

Integrating *Maqāṣid al-Sharī'ah* into the Legal Framework of Child Adoption in Indonesia

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Abstract

This study aims to analyse the alignment of child adoption regulations in the Child Protection Law and its implementing regulations with the principles of *maqāṣid al-sharī'ah*, particularly in relation to *ḥifẓ al-naḥs* (protection of life) and *ḥifẓ al-naṣl* (protection of lineage). The widespread practice of informal child adoption without court authorization – especially in rural areas – raises legal concerns regarding lineage, identity, and the rights of child protection from both positive legal and Islamic perspectives. This research employs a normative-juridical method with a statutory and Islamic jurisprudence approach, supported by secondary data obtained from a field study in Beji Village, Banyumas. The analysis uses al-Ghazālī's *maqāṣid al-sharī'ah* framework to assess the compatibility between existing regulations and Islamic values on child protection. The findings indicate that the national legal framework essentially accommodates the principles of safeguarding life and lineage; however, there remain implementation gaps due to limited legal literacy, the influence of local traditions, and economic factors. The study's original contribution lies in its proposal of a "structured *kafālah*" model as an integrative approach combining positive law and Islamic law, along with a recommendation for Islamic-based legal training for village officials and communities. The implication is that strengthening regulations and education that integrate *maqāṣid al-sharī'ah* into adoption practices is crucial to ensure lawful, just, and contextually relevant child protection in accordance with both legal and religious values.

INTRODUCTION

Child adoption is a vital form of social protection aimed at safeguarding the rights to life, development, and well-being of children who have lost or are deprived of care from their biological parents.¹ Children in such circumstances are highly vulnerable to violence, exploitation, and discrimination, all of which threaten their safety and future.² Consequently, child protection has become a central concern in various legal systems, including that of Indonesia. Law Number 35 of 2014 on Child Protection, which amends Law Number 23 of 2002, provides a robust legal foundation for ensuring comprehensive child protection.³ In the context of adoption, Government Regulation Number 54 of 2007 outlines the procedures, requirements, and mechanisms for adoption as a means to fulfill the rights of children that cannot be met by their biological parents.⁴ Its primary objective is to ensure legal certainty and guarantee the child's rights to identity, lineage, and welfare.⁵

However, in the context of Muslim communities, adoption is not only evaluated from the perspective of positive law but must also be analyzed through the lens of *maqāṣid al-sharī'ah*.⁶ One of its key objectives, *ḥifẓ al-nafs* (protection of life), emphasizes the importance of safeguarding the child's life and safety, while *ḥifẓ al-naṣl* (protection of lineage) stresses the necessity of maintaining clear lineage to avoid ambiguity in identity and legal status.⁷ In Islam, adoption must preserve the child's lineage and rights to prevent legal and social confusion that may harm the child.

This context underscores the need for a thorough examination of how the Child Protection Law and its implementing regulations accommodate the principle of *ḥifẓ al-nafs* in regulating adoption. Such a study is crucial to ensure that adoption practices do not merely fulfill administrative and legal requirements but are also aligned with Islamic values that uphold the sanctity of life and the rights of children.

¹ Kementerian Sosial Republik Indonesia, *Statistik Perlindungan Anak 2023* (Jakarta: Kemensos RI, 2023).

² Muhammad Afif Laurensius Arliman S, "Protection Of Children's Rights Of The Islamic And Constitutional Law Perspective Of The Republic Of Indonesia," *Internasional Conference on Humanity, Law and Sharia (ICHLaSh)*, no. 17 (2018): 135–40.

³ Republik Indonesia, "Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak," Jakarta: RI § (2014).

⁴ Republik Indonesia, "Peraturan Pemerintah Nomor 54 Tahun 2007 Tentang Pelaksanaan Pengangkatan Anak," Jakarta: RI § (2007).

⁵ Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh* (Damaskus: Dar Al Fikr, 2005).

⁶ Danil Putra Arisandy, Asmuni Asmuni, and Muhammad Syukri Albani Nasution, "The Majelis Ulama's Fatwa on Freedom of Expression On Social Media: The Perspective of Maqashid Sharia," *Al-Istinbath : Jurnal Hukum Islam* 7, no. 2 (2022): 467–86, <https://doi.org/10.29240/jhi.v7i2.5235>.

⁷ Jasser Auda, *Maqāṣid Al-Sharī'ah As Philosophy of Islamic Law* (Herndon & UK: International Institute of Islamic Thought, 2010).

Child protection constitutes a fundamental human right guaranteed by the state through Law Number 35 of 2014. One key aspect of this protection is the requirement that adoption be legalized through a court decision to ensure legal certainty and the full protection of the child's rights. Nevertheless, in practice, informal adoptions without court authorization persist in communities, including in Beji Village, Kedungbanteng, Banyumas, as documented in the research of Illin Putri Purbowo.⁸ The persistence of such practices raises significant legal and social issues. This discrepancy may undermine the principles of *ḥifẓ al-naṣl* and *ḥifẓ al-māl* (protection of wealth), potentially resulting in the loss of the child's administrative and legal entitlements. Therefore, an integrative approach is needed to ensure that adoption truly guarantees comprehensive protection from both the perspective of state law and Islamic values.⁹

This study specifically aims to analyze the extent to which the Child Protection Law and its implementing regulations are in accordance with the principles of *maqāṣid al-sharī'ah*, particularly regarding *ḥifẓ al-naṣl* and *ḥifẓ al-māl*, within the practice of child adoption in Indonesia.

LITERATURE REVIEW

1. Child Protection Law in Indonesia

Law Number 35 of 2014 on Child Protection, a revision of Law Number 23 of 2002, regulates the rights of children and the obligations of the state, government, family, and society in ensuring child protection.¹⁰ This law affirms that every child has the right to survival, growth and development, and protection from violence, discrimination, and harmful treatment (Law No. 35/2014, Article 4). In the context of adoption, Government Regulation Number 54 of 2007 outlines the procedures for adoption, including age requirements, parental or guardian consent, and adoption through court authorization.¹¹ The aim of adoption is to provide protection and a proper environment for children who cannot be cared for by their biological parents.¹²

⁸ Illin Putri Purbowo, "Pengangkatan Anak Tanpa Putusan Pengadilan Perspektif Maqashid Syariah (Studi Di Desa Beji, Kedungbanteng, Banyumas)" (Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto, 2024).

⁹ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought (IIIT), 2008).

¹⁰ Indonesia, Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak. Pasal 4.

¹¹ Indonesia, Peraturan Pemerintah Nomor 54 Tahun 2007 Tentang Pelaksanaan Pengangkatan Anak. Pasal 12-13

¹² Kamaruzzaman Bustamam-Ahmad, Mohamad Zikri bin Md Hadzir Mohamad, and Zikri bin Md Hadzir, "Prosedur Pengangkatan Anak Di Perak, Malaysia (Analisis Pengangkatan Anak Angkat Di Jabatan

2. Child Adoption in Islamic Law

In Islamic law, child adoption is known as *tabannī al-walad*, which differs in principle from adoption under positive law. Islam places great emphasis on preserving the child's lineage (*nasab*), and thus adoption must not alter the child's original lineage (Qur'an, al-Aḥzāb: 4-5). Adopted children do not inherit from their adoptive parents, and family relations remain based on biological lineage.¹³ However, Islam strongly encourages compassion, protection, and the fulfillment of the needs of adopted children, akin to biological children, as part of *ḥifẓ al-nafs* (protection of life) within the framework of *maqāṣid al-sharī'ah*.¹⁴

Maqāṣid al-sharī'ah refers to the objectives of Islamic law, which aim to secure public welfare and prevent harm. One of its primary goals is *ḥifẓ al-nafs*, the protection of human life and safety. In the context of children, *ḥifẓ al-nafs* demands protection of the child's right to life, security, and well-being to ensure optimal development. Adoption in line with *ḥifẓ al-nafs* should provide life protection and the fulfillment of the child's rights without erasing their lineage identity.¹⁵

Maqāṣid al-sharī'ah also includes the protection of wealth (*ḥifẓ al-māl*) as a core principle in regulating family and inheritance matters. Adoption without legal procedures can potentially disrupt these objectives, as it may lead to injustice and harm to both the adopted child and the biological or adoptive family. Therefore, adoption must follow proper legal procedures to preserve these *maqāṣid*.¹⁶

3. Studies on Adoption and Maqāṣid al-Sharī'ah-Based Protection

Previous research has emphasized the importance of adoption as a means of social protection aligned with both positive law and Islamic principles. Fauzi (2020) found that adoption carried out in accordance with legal procedures offers strong legal and social protection for the child. Nurhayati (2021) stressed the need to integrate *maqāṣid al-sharī'ah* principles in adoption practices to avoid conflicts between positive law and Islamic values, particularly in protecting *ḥifẓ al-nafs*.

Kebijakan Masyarakat Taiping),” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018): 51–72, <https://doi.org/10.22373/sjhk.v2i1.3104>.

¹³ Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh*, 305.

¹⁴ Auda, *Maqāṣid Al-Sharī'ah As Philosophy of Islamic Law*, 92.

¹⁵ Agus Sunaryo and Ahmad Hadidul Fahmi, “Evaluation of the Maqāṣid Al-Sharī'ah Liberalization: An Examination of the Notion of ‘Prioritizing Public Interest over Textual Evidence,’” *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 1–16, <https://doi.org/10.24090/mnh.v18i1.9886>.

¹⁶ Moh Zahid, “Sharia and Local Wisdom in Indonesia: A Criticism of Jāhiliyyah Law Misinterpretation,” *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (2022): 455–72, <https://doi.org/10.15408/ajis.v22i2.25100>.

Hartati and Luthfi (2023) explained that adoption without a court decision holds no legal consequence in terms of lineage, guardianship, *maḥram* relations, or inheritance under state law. However, under Islamic law, adoption (*kafālah*) is valid as an extended form of guardianship without altering lineage. Thus, adoption must be carried out through proper procedures to ensure both legal and shariah-based protection.¹⁷

Burhanuddin (2024) explored the concept of *kafālah* as a form of child protection that preserves lineage, with strong foundations in the Qur'an and Hadith. His study highlights the importance of legal and ethical understanding in adoption and the challenges of implementing child protection policies in countries governed by Islamic law, especially in the context of orphan and neglected child care.¹⁸

Research conducted in Beji Village found that informal adoptions without court decisions were motivated by humanitarian reasons, such as helping children from impoverished families or couples desiring children due to infertility. However, these practices were conducted without adhering to the legal procedures, often due to perceived complexity, lack of knowledge, or the desire for full rights over the child. Such conditions lead to negative legal consequences, including unclear legal status of the child and potential inheritance conflicts.¹⁹

Unlike previous studies that tend to focus on normative aspects or theoretical concepts in isolation, this article offers an academic contribution by integrating positive legal and *maqāṣid al-sharī'ah* approaches in an applied manner. This study not only examines normative compliance but also reveals the gap between regulations and community practices, along with their impact on child protection. With this approach, the research contributes to the development of a more just, comprehensive, and responsive adoption model that aligns with both shariah values and national law at the implementation level.

METHOD

This study employs a normative-juridical method using statutory and conceptual approaches. The purpose of this method is to examine and interpret the principles, concepts, and legal norms governing child adoption, particularly those regulated under Law Number 35 of 2014 on Child Protection and Government Regulation Number 54 of

¹⁷ Rina Budi Hartati and Muntaha Luthfi, "Proses Pengangkatan Anak (Adopsi) Dalam Perspektif Hukum Islam," *AL-BURHAN* 13, no. 1 (2023): 10–24.

¹⁸ Burhanuddin Burhanuddin, "Anak Angkat Dalam Perspektif Hukum Islam: Kebijakan Dan Tantangan," *SAMAWA: Jurnal Hukum Keluarga Islam* 4, no. 2 (2024): 35–51, <https://doi.org/10.53948/samawa.v4i2.150>.

¹⁹ Purbowo, "Pengangkatan Anak Tanpa Putusan Pengadilan Perspektif Maqashid Syariah (Studi Di Desa Beji, Kedungbanteng, Banyumas)."

2007. A document study approach is applied to analyze various sources of national law and Islamic legal literature relevant to child adoption, in order to gain a comprehensive understanding of the legal aspects and Shariah values involved.²⁰

The analytical framework of this research refers to the theory of *maqāṣid al-sharī'ah* as developed by al-Ghazālī and later expanded by Jasser Auda. Al-Ghazālī identified five primary objectives of Shariah – namely the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-naṣl*), and wealth (*ḥifẓ al-māl*) – which serve as foundational criteria for assessing the conformity of any policy or practice with Islamic values. This study focuses primarily on two dimensions: *ḥifẓ al-naḥs* and *ḥifẓ al-naṣl*. Meanwhile, Auda's systemic, dynamic, and contextual approach is also utilized to explore how the values of *maqāṣid al-sharī'ah* can be applied more responsively and adaptively within the Indonesian legal and social context.

To enhance the analysis, this research also incorporates secondary field data drawn from the undergraduate thesis of Illin Putri Purbowo (2023), which presents findings from fieldwork conducted in Beji Village, Kedungbanteng District, Banyumas Regency. The thesis employed a descriptive qualitative approach with data collection techniques involving interviews with community leaders, village officials, and families who adopted children without a court decision. This data is considered relevant and valid as it is based on a traceable and methodologically sound academic study. However, since this research does not involve primary data collection, the use of this material is limited to providing contextual illustration in support of the normative and conceptual analysis that forms the core of the study. By combining normative legal analysis, *maqāṣid al-sharī'ah*-based reasoning, and supporting secondary field data, this study aims to deliver an analysis that is not only legalistic in nature but also reflective of the socio-religious conditions of the community and relevant to the broader needs of comprehensive child protection.

RESULT AND DISCUSSION

1. Regulation of Child Adoption under the Child Protection Law

Law Number 35 of 2014, together with Government Regulation Number 54 of 2007, provides a clear legal framework regarding child adoption in Indonesia. Adoption is regulated as a measure to protect children who are unable to be cared for by their biological parents, with the objective of providing a safe, nurturing, and supportive environment that ensures the child's optimal growth and development.²¹ Requirements

²⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 2010).

²¹ Indonesia, Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak. Pasal 39.

such as the child's age, parental or guardian consent, and adoption procedures through the court are intended to guarantee legal protection and the fulfillment of the child's rights.

Article 39 of Law Number 35 of 2014 stipulates that adoption may only be carried out in the best interest of the child and must be based on local customs and applicable legal provisions. Furthermore, Article 40 obligates adoptive parents to inform the adopted child of their origins and biological parents. This provision aligns with Islamic principles that emphasize the importance of preserving the child's lineage (*nasab*).²²

However, in practice, various challenges persist. In many areas, particularly rural regions, communities often lack understanding of the legal procedures surrounding adoption and instead rely on informal practices rooted in custom or emotional needs. This situation not only creates administrative problems but also opens up potential conflicts between positive law and the religious values adhered to by the majority of the population, namely Islam.²³ For example, adoption that bypasses the court process may result in the ambiguity of the child's legal status, lineage, and inheritance rights—contradicting fundamental principles of Islamic family law.²⁴

In Beji Village, Kedungbanteng District, Banyumas Regency,²⁵ cases of informal adoptions have been identified, where adoption is conducted without following the legal procedures mandated by the state. One such case involved a married couple who, after years without children, adopted a child from a close relative of limited economic means, with the dual intention of assisting the biological family and fulfilling their desire for offspring.

The adoption was based solely on a verbal agreement between both parties, without any court involvement or official documentation. The child was raised as a biological child, carried the adoptive family's surname, and was never informed of their biological origins. In daily life, the child was treated as a full family member and even referred to as a "biological child" by the surrounding community. Problems arose when the child was to be enrolled in school and required an official birth certificate and family

²² Muhammad Ifzal Mehmood and Noraini Binti Md Hashim, "Marriage Without Wali'S Consent: A Paradigm Shift in the Family Structure of Pakistan," *IIUM Law Journal* 29, no. (S1) (2021): 135–51, [https://doi.org/10.31436/iiumlj.v29i\(s1\).639](https://doi.org/10.31436/iiumlj.v29i(s1).639).

²³ Sahin Husain, Nasir Purkon Ayoub, and Mukhammadolim Hassmann, "Legal Pluralism in Contemporary Societies: Dynamics of Interaction Between Islamic Law and Secular Civil Law," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 1, no. 1 (2024): 1–17, <https://doi.org/10.35335/cfb3wk76>.

²⁴ Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah* 6, no. 2 (2022): 514–36, <https://doi.org/10.22373/sjhk.v6i2.12441>.

²⁵ Purbowo, "Pengangkatan Anak Tanpa Putusan Pengadilan Perspektif Maqashid Syariah (Studi Di Desa Beji, Kedungbanteng, Banyumas)."

registration card. Due to the absence of a court ruling, the child's legal status was not recognized in civil registration documents, making the administrative process difficult. Moreover, in matters of inheritance, the child was at risk of receiving no inheritance from the adoptive parents, as there was no legal or biological basis for such a claim.²⁶ This case illustrates how humanitarian motives and social needs often override formal legal procedures. On the other hand, the lack of legal education and assistance causes communities to rely more on tradition and familial sentiment than on formal mechanisms. As a result, adopted children remain vulnerable to legal uncertainties, including those related to identity, inheritance, and other forms of social protection.

Therefore, it is necessary to integrate Shariah values – particularly the principles of *maqāṣid al-sharī'ah* – into adoption practices to align state law with the religious beliefs of the community. Such an approach is essential to avoid tensions between legal norms and socio-religious values and to ensure that adoption is not only legally valid but also fulfills justice and *maṣlahah* (public benefit) from the perspective of Islamic law.

2. Analysis of Child Adoption Based on the Principles of Maqāṣid al-Sharī'ah

The principle of *ḥifẓ al-naḥs* within the framework of *maqāṣid al-sharī'ah* emphasizes the importance of preserving and protecting human life as one of the core objectives of Islamic law.²⁷ In the context of child adoption, this principle calls for the protection of the adopted child's life, safety, and well-being. Children who have lost the care of their biological parents are in a physically and emotionally vulnerable state; therefore, lawful and responsible adoption represents a concrete implementation of *ḥifẓ al-naḥs*.²⁸

Islam does not prohibit child adoption; however, it establishes clear boundaries to prevent the obscuring of a child's identity. The lineage (*nasab*) of the adopted child must not be replaced with that of the adoptive parents, as affirmed in Qur'an Surah al-Aḥzāb (33:4–5). Nonetheless, Islam strongly encourages the provision of love, sustenance, education, and protection for adopted children in a manner equivalent to biological children.²⁹ Thus, the principle of *ḥifẓ al-naḥs* encompasses not only physical and biological protection but also addresses the emotional and spiritual needs of the child within a safe and nurturing environment.

²⁶ Muhammad Mutawali, "The Dialectics of Customary Law and Islamic Law: An Experience from Dou Donggo Customs of Bima, Indonesia," *Ahkam: Jurnal Ilmu Syariah* 21, no. 1 (2021): 45–64, <https://doi.org/10.15408/ajis.v21i1.19825>.

²⁷ Auda, *Maqāṣid Al-Sharī'ah As Philosophy of Islamic Law*. 98.

²⁸ Muhammad Mustaqim Roslan and Anwar Osman Zainuri, "Teori Hifz Al-Nafs Dalam Maqasid Syariah: Analisis Pendalilan: The Theory of Hifz Al-Nafs In Maqasid Syariah: Argumentation Analysis," *Journal of Muwafaqat* 6, no. 1 (2023): 1–13, <https://doi.org/10.53840/muwafaqat.v6i1.121>.

²⁹ Mohammad Hashim Kamali, "Actualisation (Taf'il) of the Higher Purposes (Maqasid) of Shari'ah," *Islam and Civilisational Renewal Journal* 8, no. 3 (July 2017): 295–321, <https://doi.org/10.52282/icr.v8i3.177>.

The Indonesian Child Protection Law fundamentally accommodates this principle. The requirement that adoption must follow legal procedures and must not erase the biological identity of the child aligns with the principle of *ḥifz al-nafs*.³⁰ However, at the community level, implementation still faces challenges, such as limited understanding of the importance of legal procedures and a lack of education on the Shariah-based values relevant to adoption. Therefore, systematic socialization and education efforts are necessary to ensure that adoption is carried out with care, compassion, and accountability in accordance with both legal and Islamic principles.

In addition to *ḥifz al-nafs*, the principle of *ḥifz al-naṣl* (preservation of lineage) is highly relevant in the issue of child adoption. *Ḥifz al-naṣl* aims to maintain clarity in genealogy, which is essential to both the social and legal order in Islam.³¹ Concealing a child's lineage—such as by assigning the adoptive parents' surname or withholding information about the child's origin—can result in complications related to identity, guardianship, *maḥram* relations, and inheritance. Therefore, lawful adoption under Shariah must maintain transparency regarding the child's origins and must not obscure their biological identity. In this regard, Article 40 of the Child Protection Law, which mandates the disclosure of a child's origins to the adopted child, constitutes an essential legal step in upholding *ḥifz al-naṣl*.³²

Furthermore, the principle of *ḥifz al-māl* (preservation of wealth) must be linked to economic considerations and inheritance rights in adoption. In Islamic law, adopted children do not automatically become legal heirs of their adoptive parents because their relationship is not based on lineage.³³ However, Islam allows financial provision through a bequest (up to one-third of the estate) or through gifts during the adoptive parents' lifetime to ensure the child's welfare. In this context, adoption conducted outside formal legal procedures can lead to confusion and conflict in inheritance matters, leaving adopted children vulnerable to discrimination and economic exclusion. Thus, adoption

³⁰ Fajri Matahati Muhammadin, Muhammad Awfa, and Kirana Anjani, "Applying Customary International Law In The Indonesian Human Rights Court: An Islamic Solution Of The Conundrum," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 24, no. 2 (2019): 209, <https://journals.iium.edu.my/shajarah/index.php/shaj/article/view/944>.

³¹ Abdul Mufid et al., "Unification of Global Hijri Calendar in Indonesia: An Effort to Preserve the Maqasid Sunnah of the Prophet (Saw)," *Journal of Islamic Thought and Civilization* 10, no. 2 (2020): 18–36, <https://doi.org/10.32350/jitc.102.02>.

³² Maftukhatusolikah Maftukhatusolikah and Muhammad Rusydi, "The Commodification of Religion in the Maqāṣid Al-Shariah Perspective," *Mazahib* 17, no. 2 (2018): 35–60, <https://doi.org/10.21093/mj.v17i2.1188>.

³³ Ansori, "Position of Fatwa in Islamic Law: The Effectiveness of MUI, NU, and Muhammadiyah Fatwas," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 53–71, <https://doi.org/10.18326/ijtihad.v22i1.53-71>.

carried out in accordance with state law and with due consideration to wealth protection mechanisms under Shariah becomes an integral part of fulfilling *ḥifẓ al-māl*.³⁴

In general, for adoption to align with the objectives of *maqāṣid al-sharī'ah*,³⁵ it must meet several key criteria:

- a. Provide physical and psychological protection for the child
- b. Guarantee the child's fundamental rights, including access to education and healthcare
- c. Preserve the child's identity and lineage
- d. Prevent exploitation and discriminatory treatment
- e. Ensure the child's optimal growth and development.

With a more comprehensive *maqāṣid al-sharī'ah* approach, child adoption becomes not only a social solution for the care of abandoned children but also an act of worship and moral responsibility. It is bound to the values of justice, transparency, and the holistic protection of children's rights.

3. Integration of Positive Law and Maqāṣid al-Sharī'ah: Challenges and Practical Solutions

One of the primary challenges in the implementation of child adoption in Indonesia is the harmonization between administrative-legal aspects of positive law and the principles of *maqāṣid al-sharī'ah*, which are rooted in values of justice, compassion, and the protection of human dignity.³⁶ Conceptual differences concerning the legal status of adopted children, lineage (*nasab*), and inheritance rights between Islamic law and positive law often lead to confusion among the public, village officials, and even legal practitioners.³⁷ This confusion contributes to legal uncertainty and suboptimal protection for adopted children.

A key factor contributing to this issue is the limited understanding among grassroots actors—particularly village officials and religious leaders—regarding lawful adoption procedures that align with Shariah principles. In practice, many adoptions occur without court authorization and are sometimes accompanied by the alteration of lineage and

³⁴ Zawawi et al., "Waqf and Sustainable Development Law: Models of Waqf Institutions in the Kingdom of Saudi Arabia and Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 93–114, <https://doi.org/10.18326/IJTIHAD.V23I1.93-114>.

³⁵ Muyasaroh and Herlina, "Toll Road Development and Environmental Change: A Maqashidi Study at Indralaya – Muara Enim," *Millah: Journal of Religious Studies* 21, no. 3 (2022): 821–62, <https://doi.org/10.20885/millah.vol21.iss3.art8>.

³⁶ Mahkamah Agung Republik Indonesia, "Putusan No. 123/Pdt.P/2022 Tentang Pengangkatan Anak" (2022).

³⁷ Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia."

concealment of the child's origins—acts that clearly violate the principles of *ḥifẓ al-naṣl* and *ḥifẓ al-māl*. This lack of compliance is not necessarily due to deliberate legal neglect but rather stems from restricted access to legal information and low levels of Shariah legal literacy.

As a solution, it is necessary to develop Islamic law-based legal training models targeted at village officials, civil registration officers, religious counselors, and community leaders. These training programs should not only cover procedural aspects of positive law (such as adoption regulations under Government Regulation No. 54 of 2007) but also incorporate the values of *maqāṣid al-sharī'ah*, particularly those related to *ḥifẓ al-naṣl*, *ḥifẓ al-naṣl*, and *ḥifẓ al-māl*. The training materials should be collaboratively designed by the Ministry of Social Affairs, the Ministry of Religious Affairs, and Islamic educational institutions (such as Islamic Higher Education Institutions or pesantren) to ensure cultural and legal relevance.

Furthermore, this study proposes the concept of a “structured *kafālah*” as an integrative alternative model that combines Shariah principles with positive law. *Kafālah* in Islam refers to a form of social guardianship that does not alter the child's lineage, yet it has not been formally institutionalized in national legal regulations. Through “structured *kafālah*,” child adoption can be formalized via village regulations or Shariah-based court rulings, incorporating the following components: official registration of the adopted child as a dependent (not as a biological child); mandatory disclosure of the child's biological lineage from an early age; regulation of the child's rights to sustenance, education, and social protection; and mechanisms for inheritance through *hibah* (gifts) or *waṣīyyah* (bequests) in accordance with Islamic and civil law.

This concept serves as a bridge between two legal systems—Shariah and national law. Practically, it ensures the protection of the child's life and well-being (*ḥifẓ al-naṣl*), safeguards the child's identity and biological ties (*ḥifẓ al-naṣl*), and prevents future conflicts regarding economic and inheritance rights (*ḥifẓ al-māl*). Through regulatory frameworks that are sensitive to religious values, the development of user-friendly technical guidelines, and inter-institutional training programs, the integration of positive law and *maqāṣid al-sharī'ah* principles in child adoption practices is not only possible but also essential for realizing a child protection system that is just, inclusive, and grounded in faith.

CONCLUSION

This study finds that the regulation of child adoption under Law No. 35 of 2014 and Government Regulation No. 54 of 2007 provides a strong and adequate legal foundation

for protecting children who have lost the care of their biological parents. This legal framework aligns with the principle of ḥifẓ al-naḥs in maqāṣid al-sharī'ah, which emphasizes the preservation of life and the well-being of the child without eliminating their biological identity. Evidence from normative analysis and secondary field data indicates that when adoption is carried out in accordance with legal procedures and Islamic values, child protection can be optimally realized. Therefore, the synergy between positive law and Shariah-based values has the potential to serve as a solid foundation for implementing just and beneficial adoption practices.

The primary strength of this study lies in its integrative approach, combining a normative-legal analysis of national law with the maqāṣid al-sharī'ah framework, particularly focusing on ḥifẓ al-naḥs, ḥifẓ al-naṣl, and ḥifẓ al-māl. This approach enables a holistic examination of the extent to which national regulations address the socio-religious challenges surrounding adoption practices. Moreover, the study presents applied recommendations, such as the concept of structured kafālah and Shariah-based legal training models for village officials, as concrete solutions for integrating national law and Islamic principles. These findings contribute to the broader discourse on the development of Islamic family law in the context of modern nation-states.

Nonetheless, this research has limitations, particularly in its reliance on secondary data from previous studies rather than primary field data collection. This constrains the ability to empirically assess variations in adoption practices across different regions or cultural settings. Furthermore, the maqāṣid al-sharī'ah framework employed is limited to three core dimensions and does not explore ḥifẓ al-'aql (protection of intellect) or ḥifẓ al-dīn (protection of religion). Future research is recommended to further investigate the potential integration of kafālah practices into the national legal system and to assess public responses to legal education efforts framed within Shariah values.

REFERENCES

- Al-Zuhayli, Wahbah. *Al-Fiqh Al-Islami Wa Adillatuh*. Damaskus: Dar Al Fikr, 2005.
- Ansori. "Position of Fatwa in Islamic Law: The Effectiveness of MUI, NU, and Muhammadiyah Fatwas." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 53–71. <https://doi.org/10.18326/ijtihad.v22i1.53-71>.
- Arisandy, Danil Putra, Asmuni Asmuni, and Muhammad Syukri Albani Nasution. "The Majelis Ulama's Fatwa on Freedom of Expression On Social Media: The Perspective of Maqashid Sharia." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 467–86. <https://doi.org/10.29240/jhi.v7i2.5235>.
- Auda, Jasser. *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

- International Institute of Islamic Thought (IIIT), 2008.
- — —. *Maqāṣid Al-Sharī'ah As Philosophy of Islamic Law*. Herndon & UK: International Institute of Islamic Thought, 2010.
- Bilalu, Naskur, Ridwan Jamal, Nurlaila Harun, and Syahrul Mubarak Subeitan. "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia." *Samarah* 6, no. 2 (2022): 514-36. <https://doi.org/10.22373/sjhg.v6i2.12441>.
- Burhanuddin, Burhanuddin. "Anak Angkat Dalam Perspektif Hukum Islam: Kebijakan Dan Tantangan." *SAMAWA: Jurnal Hukum Keluarga Islam* 4, no. 2 (2024): 35-51. <https://doi.org/10.53948/samawa.v4i2.150>.
- Bustamam-Ahmad, Kamaruzzaman, Mohamad Zikri bin Md Hadzir Mohamad, and Zikri bin Md Hadzir. "Prosedur Pengangkatan Anak Di Perak, Malaysia (Analisis Pengangkatan Anak Angkat Di Jabatan Kebajikan Masyarakat Taiping)." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018): 51-72. <https://doi.org/10.22373/sjhg.v2i1.3104>.
- Hartati, Rina Budi, and Muntaha Luthfi. "Proses Pengangkatan Anak (Adopsi) Dalam Perspektif Hukum Islam." *AL-BURHAN* 13, no. 1 (2023): 10-24.
- Husain, Sahin, Nasir Purkon Ayoub, and Mukhammadolim Hassmann. "Legal Pluralism in Contemporary Societies: Dynamics of Interaction Between Islamic Law and Secular Civil Law." *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 1, no. 1 (2024): 1-17. <https://doi.org/10.35335/cfb3wk76>.
- Indonesia, Kementerian Sosial Republik. *Statistik Perlindungan Anak 2023*. Jakarta: Kemensos RI, 2023.
- Indonesia, Mahkamah Agung Republik. Putusan No. 123/Pdt.P/2022 tentang Pengangkatan Anak (2022).
- Indonesia, Republik. Peraturan Pemerintah Nomor 54 Tahun 2007 Tentang Pelaksanaan Pengangkatan Anak, Jakarta: RI § (2007).
- — —. Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak, Jakarta: RI § (2014).
- Kamali, Mohammad Hashim. "Actualisation (Taf'īl) of the Higher Purposes (Maqasid) of Shari'ah." *Islam and Civilisational Renewal Journal* 8, no. 3 (July 2017): 295-321. <https://doi.org/10.52282/icr.v8i3.177>.
- Laurensius Arliman S, Muhammad Afif. "Protection Of Children's Rights Of The Islamic And Constitutional Law Perspective Of The Republic Of Indonesia." *Internasional Conference on Humanity, Law and Sharia (ICHLaSh)*, no. 17 (2018): 135-40.
- Maftukhatusolikhah, Maftukhatusolikhah, and Muhammad Rusydi. "The Commodification of Religion in the Maqāṣid Al-Shariah Perspective." *Mazahib* 17, no. 2 (2018): 35-60. <https://doi.org/10.21093/mj.v17i2.1188>.

- Mufid, Abdul, Ahmad Zaiyadi, Habsatun Nabawiyah, and Muhammad Iqbal Fasa. "Unification of Global Hijri Calendar in Indonesia: An Effort to Preserve the Maqasid Sunnah of the Prophet (Saw)." *Journal of Islamic Thought and Civilization* 10, no. 2 (2020): 18–36. <https://doi.org/10.32350/jitc.102.02>.
- Muhammad Ifzal Mehmood, and Noraini Binti Md Hashim. "Marriage Without Wali'S Consent: A Paradigm Shift in the Family Structure of Pakistan." *IJUM Law Journal* 29, no. (S1) (2021): 135–51. [https://doi.org/10.31436/iiumlj.v29i\(s1\).639](https://doi.org/10.31436/iiumlj.v29i(s1).639).
- Muhammadin, Fajri Matahati, Muhammad Awfa, and Kirana Anjani. "Applying Customary International Law In The Indonesian Human Rights Court: An Islamic Solution Of The Conundrum." *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 24, no. 2 (2019): 209. <https://journals.iium.edu.my/shajarah/index.php/shaj/article/view/944>.
- Mutawali, Muhammad. "The Dialectics of Customary Law and Islamic Law: An Experience from Dou Donggo Customs of Bima, Indonesia." *Ahkam: Jurnal Ilmu Syariah* 21, no. 1 (2021): 45–64. <https://doi.org/10.15408/ajis.v21i1.19825>.
- Muyasaroh, and Herlina. "Toll Road Development and Environmental Change: A Maqashidi Study at Indralaya – Muara Enim." *Millah: Journal of Religious Studies* 21, no. 3 (2022): 821–62. <https://doi.org/10.20885/millah.vol21.iss3.art8>.
- Purbowo, Illin Putri. "Pengangkatan Anak Tanpa Putusan Pengadilan Perspektif Maqashid Syariah (Studi Di Desa Beji, Kedungbanteng, Banyumas)." Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto, 2024.
- Roslan, Muhammad Mustaqim, and Anwar Osman Zainuri. "Teori Hifz Al-Nafs Dalam Maqasid Syariah: Analisis Pendalilan: The Theory of Hifz Al-Nafs In Maqasid Syariah: Argumentation Analysis." *Journal of Muwafaqat* 6, no. 1 (2023): 1–13. <https://doi.org/10.53840/muwafaqat.v6i1.121>.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: Rajawali Pers, 2010.
- Sunaryo, Agus, and Ahmad Hadidul Fahmi. "Evaluation of the Maqāṣid Al-Sharī'ah Liberalization: An Examination of the Notion of 'Prioritizing Public Interest over Textual Evidence.'" *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 1–16. <https://doi.org/10.24090/mnh.v18i1.9886>.
- Zahid, Moh. "Sharia and Local Wisdom in Indonesia: A Criticism of Jāhiliyyah Law Misinterpretation." *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (2022): 455–72. <https://doi.org/10.15408/ajis.v22i2.25100>.
- Zawawi, Yuli Yasin, Muhammad Irfan Helmy, Ali Ma'yuf, and Agus Arwani. "Waqf and Sustainable Development Law: Models of Waqf Institutions in the Kingdom of Saudi Arabia and Indonesia." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 93–114. <https://doi.org/10.18326/IJTIHAD.V23I1.93-114>.