

***Maqasid Al-Shari’ah and Legal Pluralism: Normative
Analysis of The Principle of Justice in
A Multicultural Society***

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ABSTRACT

In the context of a multicultural society, legal pluralism is an inevitable reality, especially in countries that accommodate various legal systems such as state, customary, and religious laws. One of the main challenges is how Islamic law (sharia) can contribute to justice without creating exclusivity or dominance over other groups. This paper explores the relationship between sharia and legal pluralism, focusing on the question of whether sharia can operate in harmony with the principles of inclusive justice. Through a normative approach, this paper analyzes various examples of sharia implementation in Indonesia, which coexist with other legal systems. The findings indicate that by utilizing the maqasid al-shari’ah approach which emphasizes the fundamental objectives of Islamic law such as justice, public welfare (maṣlaḥah), and the protection of human rights maqasid al-shari’ah can play a constructive role in promoting an inclusive legal system. This paper also underscores the necessity for a context-sensitive reform of Islamic law, methodological renewal in fiqh, and the strengthening of dialogue between different legal systems. In this regard, the role of the state as a mediator and the constitution as a normative foundation are vital for ensuring that religious values, human rights, and social justice can coexist in a harmonious manner.

Keywords: *Maqāṣid al-Sharī’ah, Legal Pluralism, Justice, Multicultural Society, Islamic Law*

A. INTRODUCTION

Indonesia is recognized as a country with a high level of diversity across various aspects, including religion, ethnicity, customs, and cultural values embraced by its society. This condition is also clearly reflected in its legal system, which comprises various forms of rules and values-ranging from state law based on Pancasila and the 1945 Constitution, customary law rooted in local wisdom, to religious law, including the Islamic concept of

maqāṣid al-sharī‘ah. These legal systems coexist and interact in a pattern commonly referred to as legal pluralism. The presence of legal pluralism poses a challenge for the state, particularly in the effort to realize justice that can reach all segments of society with diverse religious and ideological backgrounds.

Some groups still interpret *maqāṣid al-sharī‘ah* in a narrow and rigid manner, rendering its application ineffective in addressing the complexity of a multicultural society that operates within a framework of legal pluralism. Such a view has the potential to cause tension by disregarding social context, the diversity of legal systems, and the substantive justice values required in a society plural in terms of law, culture, and religion. At this point, the application of *maqāṣid al-sharī‘ah* as one of the religious legal systems raises significant questions regarding its compatibility with the inclusive justice values upheld in democratic and constitutional states. One risk that must be anticipated is the emergence of the dominance of certain religious values, which could lead to the exclusivity of legal implementation and may even hinder the fulfillment of substantive justice and equality for all groups, regardless of their religion or customary affiliation. This challenge underscores the urgency of reexamining the application of *maqāṣid al-sharī‘ah* in the context of a pluralistic state to ensure that religious values can coexist with the universal human values that are highly regarded in the rule of law.

In line with this need, the application of *maqāṣid al-sharī‘ah* can serve as a starting point to understand and implement the core values of Islamic law in a more contextual and adaptive manner. Through such an approach, *maqāṣid al-sharī‘ah* is not merely interpreted as the enforcement of formal rules, but also as an effort to achieve justice, shared welfare, and the respect for human dignity that is relevant to contemporary societal needs and developments. In other words, *maqāṣid al-sharī‘ah* may function as a foundation for bridging religious values with universal principles and the real needs of a diverse society.

The development and application of adaptive *maqāṣid al-sharī‘ah* values also highlight the need to revitalize the method of *ijtihād* in order to respond to the ever-evolving social context. This allows religious values to contribute positively to the development of an inclusive and democratic legal system that upholds equality and justice for all Indonesian citizens.

In practice, the state plays a highly strategic role as a mediator to ensure that the implementation of *maqāṣid al-sharī‘ah* does not favor any particular religious group but aligns with other values within the national and customary legal systems. Ultimately, the success of implementing *maqāṣid al-sharī‘ah* values in the context of Indonesia’s legal pluralism greatly depends on the ability to elaborate religious values alongside universal values, in order to form a legal system that guarantees substantive justice for all.

This also emphasizes that in a state that respects diversity, religious values and national legal values must engage in dialogue and mutually reinforce one another, thereby providing a foundation for the creation of a legal system that is inclusive, adaptive, and relevant to the ever-changing needs of society. Accordingly, this paper aims to examine how *maqāṣid al-sharī‘ah* and legal pluralism can achieve justice and collective welfare within a multicultural society

B. METHOD

This study is categorized as normative legal research, which involves examining legal materials and secondary data through literature analysis. It relies on library research (secondary materials) and broadly focuses on the study of legal principles, legal pluralism, Islamic law, and inclusive legal systems. The approach employed in this paper is normative juridical, which involves analyzing library resources, legal documents, and expert opinions relevant to *maqāṣid al-sharī‘ah* and legal pluralism, particularly in relation to the principles of justice in multicultural societies.

C. ANALYSIS AND DISCUSSION

1. The Theory of Maqāṣid al-Sharī‘ah

Maqāṣid al-sharī‘ah consists of two terms: *maqāṣid*, the plural form of *maqṣad*, which means "objective" or "goal", and *al-sharī‘ah*, which is commonly understood as Islamic law. Thus, *maqāṣid al-sharī‘ah* refers to the objectives or purposes of Islamic law. Scholars of *uṣūl al-fiqh* (principles of Islamic jurisprudence) define *maqāṣid al-sharī‘ah* as “the meanings and aims intended by the Lawgiver in prescribing legal rulings for the benefit of humankind.” In his seminal work *Al-Muwāfaqāt*, Imam al-Shāṭibī uses slightly different terminology *maqāṣid al-sharī‘ah*, *al-maqāṣid al-sharī‘ah fī al-sharī‘ah*, and *maqāṣid min shar‘i al-ḥukm* all of which convey the same essential meaning: the divine objectives behind legal rulings. Similarly, according to Alal al-Fāsī, *maqāṣid al-sharī‘ah* are the goals and the underlying wisdoms behind each Islamic legal ruling ordained by God.

From the definitions above, it can be concluded that the discourse on *maqāṣid al-sharī‘ah* aims to understand the purposes intended by the Lawgiver in legislating laws. These objectives are a crucial factor in Islamic legal reasoning, especially in the process of *ijtihād* (independent legal reasoning). The theory of *maqāṣid al-sharī‘ah* is a concept in Islamic law that focuses on the ultimate aims of the *sharī‘ah*, namely the realization of public welfare (*maṣlaḥah*) and the prevention of harm (*maḥṣadah*) to humanity. The core of *maqāṣid al-sharī‘ah* lies in the protection of five essential values: religion (dīn), life (nafs), intellect (‘aql), progeny (nasl), and property (māl). These five elements are regarded as the foundational pillars that must be safeguarded to establish justice and well-being within society.

2. The Theory of Legal Pluralism

Legal pluralism is one of the defining characteristics of Indonesia's legal system. The term “legal pluralism” combines two words: *pluralism*, which refers to a worldview that acknowledges and accepts diversity within a given society, and *law*, which refers to a set of rules or norms that govern human behavior. Legal pluralism refers to a condition in which two or more legal systems operate concurrently within the same social setting. According to Disantara, legal pluralism in Indonesia aims to achieve harmonization and integration between national law, transnational law, and customary law, enabling them to coexist and complement each other.

The theory of legal pluralism acknowledges the simultaneous existence and state recognition of various legal systems, including customary law, Islamic law, and statutory (positive) law. Legal pluralism is not an attempt to create a new legal system but rather a paradigm that emphasizes the importance of recognizing the diversity of legal traditions that have developed within Indonesian society. This concept emerged in response to the needs of a highly diverse population culturally, religiously, and traditionally so that applicable laws can be more inclusive and fair for all layers of society.

3. The Theory of Justice in a Multicultural Society

Justice originates from the term *just*. According to the Indonesian Dictionary, *adil* (just) means not arbitrary, impartial, and unbiased. Agus Santoso suggests that the scale of justice varies from one place to another and is entirely defined by societal consensus based on public order. Generally, justice encompasses four dimensions: balance, equality and non-discrimination, the rightful allocation of rights, and the proper distribution of benefits based on merit and appropriateness.

A multicultural society consists of individuals from different cultural backgrounds living together. The term *multicultural* itself comes from two words: *multi* meaning many, and *culture*. At its core, this term reflects a recognition of universal human dignity preserved within unique cultural communities. Justice in a multicultural society is a crucial moral and social principle, especially because cultural, religious, and ethnic diversity can present challenges in its implementation. Philosophically, Plato views justice as harmony and balance, where each individual fulfills their role according to their abilities. Aristotle emphasizes distributive justice-the allocation of rights and resources based on each person's contribution. In multicultural contexts, this becomes more complex due to differing metrics of contribution and need. Meanwhile, John Rawls advocates for justice as fairness, with principles that can be universally accepted regardless of cultural or religious background.

Thus, in this theory of justice, the perspectives of these three thinkers serve as foundational frameworks for discussing justice in multicultural societies. They highlight the need to balance universal values with respect for cultural diversity. The implementation of justice in multicultural settings requires equal treatment of all individuals, regardless of their cultural backgrounds. In such societies, the concept of justice demands a balance between honoring cultural diversity and applying universal principles of justice. Justice is not limited to the fair distribution of resources; it also includes equitable treatment, respect for differences, and the establishment of systems that are responsive to complex social dynamics.

4. Analysis of *Maqāṣid al-Sharī‘ah* in the Context of Justice in a Multicultural Society

Maqāṣid al-Sharī‘ah, or the objectives of Islamic law, form a fundamental framework for understanding and applying Islamic legal principles in a contextual and just manner. In a multicultural society marked by religious, cultural, ethnic, and value-system diversity justice becomes a critical issue. Therefore, the *maqāṣid al-sharī‘ah*

approach is highly relevant in addressing the challenges of justice within a pluralistic context through the following principles:

a) *Maqāṣid al-Sharī‘ah* as Universal Principles

Maqāṣid al-sharī‘ah generally aim to preserve five essential values (*darūriyyāt al-khamsah*), namely: *ḥifẓ al-dīn* (protection of religion), *ḥifẓ al-naḥs* (protection of life), *ḥifẓ al-‘aql* (protection of intellect), *ḥifẓ al-nasl* (protection of lineage), and *ḥifẓ al-māl* (protection of wealth). These five principles are universal in nature and can be applied across diverse social contexts, including multicultural societies. This means that Islam, through its *maqāṣid*, does not solely seek to regulate the lives of Muslims, but also opens space for justice and protection for all human beings, regardless of background or belief.

b) Implementing *Maqāṣid al-Sharī‘ah* in the Context of Justice in a Multicultural Society

In multicultural societies, justice is not only about formal equality but also about recognizing and respecting cultural identities and differing beliefs. *Maqāṣid al-sharī‘ah* encourage the implementation of Islamic law in ways that are adaptive and responsive to social realities. This aligns with the Islamic principle of *‘adālah* (justice). In Indonesia’s national context, the fundamental values inherent in *maqāṣid al-sharī‘ah* have been reflected in various public policies and social practices even if not explicitly labeled as such.

For example, the guarantee of religious freedom as enshrined in Article 28E and Article 29 of the 1945 Constitution demonstrates the protection of religious rights, aligning with the principle of *ḥifẓ al-dīn*. Similarly, the protection of life and personal security, guaranteed under Article 28A and Article 28G(1) of the 1945 Constitution and further reinforced in Law No. 39 of 1999 on Human Rights (Articles 4, 9(1), and 30), reflects the principle of *ḥifẓ al-naḥs*. Support for education and the recognition of intellectual freedom, as stipulated in Article 31(1–3) of the 1945 Constitution and Law No. 20 of 2003 on the National Education System (Articles 5(1–2)), represent the principle of *ḥifẓ al-‘aql*.

Likewise, regulations protecting families, children, and offspring align with *ḥifẓ al-nasl*, as reflected in Article 28B(1–2) of the Constitution, Law No. 1 of 1974 on Marriage (amended by Law No. 16 of 2019), and Law No. 35 of 2014 on Child Protection. Policies governing property rights and equitable economic distribution embody the principle of *ḥifẓ al-māl*, in accordance with Article 28H(4) and Articles 33(1–4) of the Constitution, as well as Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption (Articles 2–3). In other words, although these values are not always expressed in explicitly Islamic terms, the substance of *maqāṣid al-sharī‘ah* is embedded in Indonesia's legal system and social order, reflecting harmony between Islamic legal principles and universal justice in a multicultural society.

Maqāṣid al-sharī‘ah promotes substantive justice rather than mere procedural fairness. In a pluralistic society, *maqāṣid* serves as both an ethical and legal framework to create a public space that values pluralism, maintains harmony, and prevents the domination of majority groups over minorities. The principle of *maṣlaḥah* (public interest), which lies at the heart of *maqāṣid*, must be interpreted within a contextual and participatory framework of justice.

Accordingly, in a pluralistic society where communities differ in worldview, values, and religious beliefs enforcing a single moral or religious outlook derived from one tradition can be counterproductive, as it is not universally accepted. In such societies, the threats to peace and tolerance often arise from dogmatic and ideological perspectives that seek to standardize and impose their views, discredit differing opinions, and compel others to conform.

In his book *Islamic Legal Pluralism in a Multicultural Society: A Study of al-Sha‘rānī’s al-Mīzān al-Kubrā*, the author reflects on al-Sha‘rānī’s thought, arguing that Islamic legal thought must always remain open to diversity of opinion (*madhāhib*) both in substance and methodology. The implementation of *maqāṣid al-sharī‘ah* must also account for the importance of effective public institutions. This is essential for the future development of an inclusive legal system capable of achieving justice in multicultural societies through harmonization and legal synchronization.

D. CONCLUSION

Legal pluralism within the context of a multicultural society is an unavoidable reality that demands a legal response that is both flexible and inclusive. This study demonstrates that *maqāṣid al-sharī‘ah*, as the foundation and core of Islamic legal ethics and objectives, holds great potential to support the development of a legal system that upholds justice and human dignity—provided that it is applied contextually and remains open to social dynamics. Conversely, a rigid application of *maqāṣid* without consideration for evolving social contexts risks generating tension and fostering exclusivity in legal practices.

This study emphasizes that in a multicultural society governed by legal pluralism, justice cannot be effectively achieved through a single, exclusive legal approach. In this regard, *maqāṣid al-sharī‘ah*—as the essence of Islamic legal objectives—can serve as a conceptual framework that bridges Islamic values with diverse legal systems. Through a normative approach, it is found that when *maqāṣid* is interpreted inclusively and with awareness of the social context, it can make a substantive contribution to achieving justice, without negating the presence of other legal systems such as state law (*hukum positif*) and customary law (*hukum adat*). This is reflected in the five essential objectives of Islamic law, which also align with principles found in Indonesia’s positive law, as previously outlined:

1. *Ḥifẓ al-Dīn* (Protection of Religion): In a multicultural society, *maqāṣid* encourages the safeguarding of all religions and the freedom of belief. Islam does not enforce conversion (“*lā ikrāha fī al-dīn*”) and guarantees peaceful coexistence for adherents of other faiths.

2. *Hifẓ al-Nafs* (Protection of Life): The right to life and protection from violence are central principles. Every individual is entitled to physical security, regardless of cultural background or belief.
3. *Hifẓ al-‘Aql* (Protection of Intellect): Promotes freedom of thought, expression, and intercultural education. This supports an inclusive and respectful discourse within a plural society.
4. *Hifẓ al-Nasl* (Protection of Lineage): Ensures the safeguarding of family institutions and human dignity, based on universal values and without discrimination based on ethnicity or social group.
5. *Hifẓ al-Māl* (Protection of Property): Aims to establish an equitable economic system that protects property rights for all citizens without discrimination, while promoting fair access to resources.

Therefore, through such an approach, *maqāṣid al-sharī‘ah* not only aligns with the principles of legal pluralism but also functions as a strategic foundation for strengthening social justice in a diverse society.

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