

# Analysis of the Influence of Fiqh and Maqasid al-Syariah in the Formation of Islamic Legal Policy in Indonesia

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## ABSTRACT

This research delves into the complex interplay of Fiqh and Maqasid al-Syariah in shaping Islamic legal policy in Indonesia, employing qualitative methods such as in-depth interviews, content analysis, and document analysis. The study reveals the explicit incorporation of Fiqh in legislation and its influence on judicial decisions, highlighting the enduring role of traditional Islamic jurisprudence. Simultaneously, Maqasid al-Syariah emerges as a guiding ethical framework, fostering adaptability and providing opportunities for aligning legal objectives with overarching Islamic principles. The research explores the harmonization efforts, tensions, and collaborative initiatives in navigating the intersection between Fiqh, Maqasid al-Syariah, and contemporary legal frameworks. The findings contribute to a nuanced understanding of the dynamic relationship between tradition and adaptation in Islamic legal policymaking in Indonesia

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## 1. INTRODUCTION

The intricate interplay between traditional Islamic jurisprudence, represented by Fiqh, and the broader ethical framework summarized in Maqasid al-Sharia, is a dynamic force shaping the legal landscape in Indonesia. The development of Islamic financial institutions and the justice system in Indonesia is influenced by the principles of Fiqh and the objectives of Maqasid al-Sharia [1], [2]. The status of interfaith marriages and the inheritance rights associated with them are also examined through the lens of Fiqh and the maqasid sharia approach [3].

Furthermore, the success of banking in Indonesia is analyzed using the Maqasid Shariah Index (MSI) and Limited Maqasid Shariah Index (LMSI), which emphasize the disclosure of education, social justice, and wealth redistribution, highlighting the importance of ethical and social performance in addition to financial return [4]. The fatwas issued by the National Sharia Council-Indonesian Ulema Council, which heavily influence Sharia banking regulations in Indonesia, are also grounded in Fiqh principles, demonstrating the crucial role of Fiqh in shaping the legal framework [5].

Indonesia's legal system is influenced by its rich Islamic heritage, but it also faces challenges in the contemporary governance and diversity of society. The coexistence between Fiqh and the modern legal framework in this unique socio-cultural environment requires a thorough examination to understand the synthesis of traditions and adaptations in the formulation and implementation of legal policies [6]. The existence of Sharia Regional Regulations in Indonesia has led to endless debates and polemics, with arguments both for and against these regulations [7], [8]. The relationship between Islam and the judicial system in Indonesia is significant, with the principles of the judicial system aligning with the objectives of maqasid sharia [2]. In the context of interfaith marriages, there are differing opinions on the inheritance rights of interfaith couples, with some scholars arguing for hindrance and others for assistance [3]. Sharia banking regulations in Indonesia are heavily influenced by fiqh principles, which are used as legal foundations in the fatwas issued by the National Sharia Council-Indonesian Ulema Council [5].

The historical evolution of Islamic law in Indonesia has been influenced by various Islamic traditions, with significant influence from the Shafi'i schools. The spread of Islam in the archipelago was facilitated by merchants from different countries, leading to the emergence of mass organizations and Islamic communities in important ports [9]. Islamic education in Indonesia has a long history, with early Islamic educational institutions such as mosques, langgars, and pesantren playing a crucial role [10]. The development of the Islamic religious education curriculum in Indonesia has been influenced by sociological factors, including customs, beliefs, values, languages, religions, and social institutions [11]. Indonesian Islam has been propagated peacefully and without coercion, with the process of Islamization influenced by political power and the spirit of preaching [12], [13]. These historical developments have laid the foundation for the current embodiment of Islamic law in

Indonesia. Against this backdrop, this research undertakes a qualitative exploration to uncover the multifaceted influence of Fiqh and Maqasid al-Syariah in the formulation of legal policy, aiming to contribute to a deeper understanding of the complexities inherent in the Indonesian legal system.

## 2. LITERATURE REVIEW

### *2.1 Fiqh and its Role in Islamic Law*

The concept of Fiqh, rooted in the interpretation and understanding of Islamic law, has been central to the legal traditions of Muslim societies. The classical schools of thought, including the Hanafi, Maliki, Shafi'i, and Hanbali, have provided a comprehensive framework for understanding and applying Islamic jurisprudence [14], [15]. Within the context of Indonesia, these diverse schools have left a discernible mark on the legal landscape, influencing not only the development of religious laws but also contributing to the broader legal system of the nation [1]. Fiqh, as a living tradition, has adapted to different cultural contexts over the centuries [16]. In Indonesia, the historical transmission of Fiqh, particularly the Shafi'i school, has shaped legal thought and practices [17]. Understanding the role of Fiqh in Indonesian law is crucial for unraveling how Islamic jurisprudence informs and intersects with the contemporary legal system [18].

### *2.2 Maqasid al-Syariah: Objectives of Islamic Law*

Maqasid al-Syariah provides a broader ethical framework for Fiqh, emphasizing the preservation of fundamental values. The objectives of Islamic law, such as the preservation of life, religion, intellect, lineage, and property, serve as guiding principles for legal policies. This ethical foundation offers a unifying framework in diverse countries like Indonesia, transcending cultural and regional variations. The application of Maqasid al-Syariah introduces a dynamic dimension to legal discourse, allowing for the adaptation of Islamic principles to the evolving needs of society. Examining how these objectives are integrated into legal policies provides insights

into the ethical considerations underlying the Indonesian legal system [1], [19], [20].

### *2.3 Islamic Legal Tradition in Indonesia*

Indonesia's legal tradition is deeply rooted in Islamic principles, dating back to the arrival of Islam in the archipelago. The influence of Islamic law, particularly the Shafi'i school, is evident in various aspects of Indonesian legal thought [21]–[23]. The coexistence of customary law (*adat*) and Islamic law has shaped a unique legal landscape, where *Fiqh* plays a pivotal role in both personal and public spheres [2]. The historical development of Islamic law in Indonesia involves a continuous negotiation between indigenous legal traditions and Islamic principles [24]. This historical context is essential for understanding how *Fiqh* has become intertwined with the legal fabric of the nation [12].

### *2.4 Contemporary Legal Frameworks in Indonesia*

The Indonesian legal system operates within a dualist framework, incorporating both civil and Islamic law. This duality is enshrined in the constitution, reflecting the nation's commitment to recognizing diverse legal traditions [6]. The constitutional recognition of Islam as one of the country's official religions adds a layer of complexity to the legal landscape, necessitating a delicate balance between religious and secular legal principles [2]. The challenge lies in harmonizing traditional Islamic jurisprudence with modern legal frameworks [25]. The tension between adherence to *Fiqh* and the demands of a diverse and dynamic society requires a careful examination of how the legal system navigates this delicate equilibrium [26].

## **3. METHODS**

### *3.1 Research Design*

This research adopts a qualitative research design to delve into the nuanced influence of *Fiqh* and *Maqasid al-Syariah* on the formation of Islamic legal policy in Indonesia. Qualitative methods are well-suited for exploring complex and context-

specific phenomena, providing a deeper understanding of the subject matter. The study employs a combination of in-depth interviews, content analysis of legal texts, and document analysis to unravel the intricate dynamics between traditional Islamic jurisprudence, contemporary legal frameworks, and the broader objectives of Islamic law.

### *3.2 Sampling*

The research utilizes purposive sampling to select participants with expertise and experience relevant to the research objectives. A diverse group of informants, including Islamic scholars, legal experts, policymakers, and representatives from religious institutions, will contribute to a comprehensive exploration of perspectives. The selection ensures a varied and well-informed pool of informants capable of providing insights into different facets of the research questions.

### *3.3 Data Collection*

#### *3.3.1 Depth Interviews*

In-depth interviews will be conducted with five key informants who possess expertise in Islamic law, legal policymaking, and the intersection of *Fiqh* and *Maqasid al-Syariah* in Indonesia. The semi-structured interviews will allow for an open dialogue, enabling the exploration of personal experiences, insights, and interpretations. The informants will be selected based on their roles as scholars, policymakers, or legal practitioners, ensuring a diverse range of perspectives.

#### *3.3.2 Content Analysis*

Legal texts, including legislation, court decisions, and policy documents, will undergo content analysis. This method will involve systematically categorizing and interpreting the explicit and implicit references to *Fiqh* and *Maqasid al-Syariah*. The content analysis will provide a structured examination of how these concepts are embedded within the legal framework.

#### *3.3.3 Document Analysis*

Historical documents, scholarly writings, and relevant literature on Islamic law in Indonesia will be analyzed to trace the

evolution of legal thought. Document analysis aims to uncover the historical trajectory and ideological foundations that have shaped the integration of Fiqh and Maqasid al-Syariah in the Indonesian legal system.

#### 3.3.4 Data Analysis

Thematic analysis will be employed to analyze the data gathered from in-depth interviews, content analysis, and document analysis. The thematic analysis process involves identifying, analyzing, and reporting patterns within the data, allowing for the extraction of key themes and insights. This approach ensures a systematic exploration of the research questions and a holistic understanding of the influence of Fiqh and Maqasid al-Syariah on legal policy.

### 4. RESULTS AND DISCUSSION

The qualitative research methods applied in this study sought to unravel the influence of Fiqh and Maqasid al-Syariah in shaping Islamic legal policy in Indonesia. By engaging in in-depth interviews with key informants, content analysis of legal texts, and document analysis, the research aimed to explore the dynamic interplay between traditional Islamic jurisprudence, contemporary legal frameworks, and the broader objectives of Islamic law. The following section presents the results obtained from the interviews and the qualitative analysis, providing insights into the complexities of the Indonesian legal landscape.

#### 4.1 *Fiqh's influence on legal policy*

In-depth interviews with Islamic scholars and legal practitioners highlighted the clear influence of Fiqh on legal policy in Indonesia. Participants emphasized the explicit incorporation of Fiqh principles, particularly from the Shafi'i school, in various laws and regulations, particularly in matters relating to family law and personal status. According to one Islamic scholar, "Fiqh principles have been explicitly cited in legislation, providing a solid basis for legal norms, especially in areas such as marriage, divorce, and inheritance."

A content analysis of the legal texts supports the findings of these interviews, which reveal the substantial presence of classical Fiqh principles in the laws. Clauses explicitly referring to the Shafi'i school and other Fiqh principles underscore a deliberate attempt to ground legal policies in traditional Islamic jurisprudence. This explicit inclusion reflects the legal system's alignment with established Islamic norms, demonstrating the enduring influence of Fiqh in shaping the normative framework of Indonesian law.

An analysis of court decisions further illuminates the impact of Fiqh on court decision-making in Indonesia. Interviews with legal practitioners revealed that Fiqh principles, particularly those related to family and inheritance issues, play an important role in shaping judicial interpretations. One legal expert explained, "Judges often refer to classical Islamic jurisprudence when handing down rulings in family law cases, highlighting the influence of Fiqh in the judicial process."

A content analysis of court decisions reinforces this insight, showing instances where judges explicitly cite Fiqh principles in their deliberations. This practice not only reaffirms the link between traditional Islamic jurisprudence and contemporary legal systems, but also demonstrates that Fiqh continues to be a guiding factor in the resolution of legal disputes. The continued reliance on Fiqh in judicial decision-making underscores its continued relevance as a source of legal authority.

Interviews provided different perspectives on how the influence of Fiqh extends beyond formal legal structures into legal practice. Legal practitioners highlighted the role of Fiqh in shaping legal opinions, influencing dispute resolution mechanisms, and guiding the behavior of legal professionals. A practicing lawyer said, "In our legal practice, especially in family disputes, we often use Fiqh principles to provide guidance on matters that are not explicitly covered in the law."

This qualitative insight is further supported by a content analysis of legal

commentaries and professional literature, where references to Fiqh principles were found to be an integral part of legal practice. This impact on legal professionals highlights the intricate relationship between traditional Islamic jurisprudence and the day-to-day operation of the legal system, illustrating the practical implications of Fiqh in shaping legal policy.

However, the interviews also highlighted the challenges and controversies associated with the influence of Fiqh on legal policy. Different views among legal practitioners and scholars emerged regarding the extent to which Fiqh should be incorporated into the legal system, especially in light of the evolving norms of society. One legal scholar expressed concern, stating, "While Fiqh provides a valuable ethical foundation, there is debate as to whether certain principles are in line with modern concepts of justice and equality."

This debate is reflected in content analysis of legal criticism and academic discussions, which display a spectrum of opinions on the appropriateness of relying on Fiqh in the formulation of legal policy. This dynamic landscape demonstrates the ongoing tension between traditional Islamic jurisprudence and the imperative to address contemporary legal challenges, emphasizing the need for a nuanced approach in navigating this delicate balance.

#### ***4.2 The Role of Maqasid al-Syariah in Legal Objectives***

Qualitative findings from in-depth interviews with policymakers, scholars, and legal experts underscore the important role of Maqasid al-Syariah in providing an ethical foundation for legal objectives in Indonesia. Participants consistently emphasized that the preservation of the fundamental values outlined in Maqasid al-Syariah serves as a guiding framework for legislation. One policymaker stated, "Maqasid al-Syariah offers a comprehensive ethical foundation, which ensures that legal objectives are aligned with overarching Islamic principles."

A content analysis of the laws corroborates the insights of these interviews,

revealing explicit references to the objectives outlined in Maqasid al-Syariah in various legal texts. Provisions relating to life, religion, intellect, lineage and property indicate a conscious effort to integrate these ethical imperatives into the Indonesian legal order. This ethical foundation extends to specific areas such as family law, influencing policies in criminal justice, economic practices, and governance, thus forming a value-based legal system.

Interviews highlighted the adaptive quality of Maqasid al-Syariah, which allows for the reinterpretation and application of Islamic ethics to contemporary challenges. Policymakers and scholars stated that Maqasid al-Syariah serves as a dynamic tool, allowing legal innovation to meet the evolving needs of society. One jurist stated, "Maqasid al-Syariah's adaptability allows for a nuanced approach, ensuring that Islamic principles remain relevant in addressing contemporary challenges."

Qualitative analysis of policy documents and legal reforms supports these findings, showing instances where policymakers have consciously adapted Maqasid al-Syariah to address issues such as poverty alleviation, human rights, and technological advancement. For example, initiatives aligned with the preservation of life and intellect include regulations on healthcare and advances in medical ethics. This adaptive quality positions Maqasid al-Syariah as a catalyst for legal evolution, encouraging a balance between tradition and the changing demands of society.

Interviews and content analysis further revealed the intersection between Maqasid al-Syariah and Fiqh in shaping legal objectives. While Fiqh provides specific legal rulings based on Islamic jurisprudence, Maqasid al-Syariah offers broader ethical goals that guide legal objectives. One policymaker explained, "While Fiqh provides specific rules, Maqasid al-Syariah serves as a compass, ensuring that the rules are aligned with the broader objectives of Islamic law."

A content analysis of legal texts shows instances where Fiqh principles and

Maqasid al-Syariah converge, particularly in areas relating to family law and personal status. This intersection demonstrates the dynamic interaction between the specific legal norms derived from Fiqh and the overarching ethical goals outlined in Maqasid al-Syariah.

Despite the positive influence of Maqasid al-Syariah on legal objectives, the interviews conducted revealed some challenges in its implementation. Participants acknowledged debates and differences in interpretation regarding the priority of Maqasid al-Syariah principles in specific legal contexts. One jurist said, "While there is general agreement on the general principles, disagreements arise in terms of prioritizing specific objectives in the face of competing interests."

A content analysis of law reviews and academic writings supports this insight, revealing discussions on the challenges of balancing the various objectives of Maqasid al-Syariah, especially in complex legal scenarios. The implementation of Maqasid al-Syariah remains a dynamic process, requiring ongoing dialog and interpretation within the legal community.

#### ***4.3 Interaction between Fiqh and Contemporary Legal Frameworks***

Qualitative findings from interviews with policymakers, legal academics, and practitioners underscore ongoing efforts to harmonize traditional fiqh principles with contemporary legal frameworks in Indonesia. Participants recognized the need for synergy between Islamic fiqh and modern legal requirements. One policymaker highlighted, "Efforts have been made to ensure that the principles of Islamic law are harmonized with the broader legal framework, especially in areas such as finance, trade, and human rights."

Content analysis of legal texts provides concrete examples of harmonization, with explicit references to international legal standards and conventions in Indonesian legislation. This shows a conscious effort to integrate global legal norms while upholding Islamic principles, demonstrating a pragmatic approach to

harmonization. Initiatives, such as the development of Islamic finance laws, were identified as successful attempts at navigating the intersection between fiqh and contemporary legal frameworks.

Nevertheless, the interaction between Fiqh and the contemporary legal framework is not without its challenges. Interviews highlighted several instances where tensions arose, particularly in areas where traditional Fiqh principles might conflict with the norms of an evolving society. Family law reform emerged as a contentious area, where debates on gender equality and individual rights intersect with traditional Islamic fiqh.

Legal experts and scholars expressed differing opinions on the extent to which Fiqh should be adapted to suit the evolving values of society. One jurist noted, "While there is recognition of the need for adaptation, there are concerns about weakening the integrity of Fiqh principles, especially in areas where there are cultural and social shifts."

A content analysis of legal critiques and academic discussions further illuminates this tension, displaying a spectrum of opinions on the appropriateness of relying on Fiqh in the formulation of legal policy. This dynamic landscape demonstrates the ongoing tension between traditional Islamic jurisprudence and the imperative to address contemporary legal challenges, emphasizing the need for a nuanced approach in addressing this delicate balance.

Despite these challenges, the research identified collaborative initiatives between legal scholars, policymakers and religious authorities to navigate the interplay between Fiqh and contemporary legal frameworks. Participants highlighted forums and dialogues where diverse perspectives are considered in the formulation of legal policies. One legal practitioner stated, "Collaborative initiatives provide a platform for discussion, which enables a more comprehensive understanding of how Fiqh can adapt to contemporary legal needs."

Content analysis of legal publications shows collaborative efforts in legal scholarship, where scholars engage in

discussions on the intersection between Fiqh and contemporary legal issues. This collaborative approach seeks to bridge the gap between traditional Islamic jurisprudence and the demands of a dynamic society, offering an avenue for informed and inclusive legal policy-making.

Qualitative analysis revealed a recognition of the need for flexibility and contextualization in navigating the interaction between fiqh and contemporary legal frameworks. Policymakers and legal experts emphasized the importance of interpreting Fiqh principles in light of the context and progress of society. One policymaker stated, "Flexibility is essential to ensure that Fiqh remains relevant and applicable to the needs of contemporary society."

The content analysis of the legal debates further highlighted discussions on the contextual interpretation of Fiqh principles in legal policymaking. This flexibility recognizes the dynamic nature of societal values and facilitates the integration of Fiqh within contemporary legal frameworks.

#### 4.4 Implications and Future Directions

The results and discussion offer valuable insights into the intricate dynamics between Fiqh, Maqasid al-Syariah, and contemporary legal frameworks in Indonesia. The explicit incorporation of Fiqh in legislation and its influence on judicial decisions showcase the ongoing relevance of traditional Islamic jurisprudence in shaping legal norms. Simultaneously, the role of Maqasid al-Syariah in guiding ethical foundations provides opportunities for

policymakers to align legal objectives with overarching Islamic principles, fostering a values-based legal system.

Future research could delve deeper into specific legal cases, examining how Fiqh and Maqasid al-Syariah are applied in different contexts. Additionally, exploring the perspectives of marginalized groups, such as women and minorities, could provide a more comprehensive understanding of the inclusivity of Islamic legal policies in Indonesia.

## 5. CONCLUSION

This research illuminates the intricate dynamics of Fiqh and Maqasid al-Syariah in the formation of Islamic legal policy in Indonesia. The explicit incorporation of Fiqh in legislation, its impact on judicial decisions, and its influence on legal practice underscore the enduring role of traditional Islamic jurisprudence. Concurrently, Maqasid al-Syariah provides an ethical foundation, fostering adaptability in legal objectives to address contemporary challenges. The interplay between Fiqh and contemporary legal frameworks showcases harmonization efforts, tensions, and collaborative initiatives. This dynamic synthesis of tradition and adaptation reflects the resilience of Islamic law in responding to the evolving needs of Indonesian society. The findings contribute to ongoing discussions on the role of Fiqh and Maqasid al-Syariah in shaping legal policies, providing insights for policymakers, scholars, and practitioners engaged in Islamic legal development.

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