

From Protection to Justification: Distorting Maqāṣid al-Sharī'ah in Child Marriage

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Abstract

This article investigates the distortion of maqāṣid al-sharī'ah within the practice of child marriage in Indonesia, where a normative framework intended to safeguard protection is increasingly reinterpreted as a mechanism for social legitimation. This research seeks to critically examine the selective deployment of maqāṣid al-sharī'ah in judicial decisions on marriage dispensation and to uncover internal tensions among the objectives of Islamic law concerning child welfare protection. We employ a normative legal research design using conceptual and case-based approaches drawing upon statutory regulations, court rulings, and both classical and contemporary maqāṣid literature. The findings reveal that judicial reasoning in dispensation cases tends to overemphasize the protection of honor (ḥifz al-'ird) while marginalizing essential safeguards such as life (ḥifz al-nafs) and intellect (ḥifz al-'aql). This pattern produces a pseudo-maqāṣid phenomenon and reflects underlying power relations in legal construction shaped by prevailing social pressures. This study concludes that a methodological reconstruction is required for the application of maqāṣid through a hierarchical and contextual framework that prioritizes child protection, ensuring that Islamic law operates as an instrument of substantive justice rather than mere normative legitimacy within the Indonesian judicial practice.

Keywords

Maqāṣid al-Sharī'ah; Child Marriage; Pseudo-Maqāṣid

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1. INTRODUCTION

The Indonesian legal system has regulated child marriage through Law Number 16 of 2019 concerning Marriage, Article 7, paragraph (1), which sets the minimum age of marriage at 19 years for men and women (Wulandari et al., 2026). This provision reflects the state's commitment to child protection, as affirmed in Law Number 35 of 2014 concerning Child Protection, which places the best interests of children as the primary principle. Nevertheless, child marriage continues to occur and, in some cases, even gains legal legitimacy through the marriage dispensation mechanism as regulated



under Article 7 paragraph (2). This provision often serves as a loophole that undermines the objective of establishing a minimum age requirement for marriage.

This condition creates tension between legal norms and social realities. Some marriage dispensation rulings are granted merely to satisfy formal legal requirements, without adequately taking into account the moral, social, psychological, and religious impacts on the child. Concerns regarding promiscuity and out-of-wedlock pregnancy are frequently used as justification for accelerating marriage (Ahyani, 2016). As a result, the law no longer functions solely as an instrument of social control but instead becomes a facilitator of social pressure developing within society. Based on these conditions, this study formulates an inquiry into how *maqāshid al-sharī'ah* is interpreted and employed to legitimize the practice of child marriage through marriage dispensation in Indonesia.

The normative framework of *maqasid al-sharia* emphasizes the protection of five basic principles, namely religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), heredity (*ḥifẓ al-nasl*), and property (*ḥifẓ al-mā'l*) (Najihatul Ulya, Muhammad Royhan Assaiq, 2025). This principle aligns with QS. An-Nisa verse 9, which reminds us not to abandon the weak generation: "And let *those who leave behind them weak children should fear Allah*" (Zulfa Mustaqimah, S & Miftahur Rizik, 2024). *Maqāshid al-sharī'ah* should serve as an ethical framework that protects children's future, wellbeing, and human dignity.

However, in social practice and even some legal considerations, the principle of *maqasid al-sharī'ah* is often reduced to partial justification through the concept of honor protection (*ḥifẓ al-ird*). Out-of-wedlock pregnancies or concerns about violations of moral norms are used as reasons to accelerate child marriage. In fact, this action has the potential to violate the principle of protecting children's lives and futures. *This is contrary to the hadith* of the Prophet Muhammad SAW, which states: "*Lā ḍarar wa lā ḍirār*," which explains that there should be no harm and no harm should be the basic principle in every policy and practice of Islamic law. (Ajmal, Muhammad, Sadheer Khan (Mufti Muhammad Hassan), 2025)

This phenomenon reveals a distortion in the application of the principle of *maqāshid al-sharī'ah*, in which the principle of protection becomes an instrument of legitimacy. *Maqāshid al-sharī'ah* is no longer positioned as a holistic ethical framework; instead, it is selectively interpreted to accommodate certain social interests. Consequently, what may be termed "pseudo-*maqāshid*" emerges: the formalistic use of *maqāshid* while neglecting their substantive objectives. These distortions not only legitimize child marriage practices but also blur the boundaries between ideal legal norms and problematic social realities.

The conflict between the protection of honor (*ḥifẓ al-ird*) and the protection of soul and reason (*ḥifẓ al-nafs* and *ḥifẓ al-'aql*) results in the *maqasid* not always being in a harmonious position. QS. Al-Baqarah verse 195 affirms that "And do not plunge yourselves into destruction," indicating that any action has the potential to harm the future and must be avoided (Esen, 2017). However, protecting

family honor is often given greater priority than safeguarding a child's long-term physical, psychological, and educational wellbeing.

In addition, the use of maqāṣid in child marriage practices cannot be separated from power relations within society. Patriarchal constructions and social control over women's bodies significantly influence how maqāṣid is interpreted and implemented. Through relation power where women and child often placed as responsible objects to guard the honor family, temporary pressure structural from family, religion, and public narrow down their ability they for reject marriage. In this context, child marriage becomes socially constructed as a "rational" solution to moral anxiety. This condition contradicts the principle of justice in Islam, as affirmed in QS An-Nisa 135, which commands justice without discrimination.

The novelty of this study lies in its critical examination of the concept of "pseudo-maqāṣid" within the practice of child marriage in Indonesia. Previous studies have generally presented this concept only as maqāṣid al-sharī'ah, a normative framework for preventing child marriage. In contrast, this study analyzes how maqāṣid function as an instrument legitimizing discursive marriage child through selective interpretation and relations of power in society. With so, research This Not only discusses maqāṣid as doctrine law but also as a contestation arena formed by interest law, culture, patriarchy, and social.

Based on the description of the problem above, a significant gap exists between legal norms, the principles of maqāṣid al-sharī'ah, and the practice of child marriage. This study is important for examining how maqāṣid al-sharī'ah not only functions as a normative doctrine but also as an arena for the contestation of meaning, influenced by social, cultural, and power interests. This study offers a critical contribution to the reconstruction of understanding of maqāṣid al-sharī'ah, with a focus on the objective of protecting the dignity of man comprehensively and ensuring justice in protecting the child in the practice of marriage.

2. METHOD

This research employs normative legal methods (Abdussamad, 2021), with a conceptual and case-based approach, grounded in a critical analysis of positive legal norms and Islamic legal theory. The normative approach is considered appropriate, as it examines the consistency between the legal norms governing child marriage, the principles of maqāṣid al-sharī'ah, and their implementation in judicial practice. Meanwhile, the case-based approach is essential for identifying how judges interpret legal provisions and apply maqāṣid-based reasoning in marriage dispensation decisions.

The main source of data, in the form of secondary legal materials, includes laws and regulations, religious court rulings on marriage dispensation, and classical and contemporary literature on *maqāṣid al-syarī'ah*. The selection of court decisions focuses on cases that explicitly rely on moral considerations, out-of-wedlock pregnancy, and family honor to grant marriage dispensations. This limitation helps maintain the study's analytical focus and avoids overly broad doctrinal interpretations. However, the study acknowledges the potential influence of doctrinal bias, which tends to rely more on legal provisions and judicial reasoning rather than empirical field data.

A conceptual approach is used to construct the concepts of "pseudo-*maqāṣid*" and "power-based *maqāṣid*" as an analytical framework for understanding the distortions in the use of *maqāṣid* in legal practice. Pseudo-*maqāṣid* refers to the application of *maqāṣid* principles that prioritize moral or social considerations while neglecting substantive protections for children, such as their wellbeing, education, psychological development, and human dignity.

In contrast, 'power-based *maqāṣid*' denotes interpretations of *maqāṣid* shaped by patriarchal structures, social pressures, and institutional authority in determining legal outcomes. These concepts are operationalized through several indicators, namely: (1) the dominance of moral and family honor considerations in judicial reasoning; (2) the marginalization of the child's long-term interests; and (3) the use of *maqāṣid*-based arguments to legitimize, rather than prevent, child marriage. Meanwhile, the case approach is focused on the analysis of court decisions that show the tendency to use moral reasons and social pressure as the basis for the legitimacy of child marriage.

This study uses a qualitative method, drawing on legal interpretation techniques and normative-critical analysis. The analysis was conducted through several stages, namely: first, identifying the relevant legal norms; second, examining the principles of *maqāṣid al-sharī'ah* related to child protection; third, analyzing judicial considerations to identify patterns of interpretation and justification, followed by formulating a critical reconstruction of *maqāṣid* interpretation that is oriented toward safeguarding children.

The research not only describes norms but also tests the consistency between legal norms, the principles of *maqāṣid*, and judicial practice. This approach allows the author to reveal epistemological inequalities in the application of *maqāṣid* and show how power relations and social constructions affect the interpretation of law. Accordingly, this method is not merely descriptive but also evaluative, critical, and reconstructive, developing a legal understanding more oriented toward child protection and justice in the context of marriage dispensation practices.

3. FINDINGS AND DISCUSSION

3.1. The Concept of "Pseudo-Maqasid" in the Legitimacy of Child Marriage

The phenomenon of child marriage in Indonesia cannot be understood as a violation of positive legal norms but as a social practice that continues to be reproduced through various mechanisms of legitimacy through the use of religious arguments. According to the principle of maqāṣid al-sharī'ah, which aims to maintain the benefits of the age, it is distorted when used partially and instrumentally to justify child marriage. (Wanto & Hidayat; Rahmad, 2021)

This study defines pseudo-maqāṣid as a distorted and reductionist use of maqāṣid al-sharī'ah, in which specific objectives within Islamic law are selectively emphasized to legitimize practices that substantially contradict the broader ethical and holistic purposes of the Sharia. Jasser Auda argues that maqāṣid should be interpreted holistically, multidimensionally, and contextually, rather than through fragmented forms of reasoning. Accordingly, pseudo-maqāṣid emerge when maqāṣid shift from a protective framework to a pragmatic tool used to immediately address social anxiety and moral pressure.

The concept, therefore, serves as a new theoretical construct to explain how incomplete, selective, and manipulative interpretations of maqāṣid are employed to justify practices that are substantively inconsistent with the broader objectives of Islamic law. This also demonstrates a significant gap in contemporary Islamic legal discourse, particularly regarding the lack of systematic examination of distortions in social and judicial practices.

Maqāṣid al-Sharī'ah rests on the main principles, namely the protection of religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), heredity (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). As emphasized by Abu Ishaq al-Shatibi in *al-Muwāfaqāt al-Muwāfaqāt*, maqāṣid must be understood integratively and cannot be separated, as they are interrelated with maintaining human welfare (Ikhsan & Iskandar, 2021). This view is reinforced by Jasser Auda, who emphasizes the system approach in understanding maqāṣid holistically and contextually. (Syarifuddin, 2021)

Marriage ideally functions as an institution that ensures the continuation of healthy offspring, protects human dignity, and creates family benefits. The practice of marriage dispensation and social legitimacy for child marriage is often reduced only to the aspect of *ḥifẓ al-nasl*, where it prevents adultery or pregnancy outside marriage. This reduction creates an imbalance within the hierarchy of maqāṣid, as *ḥifẓ al-nasl* is excessively prioritized. At the same time, *ḥifẓ al-nafs* and *ḥifẓ al-'aql*, which are associated with health, safety, psychological maturity, and the intellectual development of children, are instead overlooked. This reduction ignores other dimensions that are more fundamental, such as the protection of children's reproductive health (*ḥifẓ al-nafs*) and psychological and intellectual development (*ḥifẓ al-'aql*) (Najihatul Ulya, Muhammad Royhan Assaiq, 2025). The Qur'an emphatically

emphasizes the importance of protecting children's souls and futures. An-Nisa verse 9, which reminds us not to leave behind a weak generation. This is where the epistemological problem of "pseudo-maqasid" lies, namely, when a shari'a goal is prioritized disproportionately at the expense of other goals.

Judicial practice in the application for dispensation is based on Article 7 paragraph (2) of Law Number 16 of 2019 concerning Marriage, where the judge is given discretion to grant the application on the grounds of "urgency". (Wulandari et al., 2026) This phrase became the entry point for the pseudo-nomative construction based on maqasid. Although the Supreme Court has issued Supreme Court Regulation Number 5 of 2019, which emphasizes the principle of the best interest of the child in practice, this consideration is often reduced by social pressure and pseudo-morality.

This can be seen in the Religious Court Decision Number 166/Pdt.P/2020/PA. Pwr (Andriantama Mahendra & Alfian, 2023) and Decision Number 34/Pdt.P/2020/Pa.Skw (Dita Aprilianti, 2024). Where the reason for pregnancy out of wedlock and worries about "family disgrace" are used as the main basis for granting dispensation without looking at the child's psychological readiness and health. A comparison of the two decisions reveals a recurring judicial pattern in which judges across jurisdictions interpret "urgent reasons" primarily through moral and social considerations rather than multidimensional indicators of child protection. Out-of-wedlock pregnancy is framed as a form of social emergency that must be promptly resolved through the legalization of marriage.

At the same time, the long-term consequences for the child, including mental development, reproductive health, economic preparedness, and educational continuity, receive minimal consideration. This indicates that judicial reasoning tends to prioritize the preservation of family reputation and social order over the substantive principle of the child's best interests.

In fact, in Islamic Law, upholding the benefits must meet the criteria of *maslahah mu'tabara*, which is not contrary to the principle of protecting the mind and soul (Muhammad Mustaqim Roslan, 2023). The similarity in legal reasoning patterns across the two decisions indicates that *maqāṣid* in marriage dispensation cases is often applied selectively and pragmatically. Rather than functioning as a holistic framework for child protection, *maqāṣid* is reduced to a tool of justification used to address social stigma quickly.

This pattern reflects not merely incidental judicial considerations but a broader structural tendency in which *maqāṣid* is interpreted in a fragmented manner, emphasizing *hifz al-nasl* while neglecting *hifz al-nafs* and *hifz al-'aql*. Thus, the judge's criteria for selectively applying *maqasid*, without a comprehensive analysis of all dimensions of protection, may constitute a manifestation of "pseudo-maqasid".

The manipulative use of maqāṣid can be seen in the social construction of honor and control over women's bodies. Child marriage is often positioned as a solution to maintain the family's good name, especially in the case of out-of-wedlock pregnancies. Religious postulates then strengthen this narrative interpreted textually, without considering the maqāṣid in their entirety. As in the hadith of the Prophet Muhammad SAW: "O young men, whoever among you is able (*al-ba'ah*), then marry..." (HR. Bukhari and Muslim), these hadiths are often used as a basis for legitimacy without contextual analysis (Masduki, 2019). In fact, scholars such as Imam Al-Ghazali interpret that ability (*al-ba'ah*) to include economic, mental, and social readiness, not just biological. (Hidayat & Azahari, 2020)

This indicates that a textual interpretation that disregards the hierarchy of maqāṣid risks transforming religious argumentation into a pragmatic tool of social legitimization rather than a mechanism for protecting and promoting public welfare. As a result, religious arguments are no longer directed toward safeguarding children, but instead become tools for normalizing socially accepted practices.

Referring to Indonesia's positive law, this practice is certainly contrary to the principle of child protection as stipulated in Law Number 35 of 2014 concerning Child Protection, which affirms that every child has the right to survive, grow, and develop and to receive protection from practices that endanger him or her (Wahyuni, 2022). In addition, Article 28, paragraph (2) of the 1945 Constitution states that every child has the right to protection from violence and discrimination (Kambu, 2021). This is in line with the Convention on the Rights of the Child, which affirms the obligation of states to protect children from the practice of child marriage (Bagus et al., 2021). Therefore, the legitimization of child marriage through "pseudo-maqāṣid" not only contradicts the substantive objectives of maqāṣid al-sharī'ah in safeguarding children but also creates inconsistencies with Indonesia's constitutional guarantees and its international human rights obligations regarding child protection.

The concept of pseudo-maqāṣid reveals epistemic inequality in how society and the legal apparatus understand Islamic Law. Instead of using a holistic approach that considers all the purposes of shari'a, the interpretation used is fragmentary and pragmatic. Distortions are seen in legal considerations, such as the child's health, education, and psychological readiness (Athar Maulana, Lily Andayani, 2025). This condition indicates that maqāṣid no longer functions as a comprehensive methodology of *ijtihad* but is increasingly reduced to a rhetorical instrument used to justify socially accepted practices.

Therefore, said that it is necessary to reconstruct the understanding of maqāṣid al-sharī'ah, which places child protection as the main priority. The principles of *ḥifẓ al-nafs* and *ḥifẓ al-'aql* should be the main consideration in any decision relating to child marriage (Nurbaeti, Kurniati, 2025). The reconstruction is realized through a maqāṣid-based child protection framework, an analytical model that positions child protection as a substantive requirement in granting marriage dispensations. In this

framework, maqasid no longer operate merely as abstract moral legitimacy but as a concrete instrument for legal reasoning and child protection.

Table 1. Maqasid-Based Child Protection Framework in Marriage Dispensation

Dimension of Maqasid	Operational Indicators	Judicial Assessment Criteria	Child Protection Objective
Ḥifẓ al-Nafs	Reproductive health, psychological maturity, risk of violence	Medical examination, psychological assessment, and absence of coercion	Protecting the physical and mental wellbeing of the child
Ḥifẓ al-'Aql	Educational continuity, intellectual development, and school participation	Guarantee of continued education and learning access	Preventing educational deprivation and intellectual harm
Ḥifẓ al-Nasl	Responsible parenting and family stability	Long-term parenting preparedness	Ensuring dignified family formation
Ḥifẓ al-Māl	Economic readiness and financial capability	Stable income and economic support assessment	Preventing structural poverty and dependency
Integrated Maqasid Assessment	Holistic evaluation of all dimensions	All dimensions must be cumulatively fulfilled before dispensation is granted.	Ensuring the best interests of the child
Source: Compiled by the researcher based on the theories of Al-Shāṭibī and Jasser Auda			

The table above illustrates that maqāṣid should not be interpreted selectively by prioritizing only ḥifẓ al-nasl while disregarding other dimensions of child protection. By applying structured criteria, the assessment of "urgent reasons" in marriage dispensation cases becomes more objective, measurable, and aligned with the holistic objectives of maqāṣid al-sharī'ah and the principles of child protection.

The use of maqasid in legal legitimacy must therefore satisfy three fundamental conditions: first, it must comprehensively consider all dimensions of human welfare; second, it must not contradict the foundational principles of shari'ah, constitutional law, and child protection norms; and third, it must prioritize sustainable long-term welfare rather than immediate pragmatic solutions.

The concept of pseudo-maqāṣid should be understood not merely as a conceptual critique but as a legal instrument within Islamic law that functions as a symbolic legitimization of practices accepted within society. Consequently, the concept of pseudo-maqasid may serve as a foundation for reconstructing Islamic family law toward a more holistic, justice-oriented, and child-protective legal framework.

3.2. Maqāṣid's Internal Conflict in Child Marriage

The main purpose of maqāṣid al-sharī'ah is to realize benefits (*jalb al-maslahah*) and prevent damage (*dar'al-mafsadah*). The classical theory of Al-Ghazali in al-Mustafa (Rohman, 2018) and al-Shatibi dalam *al-Muwāfaqāṭal-Muwāfaqāṭ* (Riyandi Syafri, 2025) explains that maqāṣid is structured hierarchically into three levels of necessity: *ḍarūriyyāt*, *ḥājjiyyāt*, and *taḥsīniyyāt*, which include the protection of religion, life, intellect, lineage, and property. Contemporary maqāṣid scholarship further develops the protection of honor (*ḥifz al-'ird*) as part of the protection of human dignity.

Therefore, maqāṣid must be understood as both hierarchical and dynamic, allowing the possibility of conflict between objectives that requires prioritization through *tarjih* (Tajrid, 2021). This hierarchy shows that maqāṣid at the *ḍarūriyyāt* level cannot be sacrificed to interests at the *ḥājjiyyāt* level (Nurbaeti, Kurniati, 2025) or to *taḥsīniyyāt* (Jahar et al., 2021). Accordingly, every child marriage case must be explicitly assessed within this hierarchical structure to determine which maqāṣid objective deserves priority protection.

Conflict Between *Ḥifz al-'Ird* and *Ḥifz al-Nafs*

Hifz al-'ird, which is often used as a basis for legitimacy in cases of out-of-wedlock pregnancies or concerns about social stigma. The evidence used is the same as in QS. Al-Isra verse 32 and the hadith "fa liyatadzawaj" (HR. al-Bukhārī and Muslim) are often understood literally (Wiranto & Akib, 2022). Ushuliyah, the hadith requires abilities (*al-ba'ah*) that include biological, psychological, and economic readiness, so they cannot be applied immediately to children (Arif Maulana, 2024). The use of this postulate without a comprehensive analysis of maqāṣid is a form of normative reduction that aims to give birth to pseudo-legitimacy.

On the other hand, *ḥifz al-nafs* requires protecting children's physical and psychological wellbeing. Reproductive health risks, maternal mortality, and psychological trauma indicate that child marriage potentially creates *mafsadah ḍarūriyyah*. The *uṣūl fiqh* principles "*lā ḍarar wa lā ḍirār*" (Esen, 2017) and "*dar' al-mafsadah muqaddam 'alā jalb al-maṣlahah*" (Rohmawati & Siddik, 2022) should therefore function as primary principles in legal reasoning. Within the hierarchy of maqāṣid, protection of life falls under *ḍarūriyyāt*, whereas concerns about social shame or honor often operate at the level of *ḥājjiyyāt* or *taḥsīniyyāt*. In cases involving applications for child marriage dispensation for individuals aged 15–16 due to out-of-wedlock pregnancy, the principle of *ḥifz al-'ird* is often invoked to prevent social stigma against the family.

In such situations, judges face a conflict between *ḥifẓ al-'ird* and *ḥifẓ al-nafs*. From a *maqāṣid* analysis perspective, *ḥifẓ al-'ird* is categorized as either *ḥājiyyāt* or *taḥsīniyyāt*. In contrast, *ḥifẓ al-nafs* is placed at the level of *ḍarūriyyāt* due to potential risks such as reproductive health complications, psychological trauma, and biological immaturity. (Rasito & Mahendra, 2022)

Accordingly, *ḥifẓ al-nafs* should be given priority in such cases, leading to a judicial inclination toward rejecting the dispensation request. Consequently, when these objectives conflict, *ḥifẓ al-nafs* must take precedence over *ḥifẓ al-'ird* (Rohmawati, 2024). The rule is not only normative but serves as the basis of *tarjīḥ maqāṣidī*, which requires the pre-protection of the soul for honorary considerations. This principle not only provides normative guidance but also serves as the basis for *tarjīḥ maqāṣidī* in resolving child marriage disputes.

Conflict Between *Ḥifẓ al-Nasl* and *Ḥifẓ al-'Aql*

Another important conflict arises between *ḥifẓ al-nasl* and *ḥifẓ al-'aql*. In practice, the argument of preserving lineage through child marriage is often used to provide legal status to children born outside marriage. However, this approach frequently neglects *ḥifẓ al-'aql*, which, as part of *ḍarūriyyāt*, requires the fulfillment of children's rights to education, intellectual growth, and psychological maturity. (Lenny Guspidawati, 2025)

Empirical evidence demonstrates that child marriage limits educational access and reduces the quality of human resources, thereby undermining the long-term objectives of *maqāṣid al-sharī'ah*. Protection of lineage should not be understood purely in biological terms. The continuity of future generations also depends on intellectual quality, education, and social preparedness.

A concrete example can be seen in applications for marriage dispensation involving girls aged 14–15, where the stated reason is to legitimize the status of a child who has already been born (Al Hasan & Yusup, 2021). In such cases, judges are required to consider that *ḥifẓ al-nasl* is primarily situated within an administrative and biological dimension.

However, if the child is still of compulsory school age and has not completed basic education, this creates a conflict with *ḥifẓ al-'aql*, which is classified as *ḍarūriyyāt*. Under these circumstances, the issue is understood as a tension between lineage interests (*ḥājiyyāt/taḥsīniyyāt*) and the protection of intellect (*ḍarūriyyāt*), meaning that *ḥifẓ al-'aql* should take precedence and the dispensation is therefore more likely to be rejected. Accordingly, the protection of intellect must be prioritized when child marriage poses a threat to educational rights and the child's development. (Sakinah Azzahra Hsb, 2025)

Operational Model of Tarjih Maqāṣidī

Maqasid cannot be understood in part, because it is an approach that serves only one purpose: to justify a particular practice, which is a form of pseudo-maqasid, namely the selective use of maqasid without considering their overall structure and hierarchy. Therefore, a systematic methodological approach is needed in determining the priorities of maqasid. Prioritization (*tarjih maqāṣidī*) should be based on three main parameters: (Nur et al., 2020) (1) the level of need by prioritizing *ḍarūriyyāt*; (2) the rules of damage prevention; and (3) long-term impact analysis (*ma'ālāt al-af'āl*). These three stages function as a single, integrated decision-making system rather than as separate considerations. Through this model, judges should prioritize maqāṣid related to child protection, particularly ḥifẓ al-nafs and ḥifẓ al-'aql, whenever these objectives conflict with moral or social considerations. This means that maqāṣid must be operationalized into a hierarchical judicial filter that directly guides the outcome of marriage dispensation cases.

Table 2. Operational Decision-Making Model of Tarjih Maqāṣidī in Child Marriage Case

Stages Tarjih Maqāṣidī	Logic Judge's Assessment	Implications Decision
Hierarchy Assessment	If interest dispensation is related to ḥifẓ al-'ird or ḥifẓ al-nasl, the judge is obliged to classify interest to the level of ḍarūriyyāt, ḥifẓ al-nafs, or taḥsīniyyāt. If a conflict occurs with ḥifẓ al-nafs or ḥifẓ al-'aql included ḍarūriyyāt, then the interest must be prioritized.	Interest social like honor or lineage. No can outperform protection soul, and reason children so that they become the basic main evaluation beginning.
Harm Analysis	If a risk is found in the form of a disturbance to health reproduction, psychological trauma, a school breakup, or domestic violence, then the condition is categorized as understood on the level of ḍarūriyyah. When understanding ḍarūriyyah is more dominant than the problem being proposed, then the application dispensation No. can be granted based on the rules dar 'al-mafsadah muqaddam 'alā jalb al-maṣlaḥah.	Dispensation is rejected when there is a real threat to the child's safety, health, and future.

Stages Tarjih Maqāṣidī	Logic Judge's Assessment	Implications Decision
Long-Term Impact Analysis	If marriage-child potential has a long-term impact in the form of low educational attainment, structural poverty, or a decline in the quality of life, then this impact must be considered in law as part of understanding sustainable development.	The judge's assessment is not only based on nature's actual, but also considers the consequences and long-term effects on quality generation.
Tarjih Maqāṣ idī	If there is a conflict between ḥifẓ al- 'ird or ḥifẓ al- nasl with ḥifẓ al- nafs or ḥifẓ al- 'aql, then the judge is obliged to prioritize ḥifẓ al- nafs and ḥifẓ al- 'aql as part of ḍarūriyyāt. When the all-over indicator shows an existential threat to the soul, and reason cannot be given to the child.	The decision is directed toward protection best for the child (best interests of the child), with a trend of rejection if there is risk at the level of ḍarūriyyah.

Source: Based on a normative analysis of *usul al-fiqh* literature, the concept of *maqāṣid al-sharī'ah*, and judicial reasoning practices.

Accordingly, this model of *tarjih maqāṣidī* operates as a “judicial filter system” that ensures every application for a dispensation from child marriage is not assessed solely on normative grounds, but is also examined through a hierarchical, empirical, and long-term, child-protection-oriented perspective.

3.3. Maqasid Al-Syarī'ah as an Instrument of Social Power

The practice of justice, the application of the concept of *maqasid al-sharī'ah*, does not always function as an instrument to realize benefits but transforms into a tool of social power legitimization. Unlike pseudo-*maqasid*, which refers to epistemic misinterpretation of *maqasid* principles, the present analysis focuses on a structural transformation in which *maqasid* is reconstituted through socio-legal power relations rather than doctrinal error. This framework differs from the concept of pseudo-*maqasid*, which refers to interpretative misapplications or doctrinal deviations from *maqasid al-sharī'ah* (Tohari et al., 2022). In contrast, this study emphasizes a deeper structural dimension, in which *maqasid* is not merely misconstrued but is systematically reconstructed under social and institutional pressures. This process ultimately produces a functional alignment with prevailing socio-cultural power structures.

This can be seen from Decision Number 166/Pdt.P/2020/PA. Pwr and Number 34/Pdt.P/2020/PA. Skw shows that the judge's considerations are more oriented towards resolving social pressures than substantive protection of children. The first findings show that out-of-wedlock pregnancies are the primary basis for granting the marriage dispensation (Rodhi et al., 2023). The condition of pregnancy is positioned as an urgent reason to carry out marriage to avoid social consequences immediately.

This approach reflects a pragmatic orientation that shifts maqāṣid from individual protection to short-term social impact mitigation. In fact, substantively, this condition demands protection for *hifz al-nafs* and *hifz al-aql*, considering the risks of reproductive health, psychological vulnerability, and school dropout inherent in child marriage (Mahayogi et al., 2025). Thus, the use of maqāṣid is reactive and not based on long-term analysis.

The second finding reveals that the dominance of the narrative of "family honor" in the judge's consideration is used as an excuse to expedite marriage, both in the applicant's argument and in legal considerations (Elvina Jahwa et al., 2024). In fact, the maqāṣid hierarchy, where nonseparation is not included in the category of *al-darurriyat*, is at the secondary level. However, in practice, this value is prioritized over the protection of the soul and intellect. The condition shows the distortion of the maqāṣid hierarchy, conceptualized as power-based maqāṣid, namely the selective use of maqāṣid to maintain the patriarchal social structure. Power relations in this context cannot be regarded as neutral, as they operate through what may be termed judicially mediated social control. Within this framework, community stigma, family reputation, and moral pressure function as informal yet coercive forces that indirectly influence judicial reasoning (Forbes et al., 2020). In this process, judges are not limited to interpreting maqāṣid; rather, they also negotiate between the authority of state law and prevailing social expectations, which ultimately leads to a subtle internalization of norms within judicial decision-making.

There is a lack of consideration for the psychological readiness and reproductive health of children if you look at Decision Number 166/Pdt.P/2020/PA. Pwr where the judge's consideration focuses on pregnancy conditions and social urgency without being accompanied by a description of mental readiness or health risks. The same thing can be seen in Decision Number 34/Pdt.P/2020/PA. Skw where there is no explicit analysis of the long-term impact on children's education and development. This absence shows that the judge's consideration is formal and has not comprehensively integrated the principles of child protection. These rulings demonstrate a predominantly formalistic and pragmatic mode of reasoning rather than a systematically structured *maqāṣid*-based evaluation (Abd. Rahman, Kurniati Kurniati, 2026). The judges seem to give greater weight to social stabilization concerns—such as preventing shame and restoring communal order than to a teleological assessment of consequences (*ma'ālāt al-af'āl*). In addition, there is little clear indication of a structured balancing mechanism (*mīzān*

maqāṣidī) between competing interests, suggesting that *maqāṣid* is applied selectively rather than consistently and systematically within judicial reasoning (Nurhikmah, 2024).

Normatively, of course, this practice is contrary to the rules of *lā ḍarar wa lā ḍirār* and is not in line with Article 7 paragraph (1) of Law Number 16 of 2019 concerning Marriage and Article 26 paragraph (1) letter c of Law Number 35 of 2014 concerning Child Protection. This shows the tension between protective legal norms and judicial practices that are still accommodating to social pressures (Khotimah & Ula, 2023). In addition, the pattern of legal pluralism in which social, religious, and state law norms interact in a complex way in society. Social norms about family honor tend to be more dominant, while *maqāṣid* is used as a selective form of religious legitimacy (Nurbaeti, Kurniati, 2025). This condition shows that, in a plural legal system, *maqāṣid* are prone to distortion when applied in an unequal social structure.

Legal pluralism views judges as operating within a context of competing normative authorities, including state law (such as child protection legislation), moral-religious reasoning (*maqāṣid* discourse), and community-based social norms (family honor and stigma avoidance) (Putri & Jansen, 2021). The dominance of social norms indicates a form of symmetrical legal pluralism in which informal norms effectively override formal protective legislation. This dynamic helps explain why *maqāṣid* tends to function more as a bridge of legitimacy rather than as an independent normative filter (Evy Septiana, 2022). Within this structure of legal pluralism, the dominant actor is not the state legal system, but the local socio-cultural authority that defines reputational norms such as family honor and social stigma. Judges operate in a normative environment in which informal community pressure functions as a form of "soft coercion," while state law and *maqāṣid* discourse remain comparatively weaker in shaping outcomes. This creates a hierarchical ordering of norms in practice, where social norms occupy the highest operative authority in decision-making, despite not having formal legal supremacy.

This suggests that *maqāṣid* is not only subject to conceptual distortion but is also institutionally instrumentalized within judicial practice. Its interpretive flexibility enables it to be adjusted to prevailing social expectations, rather than being applied strictly as an ethical and legal constraint (Warsidi, Sami Ullah Khan, 2025). Therefore, it is necessary to formulate two new analytical frameworks, namely power-based *maqāṣid* and normative abuse *maqāṣid*, to explain *maqāṣid*, which are used as instruments of social power legitimacy through the mechanisms of selection and reinterpretation (Rizkiani et al., 2023). This finding also expands the study of *maqāṣid*, which has tended to be normative by showing the dimension of power relations in the practice of Islamic family law. The implication is to demand a methodological reconstruction of the use of *maqāṣid*, placing *hifz al-nafs* and *hifz al-aql* as top priorities and strengthening substantive assessments in judicial practice. The integration of human rights and gender justice perspectives is also important to ensure that *maqāṣid*

functions as an instrument of protection rather than a mere justification for practices that harm vulnerable groups.

4. CONCLUSION

The use of maqāṣid al-syarī'ah in the practice of child marriage in Indonesia has undergone a serious distortion from its normative function as an instrument of protection to a tool of social legitimacy. The phenomenon of pseudo-maqāṣid indicates that maqāṣid is no longer understood holistically but is selectively reduced to justify practices that are substantially contrary to the goals of the Shari'ah itself. The dominance of family honor considerations in marriage dispensation decisions reflects a structural bias that sacrifices the protection of the child's soul and intellect. This is not only contrary to the basic principles of Islamic law but also to the constitutional norms and principles of child protection in Indonesia's positive law. Conceptually, this study offers a methodological reconstruction through the tarjī approach maqāṣidī, which places ḥifz al-nafs and ḥifz al-'aql as the primary priorities in resolving conflicts between maqāṣid.

This study contributes to the development of critical *maqāṣid* discourse by introducing the concept of pseudo-*maqāṣid* as a framework for identifying the selective use of Islamic legal objectives, shaped by socio-political interests, within contemporary family law practices. In addition, the integration of maqāṣid, Positive law, and human rights principles is essential to ensure that the law is not subject to discriminatory social pressures. In addition, it provides a normative foundation for judges and policymakers to strengthen child protection-oriented considerations in the practice of marriage dispensation. Therefore, reformulating judicial practices and strengthening the framework of child protection-based analysis are strategic steps to restore maqāṣid as an instrument of substantive justice oriented towards long-term benefits.

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