

Beyond Formal Legality: A Maqashid al-Shari‘ah Approach to Ethical Legitimacy in Electronic Consent across Notarial, Healthcare, and Child Protection Practices

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Abstract

The rapid expansion of digital technology has transformed consent practices across various sectors, including notarial services, healthcare, and child protection. While electronic consent mechanisms are increasingly recognized as legally valid, concerns remain regarding their ability to ensure meaningful autonomy, informed understanding, and protection of vulnerable individuals. This study aims to examine the ethical limitations of contemporary electronic consent regimes and to evaluate them through the normative framework of maqāṣid al-sharī‘ah. Employing doctrinal and comparative legal research, the study analyzes Indonesian digital legal regulations alongside selected international frameworks, including the General Data Protection Regulation (GDPR), the Children’s Online Privacy Protection Act (COPPA), and the United Kingdom’s Age Appropriate Design Code. The findings reveal that legally valid electronic consent often functions as procedural authorization rather than substantive ethical consent. In notarial services, consent mechanisms primarily verify identity without adequately ensuring voluntariness; in healthcare, digital consent may fail to secure meaningful patient comprehension; and in child protection, click-based consent frequently overlooks the limited capacity and vulnerability of minors. These findings

indicate a persistent gap between legal validity and ethical legitimacy in digital governance. The study concludes that maqāṣid al-shari‘ah provides a human-centered framework that reorients electronic consent from procedural compliance toward the protection of autonomy, dignity, welfare, and vulnerable users in digitally mediated environments.

Keywords: Electronic consent; digital governance; maqashid al-shari‘ah; ethical legitimacy; child protection; healthcare law

Introduction

The development of digital technology has brought significant changes to the operation of law, including the formation and verification of consent. Whereas consent was once synonymous with physical meetings, handwritten signatures, and direct personal verification, it is now increasingly expressed through clicks, electronic signatures, biometric systems, and digital platform-based authentication. Legally, these developments have been accommodated through the formal recognition of electronic documents and digital signatures. However, such advancements also raise an important academic concern that cannot be overlooked: whether technologically valid consent and automated procedures can genuinely be regarded as ethically legitimate and substantively fair.¹

The legal governance of electronic consent has evolved significantly across multiple jurisdictions, reflecting growing recognition of digital transactions, remote healthcare, and online participation. In Indonesia, the legal validity of electronic consent is supported through Law No. 11 of 2008 on Electronic Information and Transactions as amended by Law No. 1 of 2024, Government Regulation No. 71 of 2019 concerning the Operation of Electronic Systems and Transactions, and Law No. 27 of 2022 on Personal Data Protection. Internationally, comparable regulatory frameworks such as the European Union’s General Data Protection Regulation (GDPR), the United States’ Children’s Online Privacy Protection Act (COPPA), and the United Kingdom’s Age Appropriate Design Code have sought to regulate digital authorization and vulnerable-user protection. However, these frameworks primarily emphasize procedural legality and technical compliance, leaving unresolved ethical concerns regarding voluntariness, comprehension, and meaningful autonomy.

This anxiety becomes even more relevant when electronic consent is used in areas that touch on highly sensitive humanitarian dimensions, such as notary practices, health services, and child protection. In notary practice, digitization of deeds and remote authentication increase efficiency, but they may reduce the depth of verification of the parties' will. Interactions that previously allowed

¹ Afisa Afisa et al., “Analysis of the ITE Law on Digital Rights and Democratic Values in Indonesia,” *The Journal of Society and Media* 8, no. 2 (2024): 424–44, <https://doi.org/10.26740/jsm.v8n2.p424-444>.

notaries to read psychological situations, detect pressure, or ensure legal awareness are now being replaced by system-based identity verification. In healthcare, digital medical consent often takes the form of a standard electronic form that is legally compliant but may not be fully understood by the patient. Meanwhile, in the context of children, consent in the digital space often occurs through platform mechanisms that do not account for children's legal and cognitive limitations, leaving them in the most vulnerable position within the digital consent structure.² This phenomenon shows a shift in the meaning of consent: from a dialogical and protective process to an automated administrative action. Consent is no longer always understood as a guarantee of free will and complete understanding, but rather as proof of compliance with procedures. This is where the tension between formal legality and ethical legitimacy arises. Formal legality is oriented towards the fulfillment of procedural and technical requirements, while ethical legitimacy demands justice, protection of vulnerable parties, and prevention of harm. When consent is understood solely as a digital formality, its legal function as a protective instrument can be diminished.

Several studies over the last ten years have highlighted the issue of electronic consent, but they are still generally operating in separate spaces. Studies in digital law tend to emphasize technical validity, system security, and legal certainty in electronic authentication.³ The focus is on how digital identities are verified, and transactions are guaranteed to be legitimate. This study is important, but it views consent primarily as identity verification rather than as a process of interpreting will. Meanwhile, research in digital health ethics highlights the declining quality of informed consent in online medical practice.⁴ Click-based consent is often not accompanied by adequate communication, so patients agree to procedures without a sufficient understanding of the risks and alternatives.⁵ However, this discourse generally resides within the framework of general bioethics and has not been associated with broader legal purpose theory. On the other hand, studies on child protection in the digital space highlight the weak age verification, exploitation of children's data, and the inequality of the relationship between children and digital service providers. The approach is primarily based on children's rights but is rarely linked to a systemic, cross-sectoral legal and ethical

² Asriani Asriani et al., "Pembangunan Hukum Di Era Digital: Tantangan Dan Peluang Bagi Negara Dalam Menghadapi Transformasi Teknologi," *Jurnal Bisnis Mahasiswa* 5, no. 1 (2025): 164–74, <https://doi.org/10.60036/jbm.v5i1.324>.

³ Ratna Marselina Rajagukguk, "Hukum Dan Teknologi: Menghadapi Tantangan Hukum Di Era Digital," *Tugas Mahasiswa Hukum* 1, no. 1 (2023), <https://coursework.uma.ac.id/index.php/hukum/article/view/353>.

⁴ Caroline Brall et al., "Ethical Aspects of Digital Health from a Justice Point of View," *European Journal of Public Health* 29, no. Supplement_3 (2019): 18–22, <https://doi.org/10.1093/eurpub/ckz167>.

⁵ Pirma Ivan Ricky Manurung and Marice Simarmata, "Digitalisasi Layanan Kesehatan: Tantangan Etika Dan Keamanan Data Pasien," *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 2, no. 2 (2025): 263–73, <https://doi.org/10.62383/presidensial.v2i2.811>.

framework.⁶ From these three tendencies, it is clear that previous research remains sectoral and has not developed an integrated analytical framework. There has been no systematic study that assesses cross-field electronic consent using a holistic approach to legal objectives. This is the research gap that this article aims to bridge.

This study employs doctrinal and comparative legal research to examine the ethical legitimacy of electronic consent across digitally mediated legal and social sectors. A doctrinal approach is appropriate because the central issue concerns normative inconsistencies between formal legal validity and substantive ethical protection in digital consent governance. The comparative dimension enables analysis of Indonesian legal frameworks alongside selected international regulatory regimes governing digital consent and vulnerable-user protection.

The study examines Indonesian legal instruments including Law No. 11 of 2008 on Electronic Information and Transactions as amended by Law No. 1 of 2024, Government Regulation No. 71 of 2019, Law No. 27 of 2022 on Personal Data Protection, healthcare regulatory provisions concerning informed consent, and child protection legislation. Comparative analysis includes selected international frameworks such as the General Data Protection Regulation (GDPR), the Children’s Online Privacy Protection Act (COPPA), and the United Kingdom’s Age Appropriate Design Code. These materials are analyzed through qualitative legal interpretation and normative evaluation using *maqāṣid al-sharī‘ah* as the ethical interpretive framework, particularly regarding the protection of life, intellect, property, dignity, and vulnerable human interests.

Discussion

The research departs from the central question: *How can Maqāṣid al-Sharī‘ah build an ethical framework that transforms electronic consent from mere formal legality to ethical legitimacy in the practice of notary, health transactions, and child protection?* The results of the analysis show that the main problem with the electronic consent system does not lie in its illegality, but in reducing consent to a technical procedure that often ignores the dimension of substantive protection. Through the maqāṣid approach, consent is repositioned as a mechanism for protecting human dignity rather than merely an administrative instrument. The following findings and discussion are divided into four main sections.

⁶ Izzatun Khusnaini and Eny Nur Aisyah, “Regulasi Perlindungan Anak Di Ruang Digital Di Indonesia : Implementasi, Tantangan, Dan Peluang Implementasi,” *Pro Justicia: Jurnal Hukum Dan Sosial* 5, no. 02 (2025): 101–9, <https://doi.org/10.55380/projus.v5i02.1208>.

Formal Legality vs. Ethical Legitimacy in Electronic Consent

The development of the legal system in the digital era shows a strong tendency toward adjusting legal norms to advances in information technology.⁷ In the context of electronic consent, positive laws in various jurisdictions have moved quickly to recognize the validity of electronic signatures, digital documents, and online authentication mechanisms.⁸ Normatively, this recognition is a progressive step that supports the efficiency, accessibility, and modernization of legal and public services.⁹ However, behind these advances, the analysis of this study finds a narrowing of the meaning of consent that is quite fundamental: consent is increasingly understood as a technical event evidenced by a system, rather than as an ethical process that guarantees free will, understanding, and protection.¹⁰

A positive legal framework generally establishes three main pillars for the regulation of electronic consent: identification of the parties, integrity of the documents, and non-repudiation (the assurance that the approving party cannot deny its actions). These three aspects form the foundation of formal legality. Identity is verified through a digital certificate or a multi-layered authentication system; the document is kept intact through encryption or hashing; and consent trails are stored in system logs to ensure accountability. In this construction, consent is valid when the system can prove that a person with a particular identity performed an act of consent at a specific time with respect to a particular document.¹¹

From the perspective of legal certainty, this approach does provide stability. Disputes can be resolved by reviewing the system's track record, verifying transaction validity, and minimizing the risk of rejection. However, this study shows that an overly strong orientation toward the technical aspect has led to conceptual reduction: consent is treated as data rather than as a process of human will. Validity is measured by the system's ability to record an action, not by the quality of awareness and freedom behind it. In practice, the formal legality of

⁷ Lukman Santoso et al., "Halal Tourism Regulations in Indonesia: Trends and Dynamics in the Digital Era," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 73–94, <https://doi.org/10.18326/ijtihad.v22i1.73-94>.

⁸ Pauzi Muhammad et al., "Actualizing Islamic Economic Law in the Digital Era: A Study of the Application of Khiyar al-Majlis in Electronic Contracts," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 205–14, <https://doi.org/10.31958/juris.v23i2.11573>.

⁹ Indriana Indriana et al., "Interaction of Islamic Economics and Government Transformation Technology in Indonesian Muslim Society," *Jurnal Ilmiah Al-Syir'ab* 21, no. 2 (2023): 261–82, <https://doi.org/10.30984/jis.v21i2.2660>.

¹⁰ Asriani et al., "Pembangunan Hukum Di Era Digital."

¹¹ Prioni Rahmanda Saputri, "Perlindungan Privasi Digital Dalam Era Digital : Analisis UU No. 19 Tentang Perubahan UU No. 11 Tahun 2008 Pada Pemerintahan Joko Widodo," *Konsensus : Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunikasi* 2, no. 2 (2025): 112–22, <https://doi.org/10.62383/konsensus.v2i2.721>.

electronic consent is generally achieved through several standard mechanisms: digital identity verification, certified electronic signatures, system activity logs, and click-wrap (or browse-wrap) approval models. These four mechanisms make up the typical architecture of digital consent. A person is considered to have approved an action when the system records the "agree" click, the identity authentication is successful, and the document does not change after approval.¹²

However, the analysis shows that these indicators do not automatically guarantee the ethical quality of approval. Systems can ascertain *who* consents and *when* consent is given, but they cannot always be sure *whether* the individual understands the content of the consent, is free from pressure, is aware of risks, or is in an equal position. In other words, the system secures the procedural dimension, but it does not necessarily protect the substantive dimension. From a legal ethics perspective, there are at least four fundamental aspects that are often overlooked. First, understanding substance. Many digital approvals are presented in technical, long, and complex language, so they are realistically less likely to be read and understood thoroughly. Second, freedom from structural stress. In unbalanced relationships—for example, between patients and healthcare providers, or between users and digital platforms—consent is often given because there are no real alternatives. Third, risk awareness, where individuals may not fully understand the long-term consequences of the data or actions they approve of. Fourth, the protection of vulnerable parties, especially children whose legal capacity is not yet fully developed but who are still involved in the digital consent ecosystem.¹³

This is where the distinction between formal legality and ethical legitimacy becomes very clear. Formal legality focuses on compliance with procedures and technical standards. As long as the system complies with regulations, consent is considered valid. Ethical legitimacy, on the other hand, demands a deeper assessment: whether the consent truly reflects free will, adequate understanding, and protection against potential harm.¹⁴ Without this dimension, the law risks producing what can be termed "procedural justice without substantive justice." Administratively, everything seems right; However, morally and socially, the protection of human beings is not fully realized. Maqāṣid al-Sharī'ah's approach offers a different perspective in assessing this issue. Within the framework of maqāṣid, the law not only creates formal order but also safeguards the overall

¹² Setyo Utomo, "TANTANGAN HUKUM MODERN DI ERA DIGITAL," *JURNAL HUKUM MEDIA BHAKTI*, no. 0 (June 2017), <https://doi.org/10.32501/jhmb.v1i1.5>.

¹³ Jannati and Ruhly Kesuma Dinata, "Pengaruh Teknologi terhadap Perkembangan Hukum di Indonesia," *Arus Jurnal Sosial dan Humaniora* 5, no. 1 (2025): 630–35, <https://doi.org/10.57250/ajsh.v5i1.1093>.

¹⁴ Gregorius Widiartana and Sajjad Hussain, "Judicial Pardon in Contemporary Criminal Verdicts: Balancing Justice, Legal Certainty, and the Utility of Law," *NUSANTARA: Journal Of Law Studies* 4, no. 01 (2025): 1–11, <https://doi.org/10.5281/zenodo.17346796>.

welfare of humans. Every legal norm and mechanism must be judged on its ability to protect five main objectives: soul, intellect, heredity, property, and religion. With this approach, the question of consent does not stop at "whether it is procedurally legitimate," but evolves into "whether it protects human beings from harm and injustice."¹⁵

The results show that many electronic consent systems still fall short of the standards for protecting maqāṣid. In terms of protecting reason (ḥifẓ al-‘aql), the system rarely ensures that individuals truly understand the content of consent. In the aspect of life protection (ḥifẓ al-nafs), especially in healthcare, digital consent can obscure serious medical risks. Meanwhile, in the context of progeny protection (ḥifẓ al-nasl), children engage in digital agreements without a guarantee of proportionate protection. Although procedurally legitimate, the system has not fully fulfilled the purpose of substantive protection.

Maqāṣid al-Sharī'ah as an Ethical Framework for Digital Consent

The development of digital consent shows an important trend: the law is increasingly dependent on technological systems to determine the legitimacy of human actions.¹⁶ Clicks, e-signatures, biometric authentication, and system log records are now the primary indicators of consent.¹⁷ However, the study shows that these technical measures are not necessarily able to answer the more fundamental question, namely, whether consent actually protects humans from injustice and harm. It is in this context that Maqāṣid al-Sharī'ah's approach becomes relevant as an ethical framework capable of assessing the substantive quality of digital consent.

Maqāṣid al-Sharī'ah departs from the idea that the law is not revealed solely to regulate procedures, but to protect the benefit of man.¹⁸ The basic objectives of sharia the protection of soul, intellect, posterity, property, and religion constitute ethical parameters that go beyond formal legality.¹⁹ When this concept

¹⁵ Irfan Ridha et al., "ASPEK HUKUM PERLINDUNGAN KONSUMEN DIGITAL," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 3, no. 2 (2024), <https://doi.org/10.572349/civilia.v3i2.2427>.

¹⁶ Muhammad Khaeruddin Hamsin et al., "Sharia E-Wallet: The Issue of Sharia Compliance and Data Protection," *Al-Manabij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 53–68, <https://doi.org/10.24090/mnh.v17i1.7633>.

¹⁷ Swastati Gea et al., "Pemahaman Masyarakat Terhadap Tantangan Hukum Di Era Media Sosial Tentang Hak Digital Dan Kontroversi Privasi," *Jurnal Dunia Pendidikan* 5, no. 6 (2025): 2507–24, <https://doi.org/10.55081/jurdip.v5i6.4157>.

¹⁸ Muhammad Harfīn Zuhdi and Mohamad Abdun Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1818–39, <https://doi.org/10.22373/sjhk.v8i3.24918>.

¹⁹ Muhamad Zaenal Muttaqin et al., "Family Harmony in Contemporary Islamic Law: Ibn ‘Ashūr’s Maqāṣid Perspective on Marital Rights and Duties," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 61–79, <https://doi.org/10.32332/milrev.v5i1.10480>.

is applied to electronic consent, it becomes clear that each dimension of digital consent directly relates to those goals. Life protection (*ḥifẓ al-nafs*), for example, is strongly linked to consent in digital healthcare. Medical consent is not just a legal formality, but a mechanism to ensure patients understand the risks that could threaten their safety. If consent is given without adequate understanding for example, because the information is presented in a technical, hasty, or non-communicative manner then the aspect of life protection is threatened. In a digital system that emphasizes speed, this risk is becoming increasingly real. The patient may press the "agree" button without really understanding the implications of the medical action to be performed. The second dimension, the protection of reason (*ḥifẓ al-'aql*), is directly related to the quality of understanding in the consent process. The human mind must be protected from information manipulation, risk concealment, or the use of misleading terms. In digital practice, many consents are drafted in legal or technical language that ordinary users find difficult to understand. As a result, consent becomes a symbolic act without adequate awareness. From the perspective of *maqāṣid*, this situation is contrary to the purpose of the law, since reason is not given space to work optimally in decision-making.

Offspring protection (*ḥifẓ al-nasl*) has become particularly relevant in the context of children in the digital space. Children are often involved in the electronic consent system through online platforms, apps, or services. However, their legal and cognitive capacities are not yet fully developed. If the consent system does not provide additional protections, then the child is at risk of becoming an object of data exploitation, exposure to harmful content, or harmful agreements. Within the framework of *maqāṣid*, the offspring must be protected from potential long-term damage. Therefore, the standard of consent for children cannot be equated with that of adults. Property protection (*ḥifẓ al-māl*) is clearly visible in the practice of notarization and digital-based legal transactions. Consent given without adequate understanding can lead to severe financial losses. In property transactions, business agreements, or other legal documents, misrepresentation can deprive a person of their economic rights. A system that emphasizes the validity of electronic signatures without ensuring a substantive understanding risks reducing asset protection to mere administrative procedures.

The final dimension, religious protection (*ḥifẓ al-dīn*), can be understood as the moral foundation and ethical accountability in the legal system. When the law legalizes practices that are formally legal but substantively detrimental to human beings, then the moral integrity of the law itself is questioned.²⁰ In this context,

²⁰ Ahmad Musadad et al., "A *Maqāṣid Al-Sharī'ah* Analysis of the Indonesian Ulema Council's Fatwa on Interfaith Greetings within Contemporary Human Rights Discourse," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 2 (2025): 770–88, <https://doi.org/10.29300/mzn.v12i2.9610>.

maqāṣid demands that the digital legal system be not only efficient, but also fair and responsible. From this description, it can be seen that maqāṣid provides a much broader framework of evaluation than just technical validity. He demanded that consent be judged based on its impact on humans as a whole. Ethically valid consent must ensure that individuals understand the consequences, are free from covert coercion, and are protected from adverse impacts. This means that consent cannot be reduced to mere clicks or digital signatures.²¹

This research shows that the maqāṣid approach shifts the focus of fundamental questions in digital governance. If the system has been asking, "has the user pressed the agree button?", so the maqāṣid pushes a deeper question: "Is human well-being really protected through that process of consent?" This shift is paradigmatic. He places humans, not systems, at the center of legal evaluation. In this framework, consent is understood as a protective process, not just administrative evidence. Digital systems should be designed to support understanding, not just record-keeping. Language should be simplified, risks explained transparently, and additional protection mechanisms provided to vulnerable parties. Without it, technology has the potential to widen inequality, because the weak are more easily coerced into agreeing without understanding. The maqāṣid approach also affirms that digital law should be oriented towards preventing harm (dar' al-mafāsid) and achieving benefits (jalb al-maṣāliḥ). If a consent mechanism has the potential to do more harm than good, it should be reviewed from the perspective of the maqāṣid. Thus, the maqāṣid serves not only as an evaluation tool but also as a guideline for policy design.

Tabel 1. Maqāṣid al-Sharī'ah as an Ethical Framework for Evaluating Digital Consent Systems

Maqāṣid al-Sharī'ah Principle	Challenges of Digital Consent	Ethical Framework and Protection Mechanism
Ḥifẓ al-Nafs (Protection of Life)	In digital healthcare systems, patients may provide consent without fully understanding medical risks due to technical language, automated procedures, or rushed digital interactions.	Digital consent must ensure informed understanding, transparent risk communication, accessible language, and meaningful patient participation to protect human safety and dignity.
Ḥifẓ al-'Aql (Protection of Intellect)	Many electronic consent forms use complex legal or technical terminology, hidden clauses, and	Consent systems should support genuine comprehension through simplified language, transparent information, digital literacy

²¹ Anindita Susilo and Melly Ridaryanti, "Pengelolaan Media Sosial Dalam Penguatan Identitas Digital Dan Citra Diri Remaja Kota Tangerang Selatan," *Jurnal Pengabdian Masyarakat Bangsa* 2, no. 3 (2024): 565–71, <https://doi.org/10.59837/jpmba.v2i3.860>.

	manipulative interfaces that weaken rational decision-making.	support, and protection against deceptive practices.
Hifz al-Nasl (Protection of Lineage/Children)	Children involved in online platforms and digital services are vulnerable to data exploitation, harmful content, and agreements beyond their legal and cognitive capacity.	Digital governance must provide enhanced safeguards for minors through parental supervision, stricter verification systems, age-appropriate standards, and proportional legal protection.
Hifz al-Māl (Protection of Property)	In digital notarization and electronic transactions, individuals may suffer financial losses due to misunderstanding, coercion, fraud, or inadequate disclosure.	Ethical consent requires transparent contractual information, verification of substantive understanding, fair authentication mechanisms, and protection against digital economic exploitation.
Hifz al-Dīn (Protection of Religion/Moral Integrity)	Technologically valid systems may legalize practices that are formally lawful but substantively harmful, unjust, or ethically irresponsible.	Digital legal systems should prioritize justice, accountability, prevention of harm (<i>dar' al-mafāsīd</i>), and promotion of public welfare (<i>jalb al-maṣāliḥ</i>) as the ethical foundation of governance.
Human-Centered Paradigm of Consent	Current systems primarily measure consent through clicks, e-signatures, biometric verification, and procedural compliance.	The maqāṣid approach shifts the focus from technical validity toward substantive ethical legitimacy by placing human well-being, dignity, and social protection at the center of legal evaluation.

Source: Author's Interpretation

Table 1 illustrates how Maqāṣid al-Sharī'ah functions as an ethical framework for evaluating digital consent systems beyond mere procedural legality. The table demonstrates that each fundamental objective of Islamic law namely the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), property (*hifz al-māl*), and moral integrity or religion (*hifz al-dīn*)—is directly connected to contemporary challenges arising from electronic consent practices. In this framework, digital consent is not viewed solely as technical evidence of agreement, but as a mechanism that must ensure substantive protection, informed understanding, and ethical responsibility. The table further shows that current digital systems often prioritize efficiency, automation, and formal validity through electronic signatures, biometric verification, and click-based agreements, while neglecting issues of comprehension, voluntariness, and vulnerability. Through the

maqāṣid approach, the evaluation of consent shifts from procedural compliance toward human-centered protection. Consequently, ethically legitimate digital consent requires transparent communication, assessment of legal and cognitive capacity, stronger safeguards for vulnerable groups such as children, and legal mechanisms oriented toward the prevention of harm (*dar' al-mafāsīd*) and the promotion of public welfare (*jalb al-maṣāliḥ*). In this sense, the maqāṣid framework provides both an evaluative standard and a normative guide for designing more just, ethical, and socially responsible digital governance systems.

Sectoral Implications: Notarial, Healthcare, and Child Protection

The discussion of the ethical legitimacy of electronic consent becomes even more meaningful when it is placed in sectors directly involved in protecting fundamental human rights. This issue is no longer theoretical; it is present in daily practice and shapes the legality of legal actions, patient safety, and child protection in the digital space.²² This study shows that the issue of reducing consent to mere technical procedures has consistently emerged across notary practice, health services, and child protection systems. All three appear to be institutionally distinct, but they share fundamental issues: digital systems tend to emphasize formal verification, while the dimensions of free will, substantive understanding, and ethical protection remain unsecured.

In the Indonesian legal context, electronic signatures and digital authentication are formally recognized under the Electronic Information and Transactions Law and Government Regulation No. 71 of 2019, which provide legal legitimacy for electronic transactions and digital verification mechanisms. However, the existence of legal recognition does not automatically resolve ethical concerns surrounding consent in notarial contexts. Notarial consent traditionally requires not only legal identity verification but also assurance of voluntariness, comprehension, and absence of coercion. Digital authentication technologies may successfully confirm identity while remaining incapable of detecting informational asymmetry, psychological pressure, or constrained decision-making.

In the practice of notarization, approval is crucial because a notary deed serves as authentic evidence with long-term legal consequences.²³ The transfer of land rights, debt binding, the establishment of a legal entity, and inheritance agreements often depend on the validity of the parties' agreement before a notary. The digitization of notary services brings efficiency through electronic signatures,

²² Nur Paikah et al., "Protecting Children's Rights through the Transformation of Employment Policies in South Sulawesi," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 3 (2025): 1547–73, <https://doi.org/10.22373/sjhk.v9.i3.25659>.

²³ Rahel Portmann et al., "Do Socio-Structural Factors Influence the Incidence and Reporting of Child Neglect? An Analysis of Multi-Sectoral National Data from Switzerland," *Children and Youth Services Review* 140 (September 2022): 106560, <https://doi.org/10.1016/j.chilyouth.2022.106560>.

biometric verification, and online authentication systems. From a legal perspective, this development strengthens the formal legality by enabling the parties' identities to be ascertained and the integrity of documents to be better protected.²⁴

However, this study found that an overly large focus on identity often leads the system to ignore the dimension of will. Digital verification can confirm who signs, but it cannot always ensure that consent is given consciously, freely, and without pressure. In conventional practice, notaries have a space for direct interaction that allows them to read the parties' psychological and social situations. Notaries can catch signs of doubt, family pressure, or an imbalance of bargaining positions. In an automated digital system, this kind of sensitivity tends to be lost. Economic pressure, power relations in the family, or financial dependence can push a person to agree to an agreement that actually harms him. Digital systems may record such consent as valid, but ethically, it does not fully reflect free will. From the perspective of *maqāṣid al-sharī'ah*, this condition is related to the protection of property as well as the protection of reason, because decisions taken without freedom and clarity of thought can cause economic injustice. Therefore, ethical legitimacy in digital notarization demands procedures that go beyond identity authentication, such as layered verification or interactive confirmation sessions that ensure the parties' understanding. Technology should strengthen the notary's protective function, not replace it mechanically.

Healthcare presents a particularly sensitive domain for evaluating electronic consent because legal validity alone is insufficient without meaningful informed understanding. Indonesian health regulations governing informed consent emphasize patient autonomy and adequate disclosure, while global digital health governance similarly recognizes the importance of informed medical decision-making. However, telemedicine platforms and digital consent interfaces often prioritize efficiency and procedural completion over substantive patient comprehension. A digitally completed consent form may satisfy administrative compliance while failing to ensure that patients genuinely understand risks, alternatives, or long-term medical consequences.

In the health service sector, the meaning of consent is even more profound, as it directly relates to life safety. The concept of informed consent in medical ethics emphasizes that patients have the right to understand their health conditions, treatment options, risks, benefits, and consequences before agreeing

²⁴ Indah Sri Utari et al., "Legal Protection for Children as Victims of Economic Exploitation: Problems and Challenges in Three Major ASEAN Countries (Indonesia, Vietnam and Philippines)," *Lex Scientia Law Review* 7, no. 2 (2023): 771–842, <https://doi.org/10.15294/lesrev.v7i2.68301>.

to medical measures.²⁵ Digital transformation through telemedicine and electronic medical record systems has changed how consent is obtained. Patients often approve the action via a concise digital form displayed on the device's screen.²⁶ The study's findings show that, in practice, digital medical consent is often reduced to an administrative formality. Patients press the consent button after a quick read, or even without reading in full, due to the pressure of emergencies or complete trust in medical personnel. The system records the consent as legitimate, but the quality of the patient's understanding cannot be verified. From the point of view of the *maqāṣid*, this has the potential to interfere with the protection of the soul and the protection of the intellect, because medical decisions are taken without adequate awareness.

Child protection reveals the most significant limitations of contemporary electronic consent governance. Indonesian child protection law and personal data protection regulations formally recognize the need to safeguard minors, yet practical digital consent mechanisms often remain weak. Internationally, GDPR Article 8, COPPA, and the UK Age Appropriate Design Code attempt to impose stricter protections for children's digital participation. Nevertheless, many digital platforms continue to rely on self-declared age verification, click-based parental authorization, or interface designs that assume cognitive maturity and informed capacity that minors may not possess. This reveals a structural mismatch between formal legal safeguards and the lived realities of child digital vulnerability.

Medical approval is actually a risk protection mechanism, not just a procedural requirement. Therefore, the digital consent model in the healthcare sector needs to shift from static forms to interactive digital communication.²⁷ The technology can be used to present visual explanations, risk simulations, or confirmatory questions that ensure the patient truly understands the information provided. With this approach, technology serves as an educational and protection tool, not just a documentation instrument.²⁸ The problem becomes more complex

²⁵ Resita Lukitawati and Widodo Trisno Novianto, "Regulasi Layanan Kesehatan Digital Di Indonesia: Tantangan Etis Dan Hukum," *Ajudikasi: Jurnal Ilmu Hukum* 7, no. 2 (2023): 391–414, <https://doi.org/10.30656/ajudikasi.v7i2.7862>.

²⁶ Desi Sintyasari and Irsyam Risdawati, "URGENSI REFORMASI HUKUM KESEHATAN DI ERA DIGITAL: ANTARA ETIKA, PRIVASI DATA, DAN PERLINDUNGAN HAK PASIEN," *Indonesia of Journal Business Law* 4, no. 2 (2025): 1–14, <https://doi.org/10.47709/ijbl.v4i2.5878>.

²⁷ Gunawan Widjaja and Dyah Ersita Yustanti, "TANGGUNG JAWAB HUKUM RUMAH SAKIT DI ERA DIGITALISASI PELAYANAN KESEHATAN," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 4, no. 10 (2025): 3517–26, <https://doi.org/10.54443/sibatik.v4i10.3642>.

²⁸ Hana Nur Hanifah and Arista Candra Irawati, "URGENSI CYBER LAW DALAM MENJAGA PRIVASI PASIEN DI RUMAH SAKIT ERA DIGITAL," *ADIL Indonesia Journal* 5, no. 2 (2024): 154–61, <https://doi.org/10.35473/aij.v5i2.3945>.

when it comes to children as legal subjects in the digital space.²⁹ Children are the most vulnerable group because their legal and cognitive capacities are not perfect,³⁰ while their involvement in the digital ecosystem is increasing. Many online services use click-based approval mechanisms that formally apply equally to adults and children.³¹ This study shows that this approach is not in line with the principle of protecting offspring in the *maqāṣid al-sharī'ah*.

Click-based consent cannot reflect the child's ability to understand the long-term implications of data collection, algorithm use, or digital agreements. Children may agree to the terms of service without being aware of the potential exploitation of personal data or the risk of exposure to harmful content. Within the framework of *maqāṣid*, offspring must be protected from all forms of damage, both physical, moral, and social. Therefore, ethical legitimacy in the context of children demands a higher standard of protection than that of adults. Meaningful parental verification, data collection restrictions, and child-friendly system design are all part of the ethical and legal responsibilities of digital service providers. The child's consent cannot be treated as fully autonomous. The digital legal system must recognize these limitations and respond to them with specific protection mechanisms.

These three sectors share a familiar pattern: approval automation without adequate ethical protections. Digital systems are designed for efficiency, speed, and procedural certainty, but often do not fully account for the humanitarian dimension of consent itself. From the perspective of *maqāṣid al-sharī'ah*, this issue is understood as a common normative challenge: how to ensure that technology remains oriented toward human benefit. Consent should not be reduced to a single technical action, such as a click or an electronic signature. It must still be understood as a protection mechanism that ensures free will, understanding, and protection for vulnerable parties. With this approach, digital law is not only formally legal but also ethically legitimate, in line with the values of justice and human dignity.

²⁹ Erfaniah Zuhriah et al., "Dimensions of The Islamic Law and Human Rights in The Protection of Children from Convicted Parents," *De Jure: Jurnal Hukum dan Syaria'ah* 16, no. 2 (2024): 432–55, <https://doi.org/10.18860/j-fsh.v16i2.25150>.

³⁰ Rohmawati Rohmawati and Syahril Siddik, "Legal Protection for Children Out of Wedlock: Ensuring the Best Interests of Children Through Judge Decisions," *Al-'Adalah* 19, no. 2 (2022): 315–38, <https://doi.org/10.24042/adalah.v19i2.11761>.

³¹ Gunawan Widjaja et al., "PERLINDUNGAN HUKUM BAGI PASIEN DAN TENAGA MEDIS DALAM INOVASI KESEHATAN DIGITAL: TINJAUAN LITERATUR TERHADAP PERATURAN PERUNDANG-UNDANGAN DI INDONESIA," *Jurnal Kesehatan* 3, no. 2 (2025): 200–210.

Table 2. Sectoral Implications of Maqāṣid al-Sharī'ah in Digital Consent Systems

Sector	Challenges of Digital Consent	Maqāṣid-Oriented Ethical Implications and Protection Mechanisms
Notarial Practice	Digital notarization emphasizes identity authentication through electronic signatures, biometric verification, and online systems, but often fails to ensure genuine voluntariness and substantive understanding. Automated systems cannot adequately detect coercion, unequal bargaining positions, family pressure, or economic dependency influencing consent.	From the perspective of <i>ḥifẓ al-māl</i> (protection of property) and <i>ḥifẓ al-'aql</i> (protection of intellect), consent must reflect free will and conscious understanding. Ethical legitimacy therefore requires interactive verification, layered confirmation procedures, and mechanisms ensuring that parties fully understand the legal consequences of agreements before authentication is finalized.
Healthcare Services	Digital medical consent in telemedicine and electronic health systems is frequently reduced to administrative formality, where patients simply click approval without fully understanding medical risks, treatment options, or consequences. Emergency situations and excessive trust in medical personnel further weaken informed understanding.	In relation to <i>ḥifẓ al-nafs</i> (protection of life) and <i>ḥifẓ al-'aql</i> (protection of intellect), consent should function as a mechanism of patient protection rather than mere procedural evidence. Ethical digital healthcare systems must provide transparent explanations, visual risk communication, confirmatory interactions, and accessible information to ensure genuine patient awareness before medical decisions are made.
Child Protection	Children increasingly interact with online platforms and digital services that apply uniform click-based consent mechanisms despite children's limited legal and cognitive capacity. This creates risks of data exploitation, harmful content exposure, and uninformed digital agreements.	Based on <i>ḥifẓ al-nasl</i> (protection of lineage/children), children require stronger safeguards than adults because they cannot fully understand long-term digital consequences. Ethical legitimacy requires parental verification, restrictions on data collection, child-friendly system design, and proportional protection mechanisms that recognize children's vulnerability in digital environments.
Cross-Sectoral Ethical Challenge	Across all sectors, digital systems prioritize efficiency, automation, procedural certainty, and technical validation, while often neglecting voluntariness, understanding, and protection of vulnerable parties. Consent is frequently reduced to	The maqāṣid approach repositions consent as a protective and ethical process rather than a purely technical procedure. Digital governance must therefore prioritize human dignity, prevention of harm (<i>dar' al-mafāsīd</i>), promotion of welfare (<i>jalb al-maṣāliḥ</i>),

	clicks, electronic signatures, or biometric records.	transparency, and substantive justice in all forms of electronic consent.
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Source: Author's Interpretation

Table 2 demonstrates that the ethical challenges of digital consent are not confined to a single legal field, but emerge consistently across notarial practice, healthcare services, and child protection systems. Although these sectors operate within different institutional contexts, they share a common structural problem: digital systems tend to prioritize procedural validity, technical authentication, and administrative efficiency, while the dimensions of voluntariness, substantive understanding, and ethical protection remain insufficiently safeguarded. The table therefore illustrates how Maqāṣid al-Sharī'ah provides a unifying ethical framework capable of evaluating digital consent based not merely on legality, but on its capacity to protect human welfare and dignity.

In notarial practice, the table highlights that electronic signatures and biometric verification may successfully confirm identity, yet they cannot always ensure that consent is genuinely free from coercion or unequal power relations. In healthcare services, digital consent often becomes a procedural formality that fails to guarantee meaningful patient understanding of medical risks and consequences. Meanwhile, in the context of child protection, uniform click-based consent systems disregard the limited legal and cognitive capacities of minors, thereby increasing the risk of exploitation and harmful digital exposure. Through the maqāṣid perspective, these issues are interpreted as failures to adequately protect property (*ḥifẓ al-māl*), intellect (*ḥifẓ al-'aql*), life (*ḥifẓ al-nafs*), and lineage (*ḥifẓ al-nasl*).

The table further emphasizes that maqāṣid-oriented digital governance requires a paradigmatic shift from procedural compliance toward substantive ethical legitimacy. Consent should not be treated merely as technical evidence recorded by digital systems, but as a protective mechanism designed to ensure understanding, voluntariness, fairness, and proportional safeguards for vulnerable individuals. Consequently, the maqāṣid framework encourages the development of digital consent systems that integrate transparency, interactive communication, layered verification, and stronger protective measures as part of a broader commitment to justice, human dignity, prevention of harm (*dar' al-mafāsīd*), and the promotion of public welfare (*jalb al-maṣāliḥ*).

The sectoral analysis demonstrates that although electronic consent mechanisms have achieved broad formal legal acceptance across different regulatory environments, their ethical adequacy remains deeply contested. A recurring structural weakness across sectors is the reduction of consent to procedural compliance, where technical confirmation mechanisms are treated as sufficient evidence of legal validity without adequately addressing voluntariness,

comprehension, contextual vulnerability, or meaningful autonomy. This pattern reveals a critical distinction between formal legality and substantive ethical legitimacy.

From a comparative perspective, electronic consent regimes in notarial services, healthcare, and child protection exhibit different operational forms but share similar structural deficiencies. In notarial practice, digital signatures and identity authentication technologies may successfully confirm the identity of the consenting party, yet they do not necessarily establish whether consent was freely given without coercion, manipulation, or informational imbalance. In healthcare, digital informed consent often prioritizes administrative efficiency and accessibility, but may fail to ensure meaningful patient understanding of risks, alternatives, and medical consequences. In child protection contexts, click-based consent systems are even more problematic, as they frequently presume legal capacity and cognitive maturity that minors may not possess. These limitations suggest that legal compliance alone cannot function as the sole measure of legitimate consent. A *maqāṣid al-sharī‘ah* perspective redirects the inquiry from procedural formalism toward substantive human welfare, emphasizing whether legal mechanisms genuinely protect autonomy, dignity, and vulnerable individuals rather than merely satisfying technical regulatory requirements.

Table X. Comparative Analytical Evaluation of Electronic Consent Regimes

Sector	Existing Legal Mechanism	Structural Ethical Deficiency	Maqāṣid-Based Critique	Proposed Reform
Notarial Practice	Electronic signatures, biometric authentication, digital identity verification	Confirms identity but does not adequately verify voluntariness, coercion, or informed comprehension	Weakens <i>ḥijz al-māl</i> (protection of property) and <i>ḥijz al-‘aql</i> (protection of rational autonomy) where legally binding consent is procedurally valid but ethically compromised	Multi-layered verification, interactive consent confirmation, coercion-sensitive authentication mechanisms
Healthcare	Digital informed consent forms, telemedicine	Administrative procedural compliance may replace meaningful understanding of	Risks undermining <i>ḥijz al-naḥs</i> (protection of life) and <i>ḥijz al-‘aql</i> when patient	Interactive informed consent design, risk visualization, comprehension verification,

	consent protocols	medical risks, alternatives, and consequences	autonomy becomes superficial rather than substantive	adaptive consent protocols
Child Protection	Click-based digital consent, age self-declaration, platform access approval	Presumes cognitive maturity, legal capacity, and independent decision-making that minors may not possess	Fails <i>hiḏ al-nasl</i> (protection of future generations and vulnerable dependents) and may expose children to exploitation or harmful digital exposure	Verified parental oversight, age-sensitive consent architecture, stronger child-centered digital governance safeguards
Cross-sector Governance	Formal legal compliance with procedural digital authorization	Consent reduced to technical legality rather than ethical legitimacy	Contradicts the welfare-oriented logic of <i>maqāṣid al-sharī'ah</i> , which prioritizes substantive human protection over procedural formalism	Human-centered ethical governance model integrating legality, autonomy, welfare, and vulnerability protection

Toward an Ethically Legitimate Model of Electronic Consent

The main problem in the practice of electronic consent does not lie in the absence of regulation, but in the too narrow orientation towards formal legality.³² The system is designed to ensure that identities are verified, documents intact, and actions are undeniable. However, such procedural compliance does not necessarily guarantee that consent truly reflects a conscious, free, and protected will. This is where the need for a new model arises: an electronic consent model that is not only legally valid but also ethically legitimate. Based on the study's findings, the framework of *maqāṣid al-sharī'ah* provides a strong normative foundation for the model. From the perspective of *maqāṣid*, the law is always oriented towards protecting human welfare. Consent is not seen as just a formal act, but rather a protection mechanism against potential loss, injustice, and exploitation. With this approach, consent must ensure that individuals understand the consequences of their actions, have the capacity to make decisions, are free

³² Mohammad Hilman Mursalat et al., "PROBLEMATIKA YURIDIS DAN PRINSIP PERLINDUNGAN HUKUM DALAM PELAYANAN KESEHATAN JARAK JAUH MENGGUNAKAN TEKNOLOGI INFORMASI DAN KOMUNIKASI," *Jurnal Poros Hukum Padjadjaran* 4, no. 1 (2022): 94–111, <https://doi.org/10.23920/jphp.v4i1.986>.

from pressure, and receive additional protection when they are in a vulnerable position. Based on an analysis of various digital practices, this study formulates four ethical pillars that serve as the basis for a morally valid and legally valid electronic consent model.

The first pillar is transparency. In digital practice, information is often presented in long, technical, and opaque terms and conditions. Formally, the service provider has "provided information," but substantively, users don't necessarily understand it. Transparency in ethical frameworks demands the delivery of information that is clear, concise, and accessible to different levels of literacy. This is not just a matter of simple language, but also the way of presentation. Information on the risks, legal consequences, and long-term impacts should be presented in a summary that must be read before approval is granted. This approach is in line with protecting reason in *maqāṣid*, since adequate understanding is a prerequisite for the validity of the will. Without transparency, consent becomes a formality that assumes the user has read the entire document. Practical implementations of these pillars can be systems that do not allow consent to be given before the user has been provided with a concise explanation of the key risks, or the use of visual and interactive elements that aid understanding. The same technology that previously accelerated procedures can also improve the quality of information.³³

The second pillar is capacity. Not all individuals who interact with digital systems have the same legal and cognitive abilities. Children, the elderly, patients in emergency conditions, or individuals with specific disabilities require different treatment. In many systems, capacity is often assumed automatically as long as one can access the platform. In fact, within the framework of *maqāṣid*, the protection of reason and heredity requires serious attention to a person's ability to understand and consider the consequences of his actions. An ethical consent model requires an age-verification mechanism and a capacity assessment relevant to the context. In healthcare, for example, the system can include confirmation questions that measure patient understanding before final approval is given. In digital services for children, age verification should not rely solely on a unilateral statement but should be supported by a parental authentication mechanism. Thus, consent is not given by individuals who are legally or cognitively incapable of bearing the consequences.³⁴

The third pillar is volunteerism. Ethically valid consent must be the result of free will, not the product of overt or covert pressure. In the digital space,

³³ Dedy Saputra et al., "PERTANGGUNGJAWABAN PIDANA TENAGA KESEHATAN DALAM PELAYANAN TELEMEDICINE," *ANDREW Law Journal* 4, no. 1 (2025): 201–8, <https://doi.org/10.61876/alj.v4i1.58>.

³⁴ Muhammad Hutomo et al., "PERLINDUNGAN HUKUM TERHADAP PASIEN PENGGUNA JASA LAYANAN KESEHATAN ONLINE," *JURNAL EDUCATION AND DEVELOPMENT* 8, no. 3 (2020): 967–967.

pressure is often structural. The system's design can encourage users to approve immediately without any thought time, for example, by prominently displaying a consent button or by threatening to revoke service access. Medical emergencies or economic needs can also limit freedom of choice. The maqāṣid approach emphasizes that the will is forced against the purpose of protecting the soul, intellect, and property. Therefore, the ethical consent model needs to provide approvers with a space for reflection. One relevant implementation is the provision of a pause period before the decision becomes final, especially for high-impact transactions. The interface design should also be neutral, not manipulate the user's choices. Thus, consent becomes a consideration rather than an instant response to system pressure.³⁵

The fourth pillar is additional protection for vulnerable parties. Maqāṣid al-sharī'ah clearly prioritizes the protection of the weak. Children, patients, or individuals with specific dependencies require a higher standard of protection than ordinary legal subjects. An ethical consent model cannot apply uniform standards for all parties. In the context of children, this means restrictions on data collection, meaningful parental supervision, and a prohibition on the exploitation of personal information. In healthcare, patients must obtain a more in-depth explanation of the risks, especially for high-risk procedures. In a notary, parties in a weak bargaining position need the opportunity for independent consultation. This pillar shows that formal equality does not always result in substantive justice. Different treatment is needed to achieve fair protection.³⁶

These four pillars show that ethical legitimacy requires that the digital legal system function as a protection mechanism, not just an administrative validation tool. Consent is no longer understood as proof that procedures have been followed, but rather as a guarantee that human dignity is respected. Technology plays a role in strengthening protection, not in replacing the humanitarian dimension in the legal process. The model also signals a shift from a compliance-based to a responsibility-based approach. Service providers, notaries, and health institutions alone are not sufficient to demonstrate that the procedure has been carried out. They need to ensure the procedure's outcome actually protects the parties involved. Within this framework, maqāṣid al-sharī'ah serves as an ethical compass that directs the development of digital law to remain in harmony with the goal of benefit. Thus, ethically valid electronic consent is not just about who signs or when consent is given, but about how the process safeguards life, reason,

³⁵ Abigail Prasetyo and Dyah Hapsari Prananingrum, "DISRUPSI LAYANAN KESEHATAN BERBASIS TELEMEDICINE: HUBUNGAN HUKUM DAN TANGGUNG JAWAB HUKUM PASIEN DAN DOKTER: Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2022): 225–46, <https://doi.org/10.24246/jrh.2022.v6.i2.p225-246>.

³⁶ Nur Bayti Amalia et al., "PERUBAHAN BUDAYA HUKUM DALAM PELAKSANAAN PELAYANAN KESEHATAN SECARA DIGITAL," *Ensiklopedia Social Review* 7, no. 2 (2025): 32–38, <https://doi.org/10.33559/esr.v7i2.3097>.

property, descent, and moral values. This model bridges the gap between formal legality and ethical legitimacy, while offering a new direction for more humane and equitable digital governance.

Conclusion

This study concludes that the current electronic consent regime remains predominantly oriented toward formal legality, emphasizing identity authentication, procedural validity, and document integrity as the primary indicators of legitimacy. Although these mechanisms are essential for ensuring legal certainty in digital transactions, they do not necessarily guarantee that consent is given consciously, voluntarily, and with adequate protection for vulnerable parties. Through the perspective of Maqāṣid al-Sharī'ah, consent should not be reduced to a mere technical or administrative procedure, but must function as an ethical mechanism aimed at protecting human welfare, dignity, and justice. The analysis of notarial practice, healthcare services, and child protection demonstrates a similar structural problem: digital systems prioritize efficiency and automation while often neglecting substantive understanding, legal capacity, and meaningful safeguards against coercion, exploitation, and unequal power relations. Based on these findings, this study formulates a maqāṣid-oriented model of ethical electronic consent that emphasizes transparency of information, genuine voluntariness, assessment of legal and cognitive capacity, and enhanced protection for vulnerable groups as essential requirements of legitimacy. Such an approach aligns with the maqāṣid principles of protecting life, intellect, lineage, property, and moral integrity. Accordingly, the study argues that the future development of digital law should move beyond procedural compliance toward a more human-centered and ethically responsible model of governance. Future research is recommended to empirically examine the implementation of maqāṣid-based consent mechanisms within real digital platforms and institutional practices. Further studies may also develop measurable indicators for evaluating understanding, voluntariness, and ethical protection in digital consent systems, particularly in sectors involving children and patients. In addition, interdisciplinary research integrating legal studies, technology, ethics, and behavioral analysis is needed to transform maqāṣid principles into practical regulatory standards and digital platform designs that are more responsive to human dignity and social welfare.

References

- Afisa, Afisa, Zuly Qodir, Akhmad Habibullah, and Unggul Sugiharto. "Analysis of the ITE Law on Digital Rights and Democratic Values in Indonesia." *The Journal of Society and Media* 8, no. 2 (2024): 424–44. <https://doi.org/10.26740/jsm.v8n2.p424-444>.

- Amalia, Nur Bayti, Mutiara Farida, and Kuni Nela Rizki Aszahra. "PERUBAHAN BUDAYA HUKUM DALAM PELAKSANAAN PELAYANAN KESEHATAN SECARA DIGITAL." *Ensiklopedia Social Review* 7, no. 2 (2025): 32–38. <https://doi.org/10.33559/esr.v7i2.3097>.
- Asriani, Asriani, Misnah Irvita, Robi Rendra Tribuana, and Rahmiati Ranti Pawari. "Pembangunan Hukum Di Era Digital: Tantangan Dan Peluang Bagi Negara Dalam Menghadapi Transformasi Teknologi." *Jurnal Bisnis Mahasiswa* 5, no. 1 (2025): 164–74. <https://doi.org/10.60036/jbm.v5i1.324>.
- Brall, Caroline, Peter Schröder-Bäck, and Els Maeckelberghe. "Ethical Aspects of Digital Health from a Justice Point of View." *European Journal of Public Health* 29, no. Supplement_3 (2019): 18–22. <https://doi.org/10.1093/eurpub/ckz167>.
- Gea, Swastati, Yulkarnaini Siregar, and Dewi Robiyanti. "Pemahaman Masyarakat Terhadap Tantangan Hukum Di Era Media Sosial Tentang Hak Digital Dan Kontroversi Privasi." *Jurnal Dunia Pendidikan* 5, no. 6 (2025): 2507–24. <https://doi.org/10.55081/jurdip.v5i6.4157>.
- Hamsin, Muhammad Khaeruddin, Abdul Halim, Rizaldy Anggriawan, and Hilda Lutfiani. "Sharia E-Wallet: The Issue of Sharia Compliance and Data Protection." *Al-Manabij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 53–68. <https://doi.org/10.24090/mnh.v17i1.7633>.
- Hanifah, Hana Nur, and Arista Candra Irawati. "URGENSI CYBER LAW DALAM MENJAGA PRIVASI PASIEN DI RUMAH SAKIT ERA DIGITAL." *ADIL Indonesia Journal* 5, no. 2 (2024): 154–61. <https://doi.org/10.35473/aij.v5i2.3945>.
- Hutomo, Muhammad, Kurniawan, and Lalu Wira Pria Suhartana. "PERLINDUNGAN HUKUM TERHADAP PASIEN PENGGUNA JASA LAYANAN KESEHATAN ONLINE." *JURNAL EDUCATION AND DEVELOPMENT* 8, no. 3 (2020): 967–967.
- Indriana, Indriana, Arman Arman, Ishak Yussof, and Jenneke Widya Maasi. "Interaction of Islamic Economics and Government Transformation Technology in Indonesian Muslim Society." *Jurnal Ilmiah Al-Syir'ab* 21, no. 2 (2023): 261–82. <https://doi.org/10.30984/jis.v21i2.2660>.
- Jannati, and Ruhly Kesuma Dinata. "Pengaruh Teknologi terhadap Perkembangan Hukum di Indonesia." *Arus Jurnal Sosial dan Humaniora* 5, no. 1 (2025): 630–35. <https://doi.org/10.57250/ajsh.v5i1.1093>.
- Khusnaini, Izzatun, and Eny Nur Aisyah. "Regulasi Perlindungan Anak Di Ruang Digital Di Indonesia: Implementasi, Tantangan, Dan Peluang Implementasi." *Pro Justicia: Jurnal Hukum Dan Sosial* 5, no. 02 (2025): 101–9. <https://doi.org/10.55380/projus.v5i02.1208>.

- Lukitawati, Resita, and Widodo Trisno Novianto. "Regulasi Layanan Kesehatan Digital Di Indonesia: Tantangan Etis Dan Hukum." *Ajudikasi: Jurnal Ilmu Hukum* 7, no. 2 (2023): 391–414. <https://doi.org/10.30656/ajudikasi.v7i2.7862>.
- Manurung, Pirma Ivan Ricky, and Marice Simarmata. "Digitalisasi Layanan Kesehatan: Tantangan Etika Dan Keamanan Data Pasien." *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 2, no. 2 (2025): 263–73. <https://doi.org/10.62383/presidensial.v2i2.811>.
- Muhammad, Pauzi, Farida Arianti, Ahmad Masum, and Marnia Rani. "Actualizing Islamic Economic Law in the Digital Era: A Study of the Application of Khiyar al-Majlis in Electronic Contracts." *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 205–14. <https://doi.org/10.31958/juris.v23i2.11573>.
- Mursalat, Mohammad Hilman, Efa Laela Fakhriah, and Tri Handayani. "PROBLEMATIKA YURIDIS DAN PRINSIP PERLINDUNGAN HUKUM DALAM PELAYANAN KESEHATAN JARAK JAUH MENGGUNAKAN TEKNOLOGI INFORMASI DAN KOMUNIKASI." *Jurnal Poros Hukum Padjadjaran* 4, no. 1 (2022): 94–111. <https://doi.org/10.23920/jphp.v4i1.986>.
- Musadad, Ahmad, Achmad Badarus Syamsi, Sibawaihi Sibawaihi, et al. "A Maqāṣid Al-Sharī‘ah Analysis of the Indonesian Ulema Council’s Fatwa on Interfaith Greetings within Contemporary Human Rights Discourse." *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 2 (2025): 770–88. <https://doi.org/10.29300/mzn.v12i2.9610>.
- Muttaqin, Muhamad Zaenal, Ahmad Ibrizul Izz, Reza Fauzi Nazar, Shohibul Wafa Tadzul Arifin, and Muhamad Yogi Sandra. "Family Harmony in Contemporary Islamic Law: Ibn ‘Āshūr’s Maqāṣid Perspective on Marital Rights and Duties." *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 61–79. <https://doi.org/10.32332/milrev.v5i1.10480>.
- Paikah, Nur, Muhammad Yamin, Faissal Malik, Abdullah Akhyar Nasution, and Ibrahim Chalid. "Protecting Children’s Rights through the Transformation of Employment Policies in South Sulawesi." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 3 (2025): 1547–73. <https://doi.org/10.22373/sjhc.v9.i3.25659>.
- Portmann, Rahel, Tanja Mitrovic, Hakim Gonthier, Céline Kosirnik, René Knüsel, and Andreas Jud. "Do Socio-Structural Factors Influence the Incidence and Reporting of Child Neglect? An Analysis of Multi-Sectoral National Data from Switzerland." *Children and Youth Services Review* 140 (September 2022): 106560. <https://doi.org/10.1016/j.childyouth.2022.106560>.

- Prasetyo, Abigail, and Dyah Hapsari Prananingrum. "DISRUPSI LAYANAN KESEHATAN BERBASIS TELEMEDICINE: HUBUNGAN HUKUM DAN TANGGUNG JAWAB HUKUM PASIEN DAN DOKTER: Indonesia." *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2022): 225–46. <https://doi.org/10.24246/jrh.2022.v6.i2.p225-246>.
- Rajagukguk, Ratna Marselina. "Hukum Dan Teknologi: Menghadapi Tantangan Hukum Di Era Digital." *Tugas Mahasiswa Hukum* 1, no. 1 (2023). <https://coursework.uma.ac.id/index.php/hukum/article/view/353>.
- Ridha, Irfan, Raffi Maulana, Rafli Ananda Harahap, et al. "ASPEK HUKUM PERLINDUNGAN KONSUMEN DIGITAL." *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 3, no. 2 (2024). <https://doi.org/10.572349/civilia.v3i2.2427>.
- Rohmawati, Rohmawati, and Syahril Siddik. "Legal Protection for Children Out of Wedlock: Ensuring the Best Interests of Children Through Judge Decisions." *Al-'Adalah* 19, no. 2 (2022): 315–38. <https://doi.org/10.24042/adalah.v19i2.11761>.
- Santoso, Lukman, Agus Triyanta, and Jawahir Thontowi. "Halal Tourism Regulations in Indonesia: Trends and Dynamics in the Digital Era." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 73–94. <https://doi.org/10.18326/ijtihad.v22i1.73-94>.
- Saputra, Dedy, Rica Regina Novianty, and Hetty Ismainar. "PERTANGGUNGJAWABAN PIDANA TENAGA KESEHATAN DALAM PELAYANAN TELEMEDICINE." *ANDREW Law Journal* 4, no. 1 (2025): 201–8. <https://doi.org/10.61876/alj.v4i1.58>.
- Saputri, Prioni Rahmanda. "Perlindungan Privasi Digital Dalam Era Digital: Analisis UU No. 19 Tentang Perubahan UU No. 11 Tahun 2008 Pada Pemerintahan Joko Widodo." *Konsensus: Jurnal Ilmu Pertabanan, Hukum Dan Ilmu Komunikasi* 2, no. 2 (2025): 112–22. <https://doi.org/10.62383/konsensus.v2i2.721>.
- Sintyasari, Desi, and Irsyam Risdawati. "URGENSI REFORMASI HUKUM KESEHATAN DI ERA DIGITAL: ANTARA ETIKA, PRIVASI DATA, DAN PERLINDUNGAN HAK PASIEN." *Indonesia of Journal Business Law* 4, no. 2 (2025): 1–14. <https://doi.org/10.47709/ijbl.v4i2.5878>.
- Susilo, Anindita, and Melly Ridaryanti. "Pengelolaan Media Sosial Dalam Penguatan Identitas Digital Dan Citra Diri Remaja Kota Tangerang Selatan." *Jurnal Pengabdian Masyarakat Bangsa* 2, no. 3 (2024): 565–71. <https://doi.org/10.59837/jpmba.v2i3.860>.
- Utari, Indah Sri, Diandra Preludio Ramada, Ridwan Arifin, and Robert Brian Smith. "Legal Protection for Children as Victims of Economic

- Exploitation: Problems and Challenges in Three Major ASEAN Countries (Indonesia, Vietnam and Philippines).” *Lex Scientia Law Review* 7, no. 2 (2023): 771–842. <https://doi.org/10.15294/lesrev.v7i2.68301>.
- Utomo, Setyo. “TANTANGAN HUKUM MODERN DI ERA DIGITAL.” *JURNAL HUKUM MEDIA BHAKTI*, no. 0 (June 2017). <https://doi.org/10.32501/jhmb.v1i1.5>.
- Widiartana, Gregorius, and Sajjad Hussain. “Judicial Pardon in Contemporary Criminal Verdicts: Balancing Justice, Legal Certainty, and the Utility of Law.” *NUSANTARA: Journal Of Law Studies* 4, no. 01 (2025): 1–11. <https://doi.org/10.5281/zenodo.17346796>.
- Widjaja, Gunawan, Wagiman, Dyah Ersita Yustanti, Hotmaria Hertawaty Sijabat, and Handojo Dhanudibroto. “PERLINDUNGAN HUKUM BAGI PASIEN DAN TENAGA MEDIS DALAM INOVASI KESEHATAN DIGITAL: TINJAUAN LITERATUR TERHADAP PERATURAN PERUNDANG-UNDANGAN DI INDONESIA.” *Jurnal Kesehatan* 3, no. 2 (2025): 200–210.
- Widjaja, Gunawan, and Dyah Ersita Yustanti. “TANGGUNG JAWAB HUKUM RUMAH SAKIT DI ERA DIGITALISASI PELAYANAN KESEHATAN.” *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 4, no. 10 (2025): 3517–26. <https://doi.org/10.54443/sibatik.v4i10.3642>.
- Zuhdi, Muhammad Harfin, and Mohamad Abdun Nasir. “Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1818–39. <https://doi.org/10.22373/sjhc.v8i3.24918>.
- Zuhriah, Erfaniah, Suud Fuadi, Imam Sukadi, and Zahrah Salsabillah Ashari. “Dimensions of The Islamic Law and Human Rights in The Protection of Children from Convicted Parents.” *De Jure: Jurnal Hukum dan Syar’iah* 16, no. 2 (2024): 432–55. <https://doi.org/10.18860/j-fsh.v16i2.25150>.