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Law, Sharia, and the Crisis of Modernity: Reclaiming Substantive Justice through a Maqāṣid-Responsive Legal Pluralism Model in an Uncertain World

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Abstract

Modern legal positivism, built upon procedural rationality and the sovereign nation-state, increasingly fails to deliver substantive justice amid globalization, technological disruption, and rising social uncertainty, producing a widening gap between formal legality and public perceptions of fairness, a gap most visible where state law intersects with religiously grounded normative orders such as Sharia. This study addresses how Islamic legal principles, particularly maqāṣid al-sharīʿah, may be mobilized as a corrective framework for this crisis without collapsing into theocratic exclusivism or normative relativism. Employing normative doctrinal legal research combined with a socio-legal and comparative approach, the study examines Indonesian statutory instruments, including the Marriage Law, the Compilation of Islamic Law, the Sharia Banking Law, and Aceh's Jinayat Qanun, alongside comparative practice in Malaysia. The analysis yields a new conceptual model, Maqāṣid Responsive Legal Pluralism (MRLP), built on three pillars: layered authority, substantive evaluative criteria drawn from the five maqāṣid values, and responsive dialectics among state, religious, and global normative orders. Findings show that maqāṣid integration succeeds most where it operates substantively rather than symbolically, and where interpretation remains inclusive rather than sectarian, whereas formalized Sharia unaccompanied by maqāṣid-based evaluation risks collapsing into punitive legalism. The study concludes that MRLP offers a coherent middle path between secular positivism and theocratic formalism, contributing a maqāṣid-based theory of justice capable of genuine dialogue with contemporary Western theories of justice.

Keywords: *Crisis Of Legal Modernity In Globalization; Maqāṣid Al-Sharīʿah As Corrective Framework; Maqāṣid-Responsive Legal Pluralism Model; Substantive Justice In Islamic Law.*

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Introduction

The project of legal modernity emerged from the European Enlightenment, which placed reason, certainty, and state sovereignty at the foundation of the normative order. John Rawls, in A Theory of Justice, formulated justice as fairness arising from rational agreement behind a "veil of ignorance" (Rawls, 1999), while Jürgen Habermas argued that the legitimacy of modern law rests on inclusive, rational discursive procedure (Habermas, 1999). This model produced relatively stable legal orders throughout the nineteenth and twentieth centuries, yet it was built upon assumptions of a homogeneous society, a fully sovereign nation-state, and a secular rationality insulated from transcendent authority.

Since the late twentieth century, these assumptions have begun to fracture. Zygmunt Bauman describes this condition as "liquid modernity" (Bauman, 2000), An era in which institutions, identities, and norms no longer possess fixed form but continuously shift with the currents of globalization and individualization. This crisis becomes more complex still when nation-state law confronts plural societies possessing their own religious normative foundations, including Muslim communities that demand Sharia be treated as living law rather than a historical artifact.

Contemporary phenomena reveal at least three symptoms of crisis. First, growing public distrust of formal legal institutions across many countries, including Indonesia, is visible in the disparity between court decisions and the public's sense of justice, particularly in cases touching morality, family, and Islamic economics. Second, strengthening demands for the formalization of Sharia in certain regions, such as the implementation of the *Jinayat* Qanun in Aceh, demonstrate that a unified state law is no longer sufficient to accommodate society's normative plurality (Sumardi, 2021). Third, technological and global economic disruption, including Islamic fintech, artificial intelligence in adjudication, and the climate crisis, exceeds the regulatory capacity of conventional positive law and demands a more flexible yet normatively grounded ethical framework.

Scholarship on *maqāṣid al-sharīʿah* over the past decade has grown considerably, yet much of it remains polarized between two poles: normative-theological studies that examine *maqāṣid* doctrinally (Auda, 2008),and socio-legal studies that examine the implementation of Islamic law in specific fields such as family law or criminal law (Mufti, 2024). Rarely found are studies that explicitly bridge *maqāṣid al-sharīʿah* with contemporary legal pluralism theory as a response to the broader crisis of modern legal legitimacy, rather than merely to crises internal to Islamic law. Munir and Nadeem even observe that *maqāṣid* is often reduced to a tool of policy legitimation without a robust methodology for engaging non-Islamic legal theory (Munir and Nadeem, 2023). This is the gap the present study seeks to fill.

Recent literature reveals three currents of thought. Almarakiby and Eriouiche (2025) document how contemporary *maqāṣid* discourse has undergone a "fluidization", shifting from a rigid doctrinal framework toward interpretations more adaptive to modern values, though this also raises the risk of political instrumentalization. Shukri and Azalan (2023) demonstrate the application of *maqāṣid* in multicultural Malaysia as an instrument for strengthening interethnic institutions, while Umami and Ghofur (2022) affirm the alignment between *maqāṣid al-sharīʿah al-ʿāmmah* and the discourse of universal human rights. In general legal theory, post-2020 legal pluralism scholarship has begun to critique the assumption of state-centric law and to propose pluralism as a response to global normative complexity, though rarely linking it systematically to Sharia epistemology. This study positions itself at the intersection of these two currents.

The novelty of this study lies in formulating a "*Maqāṣid*-Responsive Legal Pluralism" (MRLP) model, a conceptual framework that integrates the five foundational values of *maqāṣid* al-*sharīʿah (ḥifẓ al-dīn, al-nafs, al-ʿaql, al-nas*l, and al-*māl*) as substantive evaluative criteria within the structure of modern legal pluralism, rather than merely as an internal hermeneutic reference for Islamic law. Unlike prior research that tends to discuss *maqāṣid* in internal-doctrinal terms or to discuss legal pluralism in secular-descriptive terms, this study builds operational criteria for assessing when and how Sharia norms may be integrated into state law without sacrificing either the state's constitutional authority or Sharia's normative authenticity. The model is further tested critically against concrete Indonesian regulation as a case study.

The urgency of this research lies in the pressing need for a legal framework capable of responding to global uncertainty without falling into either of two extremes: legal-formalistic fundamentalism that disregards social context, or postmodern relativism that erodes the normative authority of law itself. For Indonesia, the country with the world's largest Muslim population and a mixed legal system combining colonial law, customary law, and Islamic law, formulating a coherent epistemological framework is both a practical and academic necessity, particularly in the reform of family law, Islamic economic law, and criminal law.

Methods

This study employs normative-doctrinal legal research combined with a socio-legal and comparative approach. Primary data are drawn from relevant Indonesian legislation, including the 1945 Constitution, Law No. 48 of 2009 on Judicial Power, Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, Law No. 21 of 2008 on Sharia Banking, and Aceh Qanun No. 6 of 2014 on *Jinayat* Law, as well as classical *uṣūl al-fiqh* texts, particularly *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah by al-Shāṭibī* (1997). Secondary data are drawn from national and international academic journals published within the last five years (2021–2025), supplemented by relevant classical references. Analysis proceeds through a conceptual

approach, a statute approach, and a comparative approach, employing qualitative content analysis to identify patterns of *maqāṣid al-sharīʿah* integration within the regulations examined.

Discussion

Legal Modernity and the Crisis of Legitimacy: A Theoretical Review

Harold J. Berman demonstrates that the modern Western legal tradition emerged from the eleventh-century Gregorian Revolution, which separated legal authority (jurisdictio) from religious authority, laying the foundation for a legal system that was autonomous, systematic, and institutionally oriented (Berman, 1983). This separation was subsequently consolidated by nineteenth- and twentieth-century legal positivism, which held that the validity of law does not depend on its moral content but on the procedure by which it is enacted by a sovereign authority. Habermas sought to rescue the legitimacy of modern law through discourse theory, in which valid law is law that all citizens can accept through an inclusive process of rational deliberation (Habermas, 1996). Yet this project presupposes an epistemically homogeneous public sphere, an assumption increasingly difficult to sustain in plural societies.

This crisis of legitimacy is exacerbated by what Bauman calls the liquefaction of modern institutions (Bauman, 2000): nation-state boundaries weaken under global flows of capital and information; collective identities fragment; while law is required to respond to problems that exceed its territorial jurisdiction, from climate crisis to cross-border digital economies. In this context, Rawlsian procedural justice, however elegant philosophically, proves vulnerable to the critique that it disregards the plurality of conceptions of the good that exist in real societies, including religiously grounded conceptions of justice. Amartya Sen (2009) criticizes such institutional-transcendental approaches and proposes instead a comparative approach to justice grounded in concrete realization rather than ideal institutional design. Sen's critique opens methodological space for other ethical-normative frameworks, including *maqāṣid al-sharīʿah*, to enter the discourse of global justice theory.

Maqāṣid al-Sharīʿah as a Corrective Framework

Maqāṣid al-sharīʿah, as formulated by al-*Shāṭibī* (1997), holds that the entirety of Sharia's provisions is fundamentally oriented toward the realization of human welfare (*maṣlaḥah*) through the protection of five essential needs (al-*ḍarūriyyāt* al-*khams*): religion (*dīn*), life (*nafs*), intellect (*ʿaql*), lineage (*nasl*), and property (*māl*). Wael Hallaq (1997) demonstrates that classical *uṣūl* al-*fiqh* in fact developed a far more dynamic methodology of legal reasoning than early legal orientalism assumed, including mechanisms of ijtihad and *qiyās* that enabled Islamic law to respond to social change. Jasser Auda (2008) extends this framework through a systems approach, positioning *maqāṣid* not as a closed list of five values but as a holistic mode of thought

open to contemporary values such as justice, freedom, and human rights. Kamali (2019) affirms that *maqāṣid* functions as an "ethical filter" that ensures the application of formal law (*fiqh*) remains oriented toward its substantive purpose rather than mere textual compliance.

This framework offers a middle path between two extremes that have long dominated law-religion discourse: rigid legal-formalistic textualism on one side, and a secularism that entirely dismisses religious normative authority on the other. Umami and Ghofur (2022) show a profound alignment between *maqāṣid al-sharīʿah al-ʿāmmah* and the discourse of universal human rights, particularly regarding the protection of human dignity (*karāmah insāniyyah*), while Al-Khatib (2019) argues that contemporary ijtihad in fact demands heightened ethical awareness rather than the abandonment of textual authority. This argument is essential in rebutting the concern that integrating *maqāṣid* into modern law would reduce Sharia to a mere post-hoc justification for secular policy, a concern critically raised by Munir and Nadeem (2023).

Maqāṣid-Responsive Legal Pluralism: A Proposed Model

Building on this synthesis, this study formulates a *Maqāṣid*-Responsive Legal Pluralism (MRLP) model consisting of three pillars. First, layered authority: the state retains supreme constitutional authority (grundnorm) as the guarantor of legal certainty and citizens' basic rights, while Sharia norms are granted space as a source of substantive law within domains historically and sociologically constituting the autonomous purview of Muslim communities, such as family law and Islamic economics. Second, substantive evaluative criteria: every norm, whether originating from state law or Sharia, is evaluated according to the extent to which it realizes the five *maqāṣid* values, rather than solely according to its formal origin. This criterion enables critical examination of Sharia norms that claim authority yet substantively undermine *maṣlaḥah*, for instance, legal practices that neglect the protection of life or women's dignity. Third, responsive dialectics: the model is dynamic, allowing continuous negotiation among state authority, religious authority, and the demands of global justice through both formal institutional mechanisms (legislation, jurisprudence, fatwa) and informal ones (public discourse, social movements).

This model differs methodologically from descriptive legal pluralism, which merely records the coexistence of various normative orders within society (Tajdin, 2020). MRLP is prescriptive-evaluative: it does not merely acknowledge legal plurality but supplies substantive criteria, *maqāṣid*, for assessing the justice quality of that plurality. The model thus bridges the gap between positivist approaches that stop at formal validity and natural-theological approaches that tend to claim absolute authority without argumentative accountability.

Regulatory Analysis: Indonesia and Comparative Perspectives

Indonesia provides a rich empirical laboratory for testing the MRLP model. The Compilation of Islamic Law (KHI), introduced through Presidential Instruction No. 1 of 1991, implicitly applies *maqāṣid* reasoning in family law regulation, for example in provisions preventing child marriage as revised through Law No. 16 of 2019, which is substantively oriented toward the protection of life (*ḥifẓ al-nafs*) and lineage (*ḥifẓ al-nasl*) of the younger generation, even though formally framed as demographic and reproductive health policy. Likewise, the regulatory architecture of Sharia banking under Law No. 21 of 2008 reflects an effort to translate the prohibitions of *riba* and *gharar* into a modern economic legal framework that remains compatible with the global financial system, a concrete example of how layered authority (state–Sharia) can operate synergistically.

By contrast, the implementation of the *Jinayat* Qanun in Aceh reveals more complex tension. Sumardi, Lukito, and Ichwan (2021) show that the interlegality between Islamic criminal law, customary law, and national law in Aceh often produces problematic jurisdictional overlap, particularly when formal *ta'zir* punishment is not balanced with adequate *maqāṣid*-based reasoning regarding the principle of restorative justice. *Sodiqin* (2021) offers an Islamic restorative justice model as a way forward, arguing that the legal, moral, and spiritual dialectics of the Islamic criminal justice system are fundamentally oriented toward restoration (*iṣlāḥ*) rather than mere retribution. Comparison with Malaysia further enriches the analysis: Shukri and Azalan (2023) show that *maqāṣid's* application in multicultural Malaysia successfully strengthened interethnic institutions precisely because the *maqāṣid* framework was applied inclusively rather than exclusively-sectarian, an important lesson for the Indonesian context, which is likewise ethnically and religiously plural.

Critique and Challenges

The MRLP model is not without challenges. First, the risk of political instrumentalization remains real: as Almarakiby and Eriouiche (2025) caution, the interpretive flexibility of *maqāṣid* can be exploited by political power to legitimize particular policies without adequate methodological accountability. Second, epistemological challenges arise from conservative circles that reject the use of *maqāṣid* as an evaluative framework, viewing it as opening space for compromising the authenticity of Islamic teaching. Third, from a constitutional law perspective, integrating Sharia norms into a plural-secular state legal order risks raising constitutional issues concerning citizens' equality before the law, particularly for non-Muslim citizens. The MRLP model responds to this challenge through its layered-authority pillar, which limits the scope of Sharia norms to domains already constitutionally and sociologically agreed upon as the autonomous purview of religious communities, while still affirming the constitution's supremacy as the highest legal umbrella.

Conclusion

The crisis of legal modernity, marked by weakening procedural legitimacy, the fragmentation of nation-state authority, and rising social-global uncertainty, demands a new epistemological framework capable of linking formal legal certainty with substantive justice. This study concludes that *maqāṣid* al-*sharīʿah*, oriented toward the protection of religion, life, intellect, lineage, and property, can be positioned as a coherent corrective framework for this crisis without sacrificing either the state's constitutional authority or Sharia's normative authenticity. The *Maqāṣid*-Responsive Legal Pluralism (MRLP) model formulated in this study, with its three pillars of layered authority, substantive evaluative criteria, and responsive dialectics, offers a new theoretical contribution to contemporary Islamic legal philosophy while providing a practical basis for regulatory reform in Indonesia and other Muslim jurisdictions. Further research is recommended to test this model empirically through case studies of court decisions and public perceptions of legal justice across regions, in order to strengthen the external validity of the proposed model.

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