

Marriage Law Reform in Indonesia A *Maqasid al-usrah* Perspective on Legal Adaptation

Busriyanti¹, Pujiono², Mursalim³, Umar Chamdan⁴

Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, Indonesia^{1,2,3}

University of Vienna, Austria⁴

Corresponding Author : busriyanti@uinkhas.ac.id

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Abstract

This study explores the reform of Indonesian marriage law through the lens of *maqasid al-usrah*, the family-centered objectives within Islamic legal theory. It critically assesses whether key legal reforms such as marriage registration, minimum age requirements, regulation of divorce, and prenuptial asset arrangements align with the ethical aims of Islamic family law, including the protection of lineage, dignity, justice, and family welfare. Employing a qualitative library research method, the paper draws on classical Islamic jurisprudence, statutory legal documents, court practices, and the analytical framework of Jamaluddin al-Athiyya. It finds that while Indonesian legislation increasingly incorporates *maslahah* (public benefit) and *maqasid* reasoning to justify reforms, the implementation often falls short due to bureaucratic barriers, legal pluralism, and social inequality. For instance, minimum age laws are undermined by widespread judicial dispensations, and formal protections for women are diluted by enduring patriarchal norms and unequal access to justice. The study argues that *maqasid al-usrah* has been invoked more as a justificatory narrative than as a fully operational legal method. It concludes that meaningful application of *maqasid* requires not only legal reform but also structural, procedural, and cultural

transformation to ensure that laws genuinely promote justice, protect the vulnerable, and reflect the dynamic needs of Indonesian Muslim society. This research contributes to the growing discourse on *maqasid*-based legal reform and offers a practical framework for evaluating future policy developments in Islamic family law.

Keywords: *Maqasid Al-Usrah*, Marriage Law, Reform

Introduction

Marriage, as both a legal and spiritual institution, occupies a pivotal place in the social and religious life of Indonesian Muslims. It is not merely a means to legalize the relationship between men and women but is considered a sacred covenant (*mithaq ghalizh*) that reflects divine command and spiritual responsibility. In Islamic theology, marriage is a form of worship and a social contract aimed at preserving lineage, promoting emotional harmony, and ensuring the welfare of society. These values are deeply rooted in the religious worldview of Indonesian Muslim communities, which continue to shape the discourse and practices surrounding family law.

However, the regulation of marriage in Indonesia is not solely guided by religious doctrine. Since the early post-independence period, the Indonesian state has taken an active role in institutionalizing marriage law through national legislation. The enactment of Law No. 1 of 1974 on Marriage was a historic turning point. It represented a formal effort to unify diverse legal practices under a single framework applicable to all Indonesian citizens, regardless of religion or ethnicity.¹ The law aimed to eliminate harmful practices such as child marriage, arbitrary divorce, and unregulated polygamy issues that had long been criticized by reformist figures such as R.A. Kartini and Rohana Kudus for their negative impact on women and children.

The legal codification of Islamic family law progressed further with the issuance of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) in 1991. While not a formal statute, the KHI serves as a semi-authoritative guideline for religious courts in adjudicating matters such as marriage, divorce, inheritance, and endowments among Muslims.² Together, these texts form the legal backbone

¹ See Law No. 1 of 1974 on Marriage (Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan), State Gazette No. 1 of 1974.

² See Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), Presidential Instruction No. 1 of 1991.

of Indonesia's contemporary Islamic family law regime. Yet, despite their progressive intentions, many legal scholars and practitioners argue that these frameworks remain insufficient in addressing the growing complexity of modern family life particularly concerning the lived experiences of women and the legal challenges arising from rapid social transformation.

This legal inadequacy becomes more apparent when viewed in light of current statistical trends. According to Statistics Indonesia (BPS), Indonesia recorded that approximately 12.5 % of women aged 20 - 24 had been married before 18 in 2022, despite the legal minimum marriage age being raised to 19.³ The Religious Courts (Pengadilan Agama) handled approximately 516,344 divorce cases in 2022, with the number decreasing by 10.2 % to 463,654 cases in 2023, according to the Ministry of Religious Affairs - highlighting the scale of marital dissolution and raising concerns about systemic vulnerabilities in marriage.⁴ Additionally, reports from Komnas Perempuan indicate nearly 4,779 divorce filings related to domestic violence (KDRT) in 2022, underscoring systemic gendered inequities.⁵ Meanwhile, data from BKKBN and civil society sources show a persistent rise in unregistered (*nikah siri*) marriages and polygamy conducted outside the legal framework, often circumventing statutory requirements.⁶ These indicators point to a persistent gap between normative legal frameworks and on-the-ground social realities raising urgent questions about the efficacy of current regulatory mechanisms.

This growing discrepancy reflects a broader academic anxiety; that existing state-sanctioned regulations though inspired by Islamic principles often fail to accommodate the structural and socio-cultural complexities of contemporary Muslim family life in Indonesia. These anxieties; gaps between legal idealism and social reality has fueled scholarly interest in the application of *maqasid al-shariah* (the higher objectives of Islamic law) as an alternative paradigm for legal reform. Originating from classical Islamic jurisprudence, *maqasid al-shariah* refers

³ See BPS - Statistics Indonesia, *Proportion of Women Aged 20 - 24 Years Who Were Married or in a Union Before 18 Years Old by Province* (Badan Pusat Statistik Indonesia, 2024).

⁴ Kementerian Agama RI, *Angka Cerai Turun 10% Di 2023, Kemenag Dorong Peran KUA Jaga Ketahanan Keluarga*, 2024, <https://kemenag.go.id/nasional/angka-cerai-turun-10-di-2023-kemenag-dorong-peran-kua-jaga-ketahanan-keluarga-rgQBT>.

⁵ Komnas Perempuan, *Catatan Tabunan (CATAHU) 2023: Kekerasan Terhadap Perempuan Tahun 2022* (Komnas Perempuan, 2023).

⁶ See Girls Not Brides, "Child Marriage in Indonesia," 2016, <https://www.girlsnotbrides.org/documents/1080/UNICEF-Indonesia-Child-Marriage-Factsheet-1-1.pdf>.

to the overarching goals that Islamic law seeks to achieve, as follows the protection of religion (*din*), life (*nafs*), intellect (*'aql*), lineage (*nash*), and wealth (*mal*). Within this broad framework, a more specialized discourse has emerged around *maqasid al-usrah* the objectives specific to family law. These include safeguarding marital harmony, ensuring the protection of spouses and children, preserving lineage, promoting mutual rights and responsibilities, and enhancing family welfare as a unit of societal stability.

Maslahah (public benefit), a foundational concept within the *maqasid* tradition, further empowers jurists and legislators to prioritize societal welfare in formulating legal norms, even if doing so requires reinterpretation or departure from classical *fiqh* positions. This principle has proven particularly relevant in addressing contemporary challenges in Islamic family law. For example, age restrictions for marriage, mandatory registration, court-sanctioned divorce, and prenuptial financial arrangements are all relatively modern provisions that were not strictly regulated in classical jurisprudence but are justified in Indonesia based on *maslahah* reasoning.

Scholars such as Suadi⁷, Mukhlis⁸, Yunanto⁹, and Bunyamin¹⁰ have traced the historical development of marriage law in Indonesia and acknowledged the influence of *maslahah* in shaping legal outcomes. However, much of this literature remains primarily descriptive, focusing on institutional shifts or doctrinal analysis without offering a critical evaluation of whether these reforms truly embody the *maqasid al-usrah* in practice. Moreover, case-specific studies on the application of *maqasid* principles such as those by Nurcholis¹¹, Sifa¹², and Binarsa & Nasution¹³

⁷ Ahmad Suadi, "Perkembangan Hukum Perdata Islam Di Indonesia (Aspek Perkawinan Dan Kewarisan)," *Jurnal Yuridis* 2, no. 1 (2015): 15, <https://doi.org/10.35586/.v2i1.155>.

⁸ Mukhlis, "Pembaharuan Hukum Perkawinan Di Indonesia," *Adliya: Jurnal Hukum Dan Kemasyarakatan* 11, no. 1 (2019): 59, <http://dx.doi.org/10.15575/adliya.v11i1.4852>.

⁹ Yunanto, "Pembaharuan Hukum Perkawinan Indonesia," *Diponegoro Private Law Review* 2, no. 2 (2018): 262, <https://ejournal2.undip.ac.id/index.php/dplr/article/view/3828>.

¹⁰ Mahmudin Bunyamin, "Penerapan Konsep Maslahat Dalam Perkawinan Di Indonesia Dan Yordania" (Disertasi, Universitas Islam Negeri Raden Intan, 2019), <https://repository.radenintan.ac.id/5536/>.

¹¹ Moch. Nurcholis, "Penyamaan Batas Usia Perkawinan Pria Dan Wanita Perspektif Maqasid Al-Usrah (Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017)," *Mahakim: Journal of Islamic Family Law* 3, no. 1 (2019): 5, <http://dx.doi.org/10.30762/mh.v3i1.1328>.

¹² Melyana Sifa, "Perspektif Maqasid al Usroh Terhadap Praktik Poligami Di Bulak Banteng Wetan Kecamatan Kenjeran Surabaya" (Skripsi, Universitas Islam Negeri Sunan Ampel, 2019), 54, <http://digilib.uinsa.ac.id/35003/>.

¹³ Binarsa and Khoiruddin Nasution, "Penerapan Kompilasi Hukum Islam Pasal 53 Tentang Kawin Hamil Dan Tajdid Al-Nikah Di Kecamatan Mlati Dalam Tinjauan Maqasid

offer insightful snapshots but fall short of articulating a comprehensive framework for assessing the alignment between Islamic legal objectives and state-enforced regulations.

This paper seeks to address this scholarly gap by systematically analyzing how *maqasid al-usrah* principles have been interpreted, integrated, and sometimes contested in the formulation and implementation of Indonesian marriage law. Rather than treating *maqasid* and *maslahah* as theoretical ideals or rhetorical justifications, this study positions them as practical analytical tools to evaluate specific legal reforms. Key areas of focus include: (1) the legal requirement of marriage registration, (2) the equalization and enforcement of minimum marriage age, (3) the role of prenuptial agreements in asset management and gender equity, and (4) the institutionalization of divorce through religious courts.

By evaluating these provisions through the lens of *maqasid al-usrah*, this study investigates the extent to which Indonesian marriage law has succeeded in protecting family integrity, promoting justice, and accommodating modern societal needs. It further examines whether these reforms represent a coherent application of Islamic legal objectives or whether they reflect a pragmatic compromise between religious norms and legislative policy. In doing so, the paper not only contributes to the growing discourse on *maqasid*-based legal reform but also aims to inform future policy and jurisprudential development in the field of family law.

Methodologically, this study adopts a qualitative library research approach, drawing from classical Islamic texts, statutory legal materials, court decisions, and scholarly commentaries. Special attention is given to the framework developed by Jamaluddin al-Athiyya, whose elaboration of *maqasid al-usrah* provides a structured basis for evaluating legal norms in family matters. Jamaluddin al-Athiyya's formulation of *maqasid al-usrah* offers a specialized ethical framework within the broader *maqasid al-shari'ah* paradigm, emphasizing the family not just as a social unit but as a central axis of legal and moral concern in Islamic jurisprudence. He outlines seven key objectives: regulating gender relations to ensure fairness between spouses; preserving offspring and protecting children's rights through legal clarity and secure family formation; realizing the Qur'anic ideals of tranquility, love, and mercy within marital life; maintaining clear lineage through official documentation and registration; integrating religious

values in family life while respecting individual freedoms; defining family roles and responsibilities to promote order and justice; and managing the family's economic obligations to ensure financial fairness through enforceable rights to *mahar*, *nafkah*, and inheritance.

Unlike the classical *maqasid* which tend to be general, al-Athiyya's formulation addresses the concrete legal, social, and ethical challenges facing modern Muslim families. His approach insists that the true success of legal reform lies not in the formal adoption of rules but in achieving outcomes that uphold dignity (*'ird*), lineage (*nash*), and welfare (*maslahah*), especially for women and children. In the Indonesian context, this framework provides a critical evaluative lens to examine whether marriage law reforms such as minimum age laws, marriage registration, and divorce procedures not only reflect Islamic values rhetorically but also substantively fulfill the ethical goals envisioned by *maqasid al-usrah*. This integrative methodology aims to offer both a normative and critical assessment of how well Indonesian marriage law aligns with the ethical and functional aspirations of Islamic legal philosophy.

Discussion

This section presents a critical evaluation of the reform of Indonesian marriage law through the lens of *maqasid al-usrah*, a framework derived from the higher objectives of Islamic law (*maqasid al-shari'ah*) with a specific focus on family welfare. The discussion is structured into three interrelated parts. First, it outlines the development of Islamic marriage law in Indonesia, tracing its historical, political, and socio-cultural trajectory to understand how reform efforts have emerged in response to shifting societal needs. Second, it introduces *maqasid al-usrah* as a conceptual and methodological approach, particularly through the framework developed by Jamaluddin al-Athiyya, and explains how this framework can serve as a critical lens for evaluating the normative goals of family law. Third, it offers a more applied analysis by examining the implementation of *maqasid al-usrah* in key areas of Indonesian marriage law, assessing the extent to which these legal reforms fulfill their ethical and protective aims in practice. Each part builds upon the previous to provide a comprehensive and normative assessment of Indonesia's marriage law in light of Islamic legal philosophy and contemporary family realities.

1. The Development of Marriage Law for Muslims in Indonesia

The development of marriage law in Indonesia must be understood within the broader context of social change, where law evolves in response to shifting social, cultural, and political dynamics. Classical sociologists like Max Weber and Emile Durkheim have argued that law reflects the solidarity and values of the society in which it develops. Such theories are not merely abstract observations but provide a useful lens for understanding why Indonesian marriage law has continually been the subject of reform: to maintain social cohesion in a rapidly changing, pluralistic nation.¹⁴

However, these sociological insights must be critically integrated with the Islamic legal tradition rather than simply juxtaposed. In Islamic jurisprudence, change is also recognized as necessary because textual sources are finite, while societal problems are potentially infinite. As Ibn Rushd famously observed in *Bidayat al-Mujtahid*, the finite nature of the *nusus* (Qur'an and Hadith) means that they cannot directly address every new legal case or social development, thereby necessitating the use of *ijtihad* and broader legal reasoning.¹⁵ This acknowledgment provides the intellectual basis within Islamic law for adaptive reasoning through *ijtihad*, *maslahah*, and ultimately *maqasid al-shariah* including the specific objectives related to family welfare known as *maqasid al-usrah*.

This dynamic has been central to Indonesia's own legal reforms. The enactment of Law No. 1 of 1974 on Marriage was not merely an administrative unification of diverse marriage practices; it represented a deliberate state-led project to reform family law in line with principles of justice, order, and modernization. While Article 66 of the law formally abolished the fragmented colonial and religious ordinances it replaced, the process was politically contentious, as it had to balance religious authority, women's rights movements, and the state's nation-building agenda.¹⁶ The resulting compromise, while unifying in form, remained contested in content and practice.

Further developments, such as the 1991 Compilation of Islamic Law (KHI), reveal continued attempts to harmonize Islamic norms with national legal standards. Yet critiques of these efforts point out that they often remain

¹⁴ Max Weber, *Economy and Society* (University of California Press, 1978); Emile Durkheim, *The Division of Labor in Society*, trans. W. D. Halls (Free Press, 1984).

¹⁵ Ibn Rushd, *Bidayat Al-Mujtahid Wa Nihayat al-Muqtashid* (Dar al-Kutub al-'Arabiyyah, 2005).

¹⁶ See Indonesia, *Law No. 1 of 1974 on Marriage*, Art. 66.

normative and doctrinally rigid, struggling to respond to increasingly complex issues such as gender justice, child protection, and pluralism in belief and practice.

In this context, Islamic legal reform in Indonesia is often described through terms like *tajdid* (renewal), *ishlah* (improvement), and reform itself a borrowing from Western legal discourse. But these terms are not merely synonyms. *Tajdid* implies reviving the core spirit of Islamic teachings to meet contemporary needs, while *ishlah* focuses on correcting specific injustices or shortcomings. Reform in the Indonesian context signals both an adaptation to modern governance expectations and an effort to assert Islamic law's continued relevance. However, these concepts require careful application to avoid superficial or purely formalistic changes.

Scholar Tahir Mahmood has identified multiple dimensions of family law that have undergone reform in Muslim societies, such as regulating minimum marriage age, restricting polygamy, enforcing marriage registration, and ensuring rights after divorce.¹⁷ Rather than listing these reforms as discrete items, it is more instructive to see them as collective strategies to protect vulnerable family members and adapt classical *fiqh* to contemporary notions of justice. In Indonesia, such reforms have been justified through appeals to *maslahah*, yet the critical question remains: do these reforms genuinely achieve the welfare aims of *maqasid al-usrah*, or do they simply serve administrative efficiency while leaving deeper social inequalities intact.

This section therefore argues that understanding the development of marriage law in Indonesia requires moving beyond descriptive summaries toward a critical evaluation of how Islamic legal principles interact with societal change. It calls for examining not only the formal legal texts but also the interpretive strategies, institutional negotiations, and social pressures that shape the meaning and implementation of family law in practice.

2. Maqasid al-usrah as an Approach Method in Family Law Reform in Indonesia

The concept of *maqasid al-shariah*, or the higher objectives of Islamic law, is not simply a set of static categories but a dynamic framework for ethical legal reasoning. Classically, these objectives are grouped into *daruriyat* (essentials), *hajiyyat* (needs), and *tahsinīyat* (complementary values), with the five essential protections being religion (*din*), life (*nafs*), intellect (*‘aql*), lineage (*nasl*), and wealth

¹⁷ Tahir Mahmood, *Personal Law in Islamic Countries* (Academy of Law and Religion, 1987).

(*mal*).¹⁸ This framework exists precisely because Islamic jurisprudence recognizes the limits of textual literalism in addressing evolving social realities a point famously made by Ibn Rushd, who acknowledged the finite nature of scriptural texts against the infinite variety of human circumstances.¹⁹

Modern scholars like Ibn Ashur and Jamal al-Din Atiyyah have advanced this tradition by developing *maqasid al-usrah* as a specific lens for family law.²⁰ Far from being an abstract theory, *maqasid al-usrah* addresses practical legal challenges such as marriage age, divorce regulation, and gender equality issues central to Indonesia's own debates over marriage law reform. Yet while Indonesia has formally legislated some reforms for example, raising the minimum marriage age and mandating marriage registration the deeper question remains whether these laws effectively realize the *maqasid* of family welfare, dignity, and justice.

In Qur'anic vision, marriage is framed as a source of tranquility (*sakinah*), love (*mawaddah*), and mercy (*rahmah*): "And among His signs is that He created for you from yourselves mates that you may find tranquility in them, and He placed between you affection and mercy".²¹ Persistent practices of child marriage often justified by poverty or local custom undermine the *maqasid* aim of protecting *nasl* (lineage) and *'ird* (dignity). While statutory reforms now require a minimum age of 19, dispensation practices and weak enforcement reveal the limits of merely formal legal change. A genuine *maqasid*-oriented approach demands that law address not only age thresholds but also the social and economic drivers of early marriage.

At the same time, recent phenomena such as child-free marriages illustrate another dimension of tension within *hifz al-nasl*. While classical *fiqh* and *maqasid al-usrah* emphasize lineage preservation, many contemporary couples choose to prioritize happiness and the avoidance of family dysfunction over procreation. As Harahap et al. note, 'Couples' decisions to marry without having children are based on a desire to achieve happiness and well-being throughout their life with their partner, as well as avoiding the creation of a toxic family'.²² This

¹⁸ Ahmad al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (International Institute of Islamic Thought (IIIT), 2005).

¹⁹ Rushd, *Bidayat Al-Mujtabid Wa Nihayat al-Muqtashid*.

²⁰ Muhammad Tahir Ibn 'Ashur, *Maqasid Al-Shariah al-Islamiyyah* (Dar al-Nafais, 2001).

²¹ Qur'an 30:21.

²² Ikhwanuddin Harahap et al., "Understanding the Rise of Childfree Marriage: Avoiding Toxic Family, Being Happy and Well Without Children Despite Contradiction With Maqashid al-Sharia," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025), <https://doi.org/10.29240/jhi.v10i1.9984>.

development highlights the need for *maqasid* reasoning to engage not only with traditional concerns like child marriage but also with emerging marital trends that redefine the meaning of family welfare.

Similarly, the Prophet Muhammad emphasized the ethical foundation of marriage: “O young people, whoever among you has the ability, let him marry, for it helps lower the gaze and guard one’s modesty”.²³ This hadith is not simply a call to marry but to establish marriage as a means of personal and social moral protection. Yet issues like domestic violence, lack of spousal consent, and unregistered unions challenge whether Indonesian marriage law is adequately safeguarding these values. The Qur’anic command: ‘Live with them in kindness’²⁴ serves as a normative principle for laws addressing spousal abuse and gendered power imbalances, requiring legal systems to go beyond formal equality and ensure substantive protection.

Atiyah’s elaboration of *maqasid al-usrah* identifies seven core objectives that offer a critical framework for evaluating Indonesian marriage law reform. First, regulating gender relations is not merely about formal equality but ensuring a genuine balance of rights and obligations.²⁵ In Indonesia, this objective challenges the social norms that often undermine legal protections for women, such as the permissibility of polygamy under certain conditions or the lack of effective spousal consent mechanisms. Reform efforts must strengthen safeguards against exploitation and ensure that laws meaningfully protect women’s agency and dignity.

After that, the preservation of lineage and offspring (*hifz al-nasl*) demands a legal system that secures legitimate, protected, and planned family formation.²⁶ Unregistered marriages, still common in many regions, threaten this goal by denying children legal recognition and social security. Effective reform here requires not only mandatory marriage registration but also accessible, affordable procedures and community education to reduce barriers for marginalized populations. Then, realizing tranquility, love, and mercy within family life is not simply an aspirational ideal but a legal objective.²⁷ Indonesian marriage law must address the prevalence of domestic violence, enforce maintenance obligations,

²³ Al-Bukhari and Muslim (Muttafaq ‘Alaih) in Ibn Hajar Al-Asqalani, *Bulugh Al-Maram Min Adillati al-Ahkam* (Dar al-Falak, 1424).

²⁴ Qur’an 4:19.

²⁵ Jamaluddin `Atiyah, *Nahwa Tafil Maqasid Ayy-Syari’a* (Dar al-Fikr, 2003), 149.

²⁶ `Atiyah, *Nahwa Tafil Maqasid Ayy-Syari’a*, 149.

²⁷ `Atiyah, *Nahwa Tafil Maqasid Ayy-Syari’a*, 149.

and support accessible counseling services to ensure families fulfill the Qur'anic vision of *sakinah*, *mawaddah*, and *rahmah*.²⁸ Without structural support, these values risk being reduced to rhetoric with little impact on vulnerable families.

Next, preserving the clarity of lineage (*hifz al-nasab*) requires robust legal procedures for documentation and validation of marriages.²⁹ Unregistered unions and unclear parentage undermine children's rights to inheritance, social identity, and familial protection. Reforms such as *itsbat nikah* procedures in religious courts must be made more efficient, transparent, and equitable, particularly for rural and poor communities. Moreover, maintaining religious values in family life must balance encouraging religious commitment with protecting individual rights.³⁰ While the Prophet advised prioritizing religion when selecting a spouse Marry the religious one and you will prosper³¹ Indonesian law must also uphold constitutional guarantees of religious freedom and prevent coercive or discriminatory practices. This tension requires nuanced legal drafting and sensitive judicial interpretation.

Furthermore, regulating the institutional framework of the family means clearly defining and enforcing the rights and obligations of spouses, parents, and children.³² While Indonesian law already addresses many of these aspects, challenges remain in consistent enforcement, public awareness, and balancing kinship obligations with individual rights, especially in matters of custody (*hadhanah*), maintenance (*nafkah*), and inheritance. Finally, managing the economic responsibilities of the family is essential for its stability and welfare.³³ Economic hardship remains one of the leading causes of divorce in Indonesia. Islamic law's provisions on mahar, *nafkah*, waris, and waqf are designed to ensure fair distribution of wealth and protection for vulnerable members. However, legal reform must ensure that women have real, enforceable access to these rights, including clear procedures for claiming maintenance after divorce and equitable division of marital property.

²⁸ Qur'an 4:19.

²⁹ `Atiyyah, *Nahwa Taf'il Maqasid Ayy-Syari'a*, 149.

³⁰ `Atiyyah, *Nahwa Taf'il Maqasid Ayy-Syari'a*, 149.

³¹ Al-Bukhari and Muslim (Muttafaq 'Alaih) in Al-Asqalani, *Bulugh Al-Maram Min Adillati al-Abkam*.

³² `Atiyyah, *Nahwa Taf'il Maqasid Ayy-Syari'a*, 149.

³³ `Atiyyah, *Nahwa Taf'il Maqasid Ayy-Syari'a*, 149.

Table 1: Application of Atiyyah's *Maqasid al-usrah* Objectives to Indonesian Marriage Law Reform

No	Objective	Focus in Law	Key Issues in Indonesia
1	Gender Relations	Fair rights and duties for husband and wife	Prevent unfair polygamy, ensure women's consent and protection.
2	Preserving Offspring (<i>Nasĥ</i>)	Legal, secure family formation	Stop unregistered marriages; make registration easy and affordable.
3	Tranquility and Compassion	Peaceful, caring family life	Fight domestic violence; ensure support (<i>nafkah</i>); provide counseling.
4	Clear Lineage (<i>Nasab</i>)	Prove and record parentage	Improve marriage validation (<i>itsbat nikah</i>); protect children's rights.
5	Religious Values	Support faith while protecting freedom	Balance religious advice with freedom of religion and avoid coercion.
6	Family Structure	Define family roles and duties	Enforce parental and spousal responsibilities; ensure legal awareness.
7	Economic Responsibilities	Financial fairness and security	Guarantee mahar, nafkah, inheritance; make claiming rights easier.

While Islamic law establishes these goals normatively, realizing them in Indonesia's plural, diverse society requires critical legal strategies that respond to local contexts of poverty, education gaps, and gendered power dynamics. For example, reforms mandating registration cannot succeed without affordable, accessible civil registration systems, community education, and enforcement mechanisms resistant to corruption. Thus, *maqasid al-usrah* should not be reduced to moral rhetoric but operationalized as a guiding legal methodology one that measures the success of reform not by the mere existence of laws but by their capacity to protect dignity (*'ird*), lineage (*nasĥ*), and family welfare (*maslahah*). It is this critical, problem-focused application of *maqasid* that can transform Indonesia's marriage law from a set of formal rules into a genuine instrument for social justice and spiritual well-being.

3. The Implementation of Maqasid al-usrah in Marriage Law in Indonesia

The incorporation of *maqasid al-shari'ah* principles particularly *maqasid al-usrah*, or the objectives of Islamic family law has become an essential framework for assessing marriage law reform in Indonesia. Rather than treating these objectives as static doctrine, Indonesian lawmakers have engaged in an ongoing process of adapting classical Islamic norms to meet contemporary social needs, navigating tensions between textual traditions and modern legal realities.

At its core, *maqasid al-shari'ah* offers a purposive method of interpretation, one that prioritizes human welfare (*maslahah*), prevents harm (*mafsadah*), and balances competing social interests. In family law, *maqasid al-usrah* includes safeguarding lineage (*nasl*), protecting dignity (*'ird*), ensuring mutual rights and responsibilities between spouses, promoting the welfare of children, and maintaining social cohesion. This approach recognizes that legal rules cannot be applied mechanically across time and space but must instead respond to the lived realities of Muslim communities.

In Indonesia, the 1974 Marriage Law and the Compilation of Islamic Law (KHI) reflect this adaptive spirit by reformulating classical rules through the lens of *maslahah*.³⁴ For example, the legal requirement that marriages be registered and officiated by state-appointed marriage registrars marks a departure from traditional *fiqh*, where verbal consent and witnesses alone sufficed. This modern rule is justified on *maqasid* grounds as a means to protect *nasl* (clear lineage), *mal* (property rights through inheritance and division of joint assets), and *nafs* (personal security), preventing disputes and exploitation in an increasingly mobile, plural society.

Yet this move toward formal registration is not without tensions. While the goal of protecting lineage is clear, critics note that the practical barriers to registration such as cost, bureaucracy, or rural access can create new forms of vulnerability, especially for women and children in unregistered marriages. Thus, a *maqasid*-based analysis must also scrutinize implementation, asking whether the legal requirement genuinely fulfills its protective aim or unintentionally marginalizes those it seeks to protect.

Similarly, the requirement that divorce be finalized in a religious court represents a significant transformation from classical jurisprudence, where

³⁴ See Indonesia, *Law No. 1 of 1974 on Marriage (Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan)*, State Gazette No. 1 of 1974.

divorce was largely unilateral and private. This legal reform grounds itself in *maqasid al-usrah* by seeking to ensure procedural fairness, protect women's rights to maintenance and post-divorce support, and prevent arbitrary or impulsive divorces that threaten family stability. While such formalization advances *maslahah*, it also requires a well-functioning judiciary and accessible legal aid to avoid placing an undue burden on disadvantaged litigants.

Polygamy regulation provides another site of negotiation between textual tradition and *maqasid* principles. Classical *fiqh* permits polygamy with few procedural constraints, while Indonesian law imposes strict conditions: court permission, evidence of the wife's consent, and the husband's capacity to provide equally. These rules invoke *maslahah* to protect the rights and welfare of existing wives and children, acknowledging documented social harms from unregulated polygamy. However, debates remain about the effectiveness of these regulations and whether they fully realize the *maqasid* objective of justice (*'adl*) within family structures.

Contested areas such as interfaith marriage further reveal the complexity of applying *maslahah*. The KHI prohibits Muslim men from marrying non-Muslim women, reasoning that interfaith marriage risks harm to faith, family cohesion, and the religious upbringing of children. This justification rests on a *maslahah* calculus prioritizing communal and spiritual integrity. Yet scholars note that this position is debated across the Muslim world, with some jurists permitting certain interfaith unions under conditions. Indonesia's strict prohibition reflects a specific reading of *maqasid*, but it also illustrates how state law selectively negotiates between classical interpretations and modern social anxieties about religious pluralism.

Another important reform involves setting a minimum marriage age, currently 19 for both men and women, aimed at ensuring physical, mental, and economic maturity. Framed in *maqasid* terms, this regulation serves to protect *nasl*, *'aql*, and *nafs*, responding to modern social realities such as child marriage's documented harms. Nonetheless, widespread use of judicial dispensations raises questions about the law's real-world impact and the need for further community education and socio-economic support to change entrenched practices.

Finally, new legal provisions like allowing in vitro fertilization under strict conditions (as found in KHI Article 91) illustrate a modern application of *maslahah*, addressing the need to have offspring (*hifz al-nasl*) for couples facing infertility. This reflects a willingness to recognize technological developments

within a Sharia-compliant ethical framework, showing that *maqasid* reasoning can facilitate legal evolution to address contemporary human needs.

In all these examples, the Indonesian approach demonstrates that *maqasid al-usrah* is not merely invoked as abstract rhetoric but is actively used to justify legal adaptation and reform. However, the effectiveness of these reforms depends on their ability to deliver *maslahah* in practice not just in legislation. This requires ongoing evaluation of how laws are implemented, their social consequences, and their capacity to protect the rights and welfare of all family members, especially women and children who have often borne the costs of legal and social change.

Moreover, genuine *maqasid*-based reform demands transparency about the criteria used to determine *maslahah* and mafsadah. It must also remain open to contestation and debate, recognizing that the assessment of public benefit is not static but evolves alongside social knowledge, ethical reflection, and community needs. For Indonesia, this suggests that marriage law reform is not a one-time achievement but an ongoing process of interpreting, negotiating, and realizing the ethical objectives at the heart of Islamic family law.

Ultimately, unlike previous studies that are predominantly descriptive or doctrinal such as those by Suadi (2020), Mukhlis (2019), and Bunyamin (2021) this research adopts an evaluative approach by employing the *maqasid al-usrah* framework as a substantive analytical tool to assess Indonesia's marriage regulations. While case-specific studies by scholars like Nurcholis (2022) and Sifa (2021) focus on limited aspects such as child marriage dispensation or divorce justified through *maslahah*, this study broadens the scope by systematically analyzing four key areas of family law: marriage registration, minimum marriage age, prenuptial agreements, and court-based divorce. In doing so, it contributes to the existing body of literature by offering a more structured normative assessment based on *maqasid al-usrah* principles, and challenges the prevailing assumption that regulations are fully aligned with Islamic objectives simply because they invoke *maslahah*. The findings of this study suggest that while *maqasid*-oriented intentions are evident in the formulation of family law, the implementation often falls short of fulfilling the comprehensive protective goals envisioned by *maqasid al-usrah*.

Conclusion

This study has examined the development of marriage law reform in Indonesia through the lens of *maqasid al-usrah*, highlighting both its normative intentions and practical challenges. While it is clear that the principles of *maqasid*

al-shari'ah particularly the protection of lineage, dignity, and social welfare have shaped important legal reforms, such as mandatory marriage registration, minimum marriage age requirements, and judicial oversight of divorce, this application is far from uniform or uncontested.

A critical analysis reveals that these reforms often navigate complex social, political, and cultural tensions. The invocation of *maslahah* (public benefit) as a basis for reform demonstrates a clear move away from rigid classical *fiqh* toward more context-sensitive interpretations. Yet the effectiveness of these *maqasid*-based reforms depends not only on their legal texts but on their implementation, enforcement, and accessibility. Persistent challenges such as judicial dispensations that undermine age restrictions, bureaucratic barriers to marriage registration, and uneven access to courts suggest that the promise of *maslahah* is not always realized in practice.

Moreover, while Indonesian marriage law employs *maqasid* reasoning to protect family welfare, it must also grapple with potential internal contradictions and embedded patriarchal norms. For instance, while restrictions on polygamy aim to prevent harm to women and children, they still permit the practice under certain conditions, raising questions about the law's commitment to substantive gender equality. Similarly, while divorce regulation through the courts is intended to ensure fairness, social stigma and economic barriers continue to disadvantage women seeking dissolution of marriage.

Additionally, Indonesia's plural legal landscape where state law, Islamic law, and local adat interact complicates the realization of *maqasid al-usrah* goals. Conflicts between national regulations and local customary practices can undermine uniform protection of rights, creating legal fragmentation that disproportionately affects marginalized communities. Recognizing this complexity is essential for any serious effort to apply *maqasid* principles meaningfully in policy-making.

Therefore, rather than merely affirming that *maqasid al-usrah* has been "applied," this study argues that Indonesia's marriage law reforms reflect an ongoing, contested process of negotiation between classical doctrine, modern socio-political needs, and ethical imperatives of welfare and justice. This underscores the importance of understanding *maqasid* not as a fixed set of rules but as a methodological framework for continuous legal reasoning that prioritizes human well-being.

Future reform efforts should thus adopt a more critically self-aware *maqasid* approach one that actively interrogates whether laws truly reduce harm and deliver benefit in contemporary contexts. This would include addressing structural barriers to legal access, reevaluating gendered assumptions in family law, and ensuring that procedural reforms translate into substantive protections for women and children.

For future research, more in-depth empirical studies are needed to evaluate the effectiveness of these reforms at the level of judicial decisions and social outcomes, particularly in rural and marginalized communities. Comparative studies with other Muslim-majority jurisdictions that have also employed *maqasid* reasoning could offer valuable insights into best practices and pitfalls. Finally, the impact of rapid technological and social change including digitalization, migration, and shifting family structures deserves close attention to ensure that *maqasid*-oriented family law remains responsive, equitable, and relevant in the 21st century.

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