviayanti Manik. "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code." *Cogent Social Sciences* 10, no. 1 (2024): 2301634. https://doi.org/10.1080/23311886.2023.2301634.

Gatti, Lauren, and Paula McAvoy. "Theorizing to Cases: A Methodological Approach to Qualitative Normative Cases." *Educational Theory* 74, no. 3 (2024): 350–57. https://doi.org/10.1111/edth.12611.

Hallaq, Wael B. *Shari'a: Theory, Practice, Transformations*. Cambridge University Press, 2009.

Hudson, Barbara. "Punishment, Rights and Difference: Defending Justice in the Risk Society." In *Crime, Risk and Justice*, 144–72. Willan, 2012. https://doi.org/10.4324/9781843924197-13.

Idrus, Achmad Musyahid, Roswati Nurdin, Rahman Qayyum, Patimah Halim, and Rahmah Amir. "The Tradition of Mappasikarawa in the Bugis-Makassar Community Marriage: A Study of Islamic Law Philosophy." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 9, 2023): 848–74. https://doi.org/10.22373/sjhk.v7i2.17125.

Joseph, Suad, and Zeina Zaatari. *Routledge Handbook on Women in the Middle East*. Taylor & Francis Group, 2022. https://doi.org/10.4324/9781315165219.

Kamali, Mohammad Hashim. *Crime and Punishment in Islamic Law: A Fresh Interpretation*. Oxford University Press, 2019.

———. "History and Jurisprudence of the Maqāṣid: A Critical Appraisal." *American Journal of Islam and Society* 38, no. 3–4 (2021): 8–34. https://doi.org/10.35632/ajis.v38i3-4.3110.

———. *Maqasid Al-Shariah Made Simple*. Vol. 13. International Institute of Islamic Thought (IIIT), 2008.

Karimullah, Suud Sarim, Nanda Ahmad Basuki, and Arif Sugitanata. "An Ethical Analysis of the Application of the Death Penalty in Islamic Law." *Antmind Review: Journal of Sharia and Legal Ethics* 1, no. 1 (2024): 39–50. https://doi.org/10.63077/9w6s0675.

la Rasilla, Ignacio de. "Building Up Inclusiveness for Women in the History of International Law?" *Netherlands International Law*

Review, 2025, 1–30. https://doi.org/10.1007/s40802-025-00276-w.

Lev, Daniel. *Legal Evolution and Political Authority in Indonesia: Selected Essays*. Vol. 4. Brill, 2021.

Lukito, Ratno. *Legal Pluralism in Indonesia: Bridging the Unbridgeable*. Routledge, 2012.

Manse, Maarten. "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia." *Legal Pluralism and Critical Social Analysis* 56, no. 3 (September 17, 2024): 328–48. https://doi.org/10.1080/27706869.2024.2377447.

Mudawam, Syafaul. "The Uṣūl Al-Fiqh Approach on the Understanding of Islamic Law in Contemporary Era: Source and Contextualization." *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 55, no. 2 (August 31, 2021): 315–34. https://doi.org/10.14421/ajish.v55i2.1004.

Nasution, Khoiruddin, and Syamruddin Nasution. "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights." *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (December 13, 2021): 347–74. https://doi.org/10.14421/ajis.2021.592.347-374.

Nurhadi, and Sabariyah. "The Philosophy of Hikmah Tasyri'Based on the Perspective of Syekh Ali Ahmad Al-Jurjawi." *PETITA* 5, no. 1 (2020): 83–94. https://doi.org/10.22373/petita.v5i1.20.

Putra, Haris Maiza, and Hisam Ahyani. "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia." *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (June 30, 2022): 68–90. https://doi.org/10.30984/jis.v20i1.1861.

Raquib, Amana. "Maqasid Al-Sharī'Ah: A Traditional Source for Ensuring Design and Development of Modern Technology for Humanity's Benefit." In *Islamic Perspectives on Science and Technology*, 143–67. Singapore: Springer Singapore, 2016. https://doi.org/10.1007/978-981-287-778-9_11.

Rouf, Abd. "Reevaluating the Legal Status of Misya r Marriage: Contextual Insights from Figures of the Indonesian Ulema Council in Malang City." *Al-Hukama': The Indonesian Journal of Islamic Family Law* 14, no. 2 (2024): 232–60. https://jurnalfsh.uinsa.ac.id/index.php/alhukuma/article/view

/1919.

Sabli, Yeni Fatma, M. Hasbi Umar, and Robi'atul Adawiyah. "Mashadirul Ahkam: As-Sunnah As A Source Of Islamic Law." *El-Ghiroh* 23, no. 1 (March 31, 2025): 93–107. https://doi.org/10.37092/el-ghiroh.v23i1.1003.

Safwan, Nora Maulana, and Nurul Khansa Fauziyah. "CONTEMPORARY IJTIHAD METHOD IN DETERMINING SHARIA BUSINESS LAW: ADDRESSING LEGAL NEEDS IN AN ERA OF ECONOMIC AND TECHNOLOGICAL CHANGE." *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 7, no. 1 (March 20, 2025): 153–76. https://doi.org/10.20885/mawarid.vol7.iss1.art9.

Salim, Arskal. *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. University of Hawaii Press, 2008.

———. *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*. Edinburgh University Press, 2015.

Shachar, Ayelet. "Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law." In *Feminism, Law, and Religion*, 109–40. Routledge, 2016. https://doi.org/10.4324/9781315582184-7.

Stiles, Erin E, and Ayang Utriza Yakin. *Islamic Divorce in the Twenty-First Century: A Global Perspective*. Rutgers University Press, 2022.

Sugitanata, Arif, Ahmad Bustomi, and Siti Aminah. "Wajah Hukum 'Bermuka Dua' Dalam Regulasi Usia Perkawinan Di Indonesia." *Syakhshiyyah Jurnal Hukum Keluarga Islam* 4, no. 1 (June 26, 2024): 57–72. https://doi.org/10.32332/syakhshiyyah.v4i1.9174.

Sumawiharja, Farhan Arif. "Perkembangan Penologi Islam Dan Hukum Jinayat Di Nangroe Aceh Darussalam." *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (July 25, 2023): 1169–76. https://doi.org/10.37680/almanhaj.v5i2.2823.

Szatkowski, Janek. *A Theory of Dramaturgy*. Abingdon, Oxon ; New York, NY : Routledge, 2019.: Routledge, 2019. https://doi.org/10.4324/9781351132114.

Tajrid, Amir. "Tracing the Genealogy of Maqāṣid Al-Sharī'ah Concept: A Historical Approach." *Al-Ahkam* 31, no. 1 (2021): 69–90. https://doi.org/10.21580/ahkam.2021.31.1.6696.

Thahir, A Halil. *Ijtihâd Maqâsidi The Interconnected Maslahah-Based Reconstruction of Islamic Laws*. Geneva: Globethics. net, 2019.

Thohari, H Fuad. *Hadis Ahkam: Kajian Hadis-Hadis Hukum Pidana Islam (Hudud, Qishash, Dan Ta'zir)*. Deepublish, 2018.

Turnip, Ibnu Radwan Siddik, Zainul Fuad, and Nurhayati Nurhayati. "The Current Development of Marriage Age Provisions in Indonesia and Malaysia: A Socio-Historical Approach." *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (June 30, 2022): 105. https://doi.org/10.30984/jis.v20i1.1813.

Wahyumah, Ida, and Trias Saputra. "Comparative Analysis of the Crime of Overspel (Adultery) in the Articles of the New Criminal Code and the Old Criminal Code Related to Adultery." *Journal of Social Science* 5, no. 4 (July 25, 2024): 1034–48. https://doi.org/10.46799/jss.v5i4.900.

Winardi, Winardi. "An Islamic Law Design In The Realm Of The National Legal Politics." *Nagari Law Review* 4, no. 2 (April 30, 2021): 106. https://doi.org/10.25077/nalrev.v.4.i.2.p.106-119.2021.

Yusuf, Nasruddin, Nur Azizah, and Faradila Hasan. "Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts." *Al-'Adalah* 20, no. 2 (2023): 283–308. https://doi.org/10.24042/adalah.v20i2.16177.

Zain, Muhammad Fuad, and Ahmad Zayyadi. "Measuring Islamic Legal Philosophy and Islamic Law: A Study of Differences, Typologies, and Objects of Study." *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 1 (2023): 1–12. https://doi.org/10.24090/el-aqwal.v2i1.7472.