

ISLAMIC LEGAL REFORM BASED ON MAQĀSID SYARĪ'AH: A STUDY OF AL-GHAZĀLĪ'S THOUGHTS AND ITS RELEVANCE IN THE CONTEXT OF INDONESIAN FAMILY LAW

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Abstract

This article examines the renewal of Islamic law based on maqāsid al-syarī'ah in al-Ghazālī's thinking and its relevance to Islamic family law in Indonesia. In al-Mustasfā, al-Ghazālī emphasizes the five main goals of the Shari'a: protecting religion, soul, reason, offspring, and property. However, regulations such as Law no. 1 of 1974 and the Compilation of Islamic Law (KHI) still rely on classical jurisprudence which is not yet fully adaptive to social change. This research uses a normative-philosophical approach with literature study to explore how the concept of maqāsid can be the basis for family law reform. The results of the study show that maqāsid in al-Ghazālī's framework provides direction for reforming family law on issues of gender justice, children's rights, unilateral divorce, and marriage age limits. This approach emphasizes the importance of the substance of benefits in establishing law, not just the textuality of the arguments. Thus, maqāsid becomes a strategic foundation in building Islamic family law in Indonesia that is more responsive, fair and contextual.

Keywords: Maqashid Sharia, al-Ghazālī, Reform of Islamic Law.

INTRODUCTION

Islam is a universal and holistic religion that regulates all dimensions of human life, including the relationship of individuals with God (vertical) and their interactions with fellow human beings (horizontal). (Ambo Dalle, 2025) In the realm of law, Islam relies on four main sources, namely the Qur'an, Hadith (Sunnah), Ijma' (scientific consensus), and Qiyas (analogy) which have become basic references for the development of a normative Islamic legal framework that is responsive to the practical realities of various historical contexts. (Mochammad Arifin, S.H.I., M.H. Rini Apriyani, S.H., M.H. Dr. Solikhah, S.H. et al., 2025)

After the death of the Prophet Muhammad SAW and the end of the revelation of the Qur'an, Islamic legal thought continued to develop through the practice of ijtihad by the Prophet's companions and subsequent generations. (Mahrus, 2023) Scholars from the era of tabi'in, tabi'ut tabi'in, and the era of classical fiqh codification significantly shaped Islamic jurisprudence to answer the needs of their society. However, over time, legal stagnation emerged because fiqh decisions were considered fixed doctrines, rather than dynamic and context-based interpretations. (Karimullah, 2022) This rigidity has hampered the ability of Islamic law to adapt to changes in modern society.

In Indonesia, despite being a predominantly Muslim country, Islamic law does not serve as a formal basis for national legislation.(Edyar, 2021) Instead, Indonesia adheres to a secular, democratic, and pluralistic legal system.(Purwanto & Silalahi, 2025) Nevertheless, the principles of Islamic law are partly integrated through the recognition of Islamic family law, as reflected in Law No. 1 of 1974 and the Compilation of Islamic Law (KHI).(Tohari, 2020) However, this legal framework has not escaped criticism, as it is often considered too dependent on classical fiqh formulations that may not adequately address the social conditions of contemporary Indonesian society.(Jamil et al., 2017)

Various criticisms of the Islamic Family Law (HKI) system in Indonesia have emerged from Muslim intellectuals, such as Nur Kholis, who believes that regulations such as Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) are still tied to traditional fiqh constructions that are absolute in nature.(Kholis et al., 2017) In fact, many provisions in classical fiqh are unable to address the complexity of contemporary social problems. If not updated, Islamic law risks becoming rigid and actually hindering the social and intellectual development of society.(Hishom & Rofiq, 2025)A similar view was expressed by Abdurrahman Wahid (Gus Dur), who criticized that the renewal of Islamic law in Indonesia was often apologetic, defending the text rather than emphasizing the substance of Islamic values themselves.(Wahyu et al., 2024)The critical views of these two figures are an important basis in this study to examine the urgency of renewing Islamic family law in Indonesia through the maqāṣid al-syarī'ah approach, especially from the perspective of Al-Ghazali's thoughts. By placing maqāṣid as a methodological basis, this study aims to re-examine the provisions in IPR that are considered stagnant, and to offer a more contextual legal formulation that is in line with the socio-cultural needs of contemporary Indonesian Muslim society.

In this context, the maqāṣid syarī'ah approach becomes very relevant to be put forward. Maqashid syarī'ah is a method that explores the main purpose behind the establishment of Islamic law, namely to realize welfare and prevent damage.(Gumanti, 2018) In the classical tradition, maqāṣid includes five main objectives (al-ḍarūriyyāt al-khams):((Soetoprawiro, 2023) preserving religion, soul, mind, descendants, and property. This approach was introduced and systematized by Imam al-Ghazālī in his monumental work al-Mustaṣfā fi Ilm al-Usul. According to al-Ghazālī, Islamic law cannot be understood solely from formal texts, but its intent and purpose must be traced. Laws that are not in line with maqāṣid are actually contrary to the main spirit of sharia.

Several previous studies have also discussed similar themes, one of which is a study entitled "Maqasid Syariah as a Conceptual Foundation in Reforming Indonesian Islamic Family Law", which emphasizes the importance of maqāṣid syarī'ah as a

normative guide for policy makers to consider as a basis for the renewal of Islamic family law.(Tohari, 2020) In addition, there is also an article entitled "Reform of Islamic Law in Indonesia (Istihsan Method Approach)" which discusses Islamic reform based on the istihsan method.(Darliana et al., 2022) With many discussions that are almost similar in writing, the author is interested in a different discussion entitled "Reform of Islamic Law Based on Maqashid Syari'ah Perspective of al-Ghazālī's Thought".

This study will specifically answer the question of how the framework of maqāṣid al-Ghazālī can contribute to the reform of Islamic family law in Indonesia? Therefore, this study is different from previous studies that only focused on the basic concept of the renewal of Maqashid Syari'ah law, while this study will contribute to the renewal of Islamic law based on the thoughts of Al-Ghazali in the construction of existing law in Indonesia.

RESEARCH METHODS

This study uses a qualitative library research method with a normative-philosophical approach. This approach focuses on the analysis of legal texts and Islamic thought in depth within the framework of sharia values and objectives (maqāṣid al-syarī'ah). Through this approach, the study not only explores the normative aspects of Islamic law, but also explores the philosophical dimensions of classical texts in order to find their relevance and significance to the current social context, especially in the reality of Indonesian society.

The data analysis techniques used are descriptive-analytical and hermeneutical-critical. Descriptive-analytical analysis is carried out by systematically describing the contents of the text, both from classical and contemporary literature, to understand the structure of al-Ghazālī's thought regarding maqāṣid al-syarī'ah. Meanwhile, a hermeneutical-critical approach is used in order to interpret the thought contextually, by comparing the values of maqāṣid in classical works and the problems of Islamic family law in contemporary Indonesia. In addition, normative synthesis is applied to explain the possibility of renewing Islamic family law by bridging the classical treasury and modern social needs.

The literature used in this study was selected based on a number of specific criteria. First, the literature must have a relevant theme, namely directly related to the concept of maqāṣid al-syarī'ah, al-Ghazālī's thoughts, and issues of Islamic family law in Indonesia. Second, the literature must be authoritative, meaning it comes from authors or scholars whose competence is recognized, such as the works of al-Ghazālī, especially al-Mustasfā fī 'Ilm al-Uṣūl, as well as official legal documents such as Law

Number 1 of 1974 and the Compilation of Islamic Law (KHI). Third, the selected literature also considers the current context, namely covering scientific articles published in the last eight years and discussing the renewal of Islamic law in Indonesia with a maqāṣid approach or through the thoughts of progressive Muslim figures such as Nur Kholis Madjid and Abdurrahman Wahid (Gus Dur). Fourth, the selection of literature also considers the diversity of approaches, both from classical Islamic law sources (fiqh, ushul fiqh), positive Indonesian law, and modern academic studies with sociological, philosophical, and historical perspectives.

However, the normative-philosophical approach in this literature research also has a number of limitations. This approach does not accommodate empirical data directly, so it does not capture the overall perception of society or carry out actual family law practices in the field. In addition, the potential for subjectivity of interpretation is quite high, especially in interpreting classical texts and maqāṣid al-syarī'ah, because it is highly dependent on the framework of thought and background of the researcher. Another limitation is the dependence of research results on the availability of secondary sources, so that the quality of research is highly determined by the completeness and quality of the literature described. The limited focus on one figure, namely al-Ghazālī, also means that the contributions of other maqāṣid thinkers such as al-Shāṭibī, Ibn 'Āshūr, or contemporary figures such as Jasser Auda have not been discussed in depth in this study.

RESULTS AND DISCUSSION

Maqashid Syariah in Islamic Law Reform

1. Definition of Maqashid Syariah

In terms of language, the word Maqashid al-Syari'ah consists of two parts, namely maqāṣid and al-syari'ah, each of which has a special meaning. The word "maqāṣid" is the plural form of "maqahsid".(Pertiwi & Herianingrum, 2024) Meanwhile, the root of the word comes from the verb "qashada" which means towards; target; intentionally and voluntarily. Meanwhile, the literal meaning of the word syari'ah is a source of water or a source of life.(Maharani, 2022) The word (syari'ah) (singular) plural (syara'i) means everything that Allah has shown to His servants, including legal decisions. The word syari'ah means regulations, in accordance with the meaning contained in the Qur'an, Surah Al-Jatsiya verse 18: (Then We made for you the law of Allah). (Maharani, 2022)

Thus, maqāṣid syarī'ah are the goals that Islamic Shari'a wants to achieve in establishing its laws, both relating to worship, muamalah, and social life in general. (Khakim, 2019) Maqashid shari'ah functions as the philosophical basis behind all revealed Islamic law, so that the shari'ah is not only formalistic but also substantive and contextual.

Maqashid is important in order to respond to social dynamics and changing times. Without considering maqāṣid, Islamic law risks becoming rigid, textual, and

unresponsive to the realities of the people. Therefore, maqāṣid syarī'ah becomes a bridge between text and context, between divine norms and human needs.

The scholars, especially al-Ghazālī, grouped maqāṣid sharī'ah into three levels: (Pertiwi & Herianingrum, 2024)

a. Al-Dharuriyat (primary needs)

The objectives of the law that are very fundamental to the survival of humans and religion. Consisting of five main things:

1. Maintaining religion (ḥifẓ al-din)
2. Maintaining the soul (ḥifẓ al-nafs)
3. Maintaining reason (ḥifẓ al-'aql)
4. Maintaining descendants (ḥifẓ al-nasl)
5. Maintaining property (ḥifẓ al-mal)

b. Al-Hajiyat (secondary needs)

These are needs that if not met do not cause harm, but can cause difficulties and narrowness in life.

c. Al-Tahsiniyat (tertiary/complementary needs)

These are the objectives of the law that function to perfect life, such as ethical values, aesthetics, and politeness.

This classification is the basis for assessing legal policies, including when conducting contemporary ijtihad in the context of renewing Islamic law so that it remains relevant to the times.

Application of Maqashid Sharia in Islamic Law Reform according to al-Ghazālī

al-Ghazālī was an important figure in the development of the concept of maqāṣid syarī'ah. In the book *al-Mustaṣfā fi Ilm al-Usul*, he emphasizes that all sharia law aims to safeguard the five basic needs (al-ḍarūriyyāt). Al-Ghazālī views that maqāṣid is not just a complement to ushul fiqh, but is the main foundation that must be taken into consideration in determining the law. (Nasrullah Kartika MR & Noor, 2014)

According to al-Ghazālī, the maintenance of the five fundamental elements of religion, soul, mind, lineage and property, is included in the category of al-dharuriyyat (basic needs), which is the highest level of benefit (public interest) and must be upheld above all else. For example, Islamic law mandates the death penalty for those who lead others astray in matters of faith or spread innovations, as such acts are harmful to the religion. (Gamajaya, 2023) Similarly, qisas (death penalty) is prescribed to preserve human life, while corporal punishment for those who consume alcohol serves to preserve reason. (Salmawati, 2020) Punishment for zina is intended to preserve offspring, and severe punishment for theft and robbery aims to secure property, which is essential for human survival and well-being. (Pertiwi & Herianingrum, 2024) al-Ghazālī also outlined a third level of maṣlaḥah, beyond al-dharuriyyat and al-hajiyat (supplemental needs), called al-tahsiniyyat (improvement) and al-tazyiniyyat (beautification). These focus on enhancing good behavior and preserving socially acceptable customs and practices in interpersonal relationships. For example, he argued that slaves should not be admitted as witnesses in court, regardless of the validity of their legal opinions or hadith histories, because their social status was subordinate and potentially compromised by coercion from their masters.

Moreover, al-Ghazālī emphasized that neither hajiyat nor tahsiniyyat can independently function as legal justification (hujjah) unless they reach the level of dharuriyyat. (Imam Kamaluddin, 2024) He firmly stated that all forms of maṣlaḥah that conflict with the Koran, Sunnah, or scientific consensus (ijma') must be rejected. On the

contrary, any benefits that are in line with sharī'ah principles must be accepted as legitimate considerations in legal formulation. For al-Ghazālī, the main goal of Islamic law is to ensure human welfare in both worldly and spiritual dimensions. Thus, the role of maṣlaḥah is very important and decisive in directing legal reform.

In this case, al-Ghazālī clearly mentions the conditions of maslaha mursalah which are used as evidence (proof) in determining the law, namely;

- a. The maslahat is in line with the types of actions of the sharia/determination of Islamic law (which are intended to preserve religion, reason, soul, property, and descendants/honor). This is the requirement for the acceptance of maslaha mursalah. Maslahah mulghā (which contradicts the nas and ijma') must be rejected. Likewise, maslaha gharibah (which has no evidence at all, either to justify or to invalidate). Even al-Ghazālī stated that such maslahat does not exist in essence.
- b. The maslahat must be in the form of daruriah maslahat or hajiah which occupies the position of daruriah. The tahsiniat maslahat cannot be used as a basis/consideration for determining Islamic law, unless there is a special argument that shows it, which means that the determination of the law is through qiyas, not in the name of maṣlaḥah mursalah.

Al-Ghazālī firmly stated that all forms of maslahat (public interest) that are contrary to the Qur'an, Sunnah, or ijma' (consensus of scholars) are invalid and must be rejected. On the other hand, maslahat that is in line with the principles of sharia can be accepted and can be considered in the formulation of Islamic law. Through this statement, al-Ghazālī emphasized that true Islamic law will never be contrary to the true public interest, and cannot support decisions that result in losses or injustice to the Muslim community.

According to al-Ghazālī, the application of Islamic law that does not pay attention to maqāṣid has the potential to cause injustice, hardship, and even social damage. Therefore, he emphasized that maslahat must be the basis for ijtihad. In this context, the renewal of Islamic law must be directed at achieving the welfare of the people, not merely maintaining the form of classical fiqh texts.

In the Indonesian context, al-Ghazālī's thoughts are relevant to be used as a paradigm in reviewing Islamic family law regulations such as Law No. 1 of 1974 and the KHI. When some of the contents of the regulation are no longer able to answer social dynamics, maqāṣid becomes a measuring tool for carrying out contextual legal reformulation. For example, in the issue of gender justice, protection of children, and women's civil rights, the maqāṣid approach will lead to the principle of protecting life, descendants, and property in a balanced manner, not just relying on textual arguments alone.

Thus, the renewal of Islamic law based on maqāṣid syarī'ah according to al-Ghazālī is a renewal that emphasizes the substance of sharia values, not the external form of law or certain fiqh doctrines. This is an important key so that Islamic law remains alive, flexible, and guides society towards benefit in the context of ever-changing times.

Relevance of Maqāṣid al-Ghazālī to Family Law in Indonesia

The thinking of maqāṣid al-syarī'ah as developed by al-Ghazālī has a very strong relevance in reviewing and updating Islamic family law in Indonesia. This approach provides a deeper foundation of values than simply following the classical fiqh formulation textually. (Pokhrel, 2024) In the context of Indonesian positive law,

especially Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), there are a number of issues that require maqāṣid-based reformulation to be more responsive to modern social needs and realities.

First, in terms of protecting women and gender justice, the maqāṣid al-Ghazālī, especially in the dimensions of ḥifẓ al-nafs (protecting the soul), ḥifẓ al-'aql (protecting the mind), and ḥifẓ al-nasl (protecting descendants), encourages the law to no longer limit the role and rights of women in a discriminatory manner. For example, there are still articles in the Marriage Law and the KHI that show the dominance of the role of men as heads of families exclusively without considering the equality of responsibility and actual capacity of husband and wife in the household. (Habibunnas, 2021) For example, in article 25 of the Compilation of Islamic Law, when viewed from the perspective of gender equality and statutory regulations. The Compilation of Islamic Law (KHI) which has been a reference for registrars in determining witnesses to marriage has a number of weaknesses. One of them is because its substance is heavily influenced by Law No. 1 of 1974 and refers almost entirely to the views of the Shafi'i school of fiqh. (Fitriana, 2014) In fact, there is no explicit prohibition in the Qur'an or Hadith which states that women cannot be witnesses in marriage. Apart from that, constitutionally, women have equal status before the law. Therefore, it is necessary to revise Article 25 KHI to provide space for women to be witnesses in wedding processions.

Second, in terms of child protection, maqāṣid al-Ghazālī provides an important basis for strengthening the law regarding child support, education and custody after divorce. The articles in the KHI regarding the right to hadhanah (child care) need to be reviewed so that they are not only based on the age of the child or the gender of the parents, but rather on the best interests of the child as upheld in maqāṣid. Article 159 concerning provisions regarding child custody (hadhanah) after divorce, emphasizing the principle of the benefit of the child as the main basis for decision making by the Religious Courts. (Durotun Nasika, 2018) The provisions in Article 159 of the KHI can be seen as an effort to translate the values of maqāṣid al-syarī'ah into the family law system in Indonesia. Through the principles of al-Ghazālī, it is seen that hadhanah is not only about parental rights, but more importantly about the welfare of children as the main subject that must be protected by law, both in terms of physical, mental, educational, and social future.

Third, in the matter of divorce, maqāṣid encourages the law to emphasize the process of mediation, justice, and protection of vulnerable parties, especially women and children. The practice of unilateral divorce in Article 129 of the KHI which seems to limit divorces that are issued outside the court, in practice many husbands still pronounce divorce unilaterally (outside the official legal process), and this creates legal uncertainty and socio-economic vulnerability for women and this is contrary to the principles of ḥifẓ al-nafs and ḥifẓ al-nasl, because it opens up opportunities for structural and economic violence against women. (Alam, 2024) Therefore, maqāṣid demands procedural updates that guarantee substantive justice.

Fourth, on the issue of child marriage and the age limit for marriage, where initially in Article 7 paragraph 1 of Law No. 1 of 1974 it was stated that the age limit for marriage is that men are 19 (nineteen) years old and women are 16 (sixteen) years old. (Hasibuan, 2019) After that, a revision was made and discussed intensively, it was decided that the Law according to the mandate of the Constitutional Court Decision No. 22/PUU-XV/2017 dated December 13, 2018, that the age of marriage is 19 years for

both men and women. Through the maqāṣid approach to encourage the law to protect the mind and soul of individuals by strengthening the minimum age requirements for marriage. In al-Ghazālī's framework, ḥifẓ al-'aql and ḥifẓ al-nafs show that marriage must be carried out at a mature age so as not to cause physical, psychological or social harm in the future.

Table 1. Principles of Maqāṣid al-Ghazālī and their Implications for Family Law.

Maqāṣid Principle	Brief Explanation	Implications for Family Law Reform
Ḥifẓ al-Dīn (Religion)	Preserving the continuity and sanctity of religious values	Ensuring marriage is conducted in accordance with both religious and legal procedures
Ḥifẓ al-Nafs (Life)	Protecting human life and safety	Protecting women and children from domestic violence; improving the divorce system
Ḥifẓ al-'Aql (Intellect)	Safeguarding human intellect and rationality	Rejecting early-age marriage and promoting a psychologically mature minimum age for marriage
Ḥifẓ al-Nasl (Lineage)	Ensuring the continuity and dignity of lineage	Enforcing child custody rights after divorce based on the principle of the best interest of the child
Ḥifẓ al-Māl (Property)	Protecting ownership rights and economic welfare	Ensuring protection of alimony, inheritance, and joint property rights after divorce

Thus, maqāṣid al-Ghazālī provides a normative framework that can be used as a benchmark in evaluating and perfecting family law regulations. This approach does not reject the text, but encourages a more substantial and contextual interpretation of the law, so that Islamic family law in Indonesia is able to answer the challenges of the times and guarantee the wider benefit of the people.

CONCLUSION

Maqāṣid al-syarī'ah as formulated by al-Ghazālī is a very important philosophical foundation in the renewal of Islamic law, especially in the context of family law in Indonesia. By dividing maqāṣid into three levels, namely al-darūriyyāt, al-ḥājjiyyāt, and al-taḥsīniyyāt, al-Ghazālī emphasized that Islamic law is truly aimed at realizing the benefit of the people in all aspects of life, both spiritual and social. The relevance of Maqāṣid al-Ghazālī's thoughts is very real in reformulating family law regulations in Indonesia, such as Law no. 1 of 1974 and the Compilation of Islamic Law (KHI). In various crucial issues—such as the role of women in marriage, children's rights after divorce, the practice of unilateral talaq, and the age limit for marriage the maqāṣid approach is able to offer solutions that are not only normative but also

contextual and humanist. This approach emphasizes the importance of protecting the soul (ḥifẓ al-nafs), mind (ḥifẓ al-'aql), descendants (ḥifẓ al-nasl), and property (ḥifẓ al-māl), in every applicable legal formulation. Thus, the renewal of Islamic family law in Indonesia which is based on maqāṣid al-Ghazālī is not just a technical revision, but is a transformation of values towards substantive justice. This is very important so that Islamic law not only survives formally, but is also able to become an instrument that is adaptive, a solution, and brings benefits to the people in facing the complexities of modern life.

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