



## Utilizing Science and *Maqāṣid al-Sharī'ah* in Resolving Contemporary Issues of Islamic Family Law

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**Abstract:** Contemporary ijthad is required in the formulation of new formulas, such as legal protection of the rights of children outside marriage whose biological father is known. Reformulation of Jurisprudence as an analysis of Islamic law must be able to answer socio-cultural problems in the modern era, such as proof of the use of DNA as genealogy. An adaptive formulation of Jurisprudence on contemporary cases by combining science and *Maqāṣid al-Sharī'ah* is analyzed in this article. The resolution of Islamic law by referring to the opinions of the Four Madhhabs of Jurisprudence needs to be approached or juxtaposed with science. A correct understanding of the values contained in the sharia and the application of *Maqāṣid al-Sharī'ah* are indispensable in contemporary ijthad so that the face of Jurisprudence can dialect with the times. So that the determination of lineage by DNA can be used as a legal reference that is adaptive to science and in accordance with the great objectives of *Maqāṣid al-Sharī'ah*.

**Keywords:** *Maqāṣid al-Sharī'ah*; Science; Islamic jurisprudence; contemporary family law

**Abstrak:** Ijthad kontemporer dibutuhkan dalam perumusan formula baru seperti perlindungan hukum atas hak-hak anak di luar perkawinan yang telah diketahui ayah biologisnya. Reformulasi Fikih sebagai analisis hukum Islam harus dapat menjawab problem sosial budaya di era modern seperti pembuktian dalam penggunaan DNA sebagai geneologi nasab. Formulasi Fikih yang adaptif atas kasus kontemporer dengan mengabungkan sains dan *Maqāṣid al-Sharī'ah* dianalisis dalam artikel ini. Penyelesaian hukum Islam dengan merujuk pendapat Fikih Empat Madzhab perlu didekati atau disandingkan sains. Pemahaman yang benar tentang nilai yang terkandung dalam syariah dan penerapan *Maqāṣid al-Sharī'ah* sangat diperlukan dalam ijthad kontemporer, sehingga wajah Fikih dapat berdialek dengan zaman. Sehingga penetapan nasab dengan DNA dapat dijadikan rujukan hukum yang adaptif dengan sains dan sesuai tujuan besar *Maqāṣid al-Sharī'ah*.

**Kata Kunci:** *Maqāṣid al-Sharī'ah*; sains; hukum Islam; hukum keluarga kontemporer

## Introduction

Over time, a multitude of legal phenomena and challenges emerge, necessitating solutions. Certain issues remain unaddressed by the established rules of *fiqh* (Islamic jurisprudence). Consequently, contemporary *ijtihad* becomes imperative to provide responses to these diverse contemporary dilemmas.<sup>1</sup> Contemporary *ijtihad* is undertaken to formulate Islamic jurisprudence that is congruent with the current societal context (*salih li kulliz-zaman wal-makan*), which includes addressing modern-day challenges, such as determining the biological father of an adopted child through scientific means like DNA testing.<sup>2</sup>

Numerous contemporary issues within the realm of family law frequently encounter incomplete resolutions within the jurisprudence and statutes of family law in Indonesia.<sup>3</sup> For instance, contemporary challenges include instances of divorce based on electronic evidence, as demonstrated in case decisions numbered 0150/PDT.G/2014/PA.YK and 0132/PDT.G/2015/PA.YK, along with marriages conducted via the internet or teleconference within judicial settings, exemplified by the South Jakarta Religion Court case numbered 1751/P/1989.PA.JS. Furthermore, issues encompassing gender equality within familial structures, as well as cases involving the determination of children's parentage through DNA testing, as elucidated by Constitutional Court Decision Number 46/PUU-VIII/2010, also contribute to the array of contemporary challenges.<sup>4</sup>

Consequently, addressing the aforementioned phenomenon necessitates *ijtihad* and innovative approaches within the domain of Islamic law.<sup>5</sup> The discourse concerning the evolution and establishment of legal principles in the *Uṣūl al-Fiqh* literature is synonymous with *ijtihad*.<sup>6</sup> In this context, *ijtihad* is construed as the endeavor undertaken by a jurisprudential expert (*faqih*) to deduce Sharia law from its foundational sources.<sup>7</sup>

Broadly speaking, *ijtihad* can be characterized as the endeavor to enhance the derivation of Islamic law from its foundational sources, aiming to address emerging legal issues within society.<sup>8</sup> The indispensable role of law, as universally acknowledged across literature pertaining to the sociology of law, is perennially essential, serving a dual function of significance. Law serves as a mechanism

<sup>1</sup> Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer," *Unisia* 30, no. 66 (2007).

<sup>2</sup> Bani Syarif Maula, "Kajian Al-Ahwal Al-Syakhsyiyah Dengan Pendekatan Maqasid Al-Syari'ah," *Al-Manahij: Jurnal Kajian Hukum Islam* 8, no. 2 (2014): 233–46.

<sup>3</sup> Nofialdi Nofialdi, "Ijtihad Ibn Qayyim Al-Jawziyyah Dan Al-Maqasid Al-Juz'iyah: Refleksi Penyelesaian Kasus Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 1 (2018): 71–86.

<sup>4</sup> Imam Mustofa, "Ijtihad Kontemporer Sebagai Upaya Pembaruan Hukum Keluarga Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 2 (2013): 207–24.

<sup>5</sup> Warkum Sumitro and Fiqh Vredian Aulia Ali, "Reformulasi Ijtihad Dalam Pembaruan Hukum Islam Menuju Hukum Nasional: Ikhtiar Metodologis A. Qadri Azizy Mentransformasikan Fikih Timur Tengah Ke Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 15, no. 1 (2015): 39–60.

<sup>6</sup> Muflikhatul khoiroh and Abd Syakur Syakur, "The Flexibility of Islamic Law in the Ganjur Tradition in Lamongan, Indonesia," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 SE-Articles (December 25, 2023): 139–59, <https://doi.org/10.18326/ijtihad.v23i2.139-159>. Indonesia, considered unique for allowing women to propose to men. Despite its uniqueness, the &lt;em>Ganjur &lt;/em> tradition carries important moral teachings in the context of realizing humanistic and egalitarian family relations. This study is a legal-sociological study using a grounded research model to find evidence of the flexibility of Islamic law in determining the status of the law of the &lt;em>Ganjur &lt;/em> tradition. The data required include the history of &lt;em>Ganjur &lt;/em>, &lt;em>Ganjur &lt;/em> practice, and people's views on &lt;em>Ganjur &lt;/em>, which were explored through interviews with twenty informants and Focus Group Discussions (FGDs)

<sup>7</sup> Muhammad Rawwas Qal'ahji, "Al-Mausu 'ah Al-Fiqhiyyah Al-Muyassarrah," *Beirut: Dar Al-Nafa'is* 1421 (2000).

<sup>8</sup> Anugrah Reskiani et al., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 39–51.

for social regulation amidst the evolving dynamics of human existence, and concurrently functions as an instrument for societal transformation aimed at actualizing the concept of *maslahah* (public welfare), which stands as the intrinsic objective of law.<sup>9</sup>

The paramount subject within the realm of *Uṣūl al-Fiqh* scholarship is *Maqāṣid al-Sharī'ah*, constituting the core essence of this field of study. *Maqāṣid al-Sharī'ah* holds a pivotal role in the formulation and development of legal frameworks, embodying the underlying rationale and wisdom guiding the implementation of every legal precept.<sup>10</sup> In essence, *Maqāṣid al-Sharī'ah* denotes the objectives of Islamic law, which aim to facilitate benefits for individuals both in the present world and the hereafter. These benefits are realized through the preservation of the five fundamental necessities (*al-daruriyyat al-khamsah*), namely safeguarding religion, life, intellect, progeny, and property.<sup>11</sup> The application of *Maqāṣid al-Sharī'ah* is indispensable in contemporary *ijtihād* to foster the emergence of a jurisprudence that is human-centered, adaptable, and equitable. Through this approach, *fiqh* is anticipated to effectively engage in discourse with the evolving challenges and developments encountered by society.<sup>12</sup>

To date, there exists a scarcity of literature addressing contemporary *ijtihād* through the lens of *Maqāṣid al-Sharī'ah*. The prevalent approach predominantly relies on normative *fiqh* methodologies, leading to misconceptions among many jurisprudential experts regarding the essence of legal enactments. Hence, it is imperative to scrutinize legal verdicts from the perspective of *Maqāṣid al-Sharī'ah*. Scholars of *Uṣūl al-Fiqh* concur that a thorough comprehension of *Maqāṣid al-Sharī'ah* constitutes a fundamental prerequisite for conducting *ijtihād* to address the evolving array of human life challenges. Consequently, scholars engaged in *ijtihād* must possess a comprehensive understanding of the objectives of Islamic law (*Maqāṣid al-Sharī'ah*) to facilitate the advancement of legal reasoning and effectively tackle contemporary legal issues that may not be explicitly addressed in the Qur'an and Sunnah.<sup>13</sup>

The discussion of *Maqāṣid al-Sharī'ah* invariably invokes the name of the eminent jurist Imam al-Shatibi, whose significant contributions are encapsulated in his seminal work *al-Muwafaqat fi Uṣūl al-Sharī'ah*. As a classical scholar, Imam al-Shatibi extensively expounded upon *Maqāṣid al-Sharī'ah*, thus rightfully earning recognition as a trailblazer in the field of *Maqāṣid* science. He adeptly synthesized the theoretical frameworks of *Ushul al-Fiqh* (or *nazariyyat uṣūliyyah*) with the concept of *Maqāṣid al-Sharī'ah*, thereby yielding legal frameworks perceived as more dynamic and contextually relevant. Therefore, it is unsurprising that the concept of *Maqāṣid al-Sharī'ah* presented by Imam al-Shatibi remains highly pertinent and significant for scholarly examination. Given the perpetual evolution and diversification of human circumstances and requirements, it becomes imperative to continually refine this concept, as evolving times inevitably impact legal frameworks. What was once deemed unfavorable during classical eras may now hold intrinsic value and be regarded positively. Throughout

<sup>9</sup> Soerjono Soekanto, "Pokok-Pokok Sosiologi Hukum," 2004.

<sup>10</sup> Asyharul Muala, "Repositioning of Islamic Economics in the Era of Globalization from the Maqasid Syari'ah Perspective," *J. Islamic L.* 1 (2020): 45.

<sup>11</sup> Agus Waluyo, "The Developmental Policy of Halal Product Guarantee in the Paradigm of Maqāṣid Sharī'ah in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 1 (2020): 41–60, <https://doi.org/10.18326/ijtihad.v20i1.41-60>.

<sup>12</sup> Maulidi Maulidi, "Metodologi Ijtihad Fikih Kontemporer (Telaah Atas Pemikiran Yusuf Al-Qaradawi)," *Al-Manahij: Jurnal Kajian Hukum Islam* 8, no. 1 (June 6, 2014): 13–26, <https://doi.org/10.24090/mnh.v8i1.396>.

<sup>13</sup> Zarul Arifin, "Kehujahan Maqasid Al-Syari'ah Dalam Filsafat Hukum Islam," *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 5, no. 2 (2020): 258–74.

its evolution, the exploration of *Maqāṣid al-Sharī'ah* has frequently served as a point of reference for scholars of Islamic legal philosophy. Although these scholars often employ the terminology of Islamic legal philosophy rather than explicitly using the term *Maqāṣid al-Sharī'ah*, the underlying principles share remarkable similarities. Consequently, the prominence of *Maqāṣid al-Sharī'ah* in the progression of Islamic law discourse is undeniable, with the study of legal development intricately intertwined with the domain of Islamic legal philosophy.<sup>14</sup>

To achieve contemporary *ijtihād* formulations capable of addressing current challenges, strategic measures must be enacted. These include prioritizing primary sources within the sectarian system or in establishing references. Additionally, scholars should dare to scrutinize the thoughts of *ulama* or the outcomes of Islamic legal decisions by religious organizations, not in a doctrinal or dogmatic manner, but through critical examination akin to intellectual history or the history of ideas. Furthermore, all contributions of past scholars should be regarded as valuable knowledge, whether derived through deductive reasoning (*verstehen*) or inductive methods. It is essential to remain open to external influences and anticipate future occurrences. Moreover, enhancing responsiveness and promptly addressing emerging issues, as individuals often seek prompt religious legal guidance, is crucial. Active and progressive interpretation should be undertaken to offer relevant inspiration and guidance to the populace. Additionally, the provisions of Islamic law, including the five categories (*wajib* or obligatory, *sunnah* or recommended, *mubah* or permissible, *makruh* or disliked, and *haram* or prohibited), should be construed as concepts or teachings of social ethics.<sup>15</sup> Integrating jurisprudence into the broader legal science ensures that its study employs language accessible to legal experts at large. *Fiqh* studies should encompass not only deductive (normative) approaches but also inductive (empirical) studies. Furthermore, the common good (*masalih 'ammah*) should serve as a foundational principle in shaping *fiqh* or Islamic jurisprudence. Authenticity of Quranic and Hadith texts must be upheld as a standard for materials produced through *ijtihād*, particularly in predominantly inductive procedures.<sup>16</sup>

From the aforementioned discussion, it is evident that there is an immediate necessity not only to rejuvenate Islamic legal discourse but also to undertake tangible steps and methodologies. Presently, there is a compelling need for a contemporary and innovative approach to *ijtihād*, referred to as “fresh *ijtihād*”, aimed at formulating family law solutions that are pertinent and contextual, capable of addressing various familial issues as illustrated earlier. Numerous studies have already embraced this method as a means to resolve contemporary challenges, exemplified by works such as Muannif Ridwan’s “*Ijtihād* in the Contemporary Era: The Context of Islamic Thought in *Fiqh* and Maqāṣid al-Sharī'ah ”.<sup>17</sup>

Modern *ijtihād* can be practiced through the engagement of diverse groups representing various backgrounds. Consequently, *ijtihād* is conducted employing multifaceted approaches to generate suitable legal regulations capable of addressing the essence of prevailing issues within the contemporary context.

<sup>14</sup> Fathurrahman Djamil, *Filsafat Hukum Islam* (Logos Wacana Ilmu, 1997).

<sup>15</sup> Zainal Muttaqin, “Formalization of Islamic Law in Indonesia in the Framework of Social Engineering Theory by Roscoe Pound,” *El-Mashlahah* 11, no. 2 (2021): 97–115.

<sup>16</sup> Ahmad Syukri Saleh, *Pengembangan Metodologi Ke Arah Ijtihad Kontemporer* (Jambi: UIN Sutha Jambi, n.d.).

<sup>17</sup> Muannif Ridwan, “Ijtihad Pada Era Kontemporer (Konteks Pemikiran Islam Dalam Fiqih Dan Maqashid Al-Syariah),” *Jurnal Masohi* 1, no. 2 (2020): 110–21.

The scientific and technological reference mentioned in this study pertains to the DNA (Deoxyribonucleic Acid) testing technology. DNA, in its technical terminology, denotes a chemical compound present in the human body, encapsulating genetic information or data within specialized cells, transmitted from one generation to the next.<sup>18</sup> In essence, DNA serves as a protein responsible for conveying hereditary characteristics. DNA is primarily located within the cell nucleus, where it configures into a single strand known as a chromosome. During reproduction, each offspring inherits chromosomes from both parents, comprising a complete set of genetic traits inherited from both maternal and paternal lineages.

According to Article 43, paragraph 1 of the Marriage Law, pertaining to children born out of wedlock, establishing their lineage can be achieved through technological means, such as DNA testing, involving the illegitimate child and their biological father. The utilization of DNA testing offers definitive evidence, facilitating the resolution of issues concerning a child's parentage, particularly enabling an illegitimate child to establish a legal relationship with their biological father.

In Islamic jurisprudence, considerable divergence persists regarding the permissibility of employing DNA testing methodologies to establish the parentage of illegitimate children. The acceptance of DNA test results as legal evidence in determining the paternity of illegitimate children remains subject to debate among prominent fiqh scholars. This contention stems from the absence of explicit references to scientific and technological proofs, such as DNA testing, within the Quran, Sunnah, or classical fiqh literature.

Given the aforementioned issues, we deem it essential to undertake research grounded in scientific methodology. The primary objective is to conduct an in-depth examination and analysis of contemporary Islamic family law cases.<sup>19</sup> Furthermore, this research endeavors to elucidate the perspective of *Maqāṣid al-Sharī'ah* concerning contemporary Islamic family law cases. Additionally, the study aims to scrutinize the scientific aspects of employing *ijtihad* in addressing contemporary Islamic family law cases. Moreover, this investigation systematically analyzes the dynamics involved in resolving legal cases pertaining to Islamic family law through the application of the *Maqāṣid al-Sharī'ah* theory.

### The Dynamics of Contemporary Islamic Legal Systems

Contemporary Islamic law represents the evolution of Islamic legal thought in the present day, incorporating principles that maintain relevance to preceding eras. Here, Islamic law refers to *fiqh*. Therefore, contemporary Islamic law signifies the advancement of *fiqh* reasoning in contemporary contexts. Within *fiqh*, the term “contemporary” denotes an approach to understanding *fiqh* that addresses novel phenomena not encountered in the past. Contemporary *fiqh* stands in contrast to classical *fiqh*. Harun Nasution delineated historical epochs based on the characteristics of Islamic thought, namely the classical era (characterized by rationalism), the medieval era (marked by tradition), and the modern or contemporary era (characterized by a return to rationalism).<sup>20</sup>

<sup>18</sup> Suryo, *Genetik Manusia* (Yogyakarta: Univeristy Press, 1994).

<sup>19</sup> Abidin Nurdin et al., “Tujuan Hukum Islam Untuk Kemaslahatan Manusia: Penerapan Kaidah Fiqhiyah Dalam Bidang Ekonomi Dan Hukum Keluarga,” *El-Ussrah: Jurnal Hukum Keluarga* 5, no. 1 (2022): 41–55.

<sup>20</sup> Harun Nasution, *Teologi Islam: Aliran-aliran, Sejarah, Analisa Perbandingan* (Jakarta: UI-Press, 2008), 3. Muhammad Azhar, *Fiqh Kontemporer Dalam Pandangan Neomodernisme Islam* (Pustaka Pelajar, 2016).

The concept of contemporary Islamic law corresponds to *al-masa'il al-fiqhiyah*, which entails the examination of jurisprudential matters relevant to the modern era. This is evident in numerous publications explicitly titled *al-masa'il al-fiqhiyah* or “problems of contemporary Islamic law”. Thus, it is evident that contemporary Islamic law refers to the Islamic legal perspective on contemporary issues. The emergence of numerous unprecedented cases or contemporary challenges underscores the necessity for a responsive understanding of contemporary Islamic law. This implies that modern fiqh endeavors to address novel issues seeking clarification concerning their *halal-haram* legal status. Essentially, contemporary Islamic law endeavors to acknowledge notable shifts within Islamic legal frameworks over time. Such significant transformations arise primarily due to ongoing societal developments, which consistently necessitate novel ethical considerations and modes of thought.<sup>21</sup>

The scope of contemporary Islamic law encompasses various issues and challenges pertinent to the current societal landscape. Among the primary areas of focus in contemporary Islamic law are matters pertaining to Family Law, which include aspects such as marriage, divorce, spousal rights, children’s rights, polygamy, and other facets concerning familial structures in contemporary society. Additionally, it encompasses Islamic Economic Law, which delves into economic principles rooted in Islam, such as equitable wealth distribution, prohibition of usury, and the application of *muamalah* (business transactions) principles in accordance with Islamic teachings within modern contexts. Moreover, it addresses Islamic Criminal Law concerning punishment within the Sharia context in modern times, encompassing the implementation of *hudud* and *qisas* punishments prescribed in the Quran, along with other concepts pertinent to contemporary criminal justice systems.<sup>22</sup>

Health and medical law encompass topics including abortion, euthanasia, and medical ethics, contextualized within Islamic values. Social law and justice address matters of social equity, human rights, and interreligious coexistence within contemporary Muslim societies. Technology and information law tackle emerging legal issues stemming from technological advancements, such as internet regulations, privacy laws, and ethical considerations in technology development. Environmental law focuses on environmental preservation and sustainability in line with Islamic principles. Islamic international law examines state relations within the framework of international law while considering Islamic tenets. Islamic law and pluralism explore issues concerning religious diversity and interfaith harmony in multicultural Islamic societies. Islamic law and politics investigate the interplay between Islamic law and the political landscape in modern nations with predominantly Muslim populations.<sup>23</sup>

The examination of contemporary Islamic law holds paramount significance in ensuring the application and interpretation of Islamic law remain responsive to the evolving dynamics of society, while remaining consistent with the fundamental principles of Islamic teachings.<sup>24</sup> Upon reviewing the themes found in *al-masa'il al-fiqhiyah* literature and contemporary fatwas, the exploration of contemporary Islamic law can be segmented into the following dimensions:

<sup>21</sup> Muammar Bakry et al., “Reflections of Contemporary Islamic Law to The Spirit Doll Phenomenon; A Sadd Al-Zari’ah Perspective,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 20–35.

<sup>22</sup> H Syamsul Anwar, *Studi Hukum Islam Kontemporer Bagian Dua* (Yogyakarta: UAD Press, 2021).

<sup>23</sup> Amirudin Amirudin and Masayu Mashita Maisarah, “Karakteristik Kajian Islam Kontemporer: Dialektika Barat Dan Timur,” *Eduprof: Islamic Education Journal* 2, no. 1 (2020): 18–38.

<sup>24</sup> Idri Idri, “Scientific Analysis Methods of Islamic Law in Contemporary Studies,” *International Journal of Progressive Sciences and Technologies (IJPSAT)* 29, no. 1 (2021): 231–41.

1. The facets of Family Law encompass all matters pertaining to *al-ahwal al-syakhshiyah*, which involve various issues such as inheritance distribution, telephone-based marriage contracts, inheritance disputes, marriage prompted by pregnancy, family planning, and similar concerns.
2. Concerning economic dimensions, attention is given to matters pertaining to the interpretation of usury within banking practices and contemporary zakat management. Particular focus is placed on challenges associated with the bank interest system, the utilization of zakat for productive purposes, the intersection of zakat and taxation, zakat collection from specific professions, credit transactions and financial gathering practices (in Indonesian culture, this practice is commonly referred to as *arisan*), insurance frameworks, among other pertinent considerations.
3. Within the domain of criminal law, the discourse encompasses considerations of human rights and religious humanism. Contemporary Islamic law endeavors to offer fresh interpretations concerning *hudud* laws, such as hand amputation, *qisas* laws including the death penalty, and the integration of Islamic law within the national legal framework, among other pertinent issues.
4. Within the realm of women and gender, there are discussions concerning the involvement of women in public and social domains traditionally regarded as exclusive to men. In this discourse, contemporary Islamic law addresses various topics including Muslim women's attire, professional pursuits of women, female leadership roles, and related matters.
5. In the realm of medical matters, the swift advancements in medical science have garnered significant attention in contemporary Islamic legal discourse. This encompasses various issues such as organ transplants, blood and organ donations, post-mortem procedures, contraceptive methods, gender reassignment surgeries, fetal sex selection, debates on human cloning, in vitro fertilization, establishments like milk banks, blood banks, sperm banks, and related topics.
6. Technological advancements, which have introduced numerous conveniences, are a focal point in contemporary Islamic legal discourse. This includes discussions surrounding mechanically slaughtering livestock, broadcasting the call to prayer via cassette recordings, participating in prayer led by an imam via radio or television, and the exchange of greetings (*salam*) using electronic means such as bells, among other related topics.
7. The dimension of worship presents intriguing issues evolving within our surroundings, such as financial preparations for Hajj (or Hajj bailout funds), performing tayammum with alternative substances aside from land or dust, offering sacrifices (*qurban*) with monetary contributions, delaying menstruation for the purpose of performing Hajj, and similar topics.
8. The political dimension encompasses several compelling cases, including discussions surrounding the concept of an Islamic state, procedures for selecting leaders, allegiance to governing authorities, and related topics.<sup>25</sup>

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<sup>25</sup> Arip Purkon, "Rethinking of Contemporary Islamic Law Methodology: Critical Study of Muhammad Shahrūr's Thinking on Islamic Law Sources," *HTS Theologiese Studies/Theological Studies* 78, no. 4 (2022).

The emergence of various new challenges reinforces the notion that *fiqh* is inherently intertwined with real-life contexts, underscoring that *fiqh* is fundamentally a practical discipline (*al-ahkam al-amaliyah*) rather than merely a theoretical science (*al-'ulum al-nazariyah*).<sup>26</sup>

### Flexibility and Adaptability of Islamic Law

One notable aspect of Islamic law is the breadth of matters left neutral or intentionally untouched by Islamic religious texts. Legal scholars are tasked with conducting *ijtihad* in these areas, aiming to introduce provisions that foster societal benefit. Hence, they must exercise creativity while remaining aligned with the overarching objectives and ethos of Sharia.<sup>27</sup> Furthermore, Islamic law exhibits universal attributes, encompassing regulations governing all facets of life, both personal and societal realms, as outlined in the Quran and Sunnah. Adaptation to specific locales and epochs is expected to adhere to the overarching principles delineated in the Quran, rather than vice versa. Consequently, it is the responsibility of Islamic legal scholars to undertake efforts to accommodate these adaptations, ensuring the appropriate implementation of Islamic law in diverse contexts and circumstances.

Historical evidence demonstrates that Islamic law has served as the principal guiding framework across diverse societies, governmental structures, and cultural civilizations within the Islamic world for around 14 centuries. Throughout this period, Islamic law (*qanun*), judicial adjudication (*qada*), and the development of contemporary legal provisions (*fatwa*) have consistently responded to emerging issues, providing avenues for addressing the challenges encountered by Muslims in each era.<sup>28</sup>

The flexibility within the dynamics of Islamic law can be analyzed through three distinct approaches. Firstly, certain texts have been universally revealed, necessitating further interpretation and elucidation for their implementation. Secondly, scholars can extrapolate legal rulings for new circumstances by referencing legal texts addressing similar underlying causes (*'illat*). In the language of jurists (*fuqaha*), such legal legitimacy is termed as *qiyas* or analogical law-making. Thirdly, there exist overarching principles and guidelines rooted in *maslahah* (public benefits) consistent with Maqasid al-Syariah. By delineating these three dynamic components of Islamic law, we can comprehend the assertion of Imam al-Shafi'i that "there is nothing encountered by humans for which legal provisions cannot be found in the Qur'an".<sup>29</sup>

Upon scrutinizing the thought processes of classical scholars, it becomes evident that their methodologies were intricately linked to the Quran and Hadith. This approach fostered numerous qualitative *ijtihad* endeavors, as evidenced by many of the Prophet's companions, notably Umar bin al-Khattab. Such cognitive frameworks were also emulated by leading figures of Islamic jurisprudential schools (*madhhab*) such as Malik ibn Anas, Abu Hanifah, al-Shafi'i, and Ahmad ibn Hanbali. For Muslims aspiring to advance and effectively anticipate modern developments, it is fitting to cultivate the cognitive frameworks employed by the Prophet's companions and classical scholars in the present context. The relevance between contemporary *fiqh* and the classical *fiqh* that followed lies in the

<sup>26</sup> Sirry Mun'im A and K H Ali Yafie, *Sejarah Fiqih Islam: Sebuah Pengantar* (Jakarta: Risalah Gusti, 1996).

<sup>27</sup> Misbahuddin Misbahuddin, "Fleksibilitas Penerapan Syariah Islam," *Jurnal Ushuluddin: Media Dialog Pemikiran Islam* 14, no. 3 (2010): 435–46.

<sup>28</sup> Yusuf Al-Qardhawi, "Keluwasan Dan Keluasan Syari'at Islam Dalam Menghadapi Perubahan Zaman" (Jakarta: Pustaka Firdaus, 1996).

<sup>29</sup> Salmah Intan, "Kitab Al-Risalah Imam Al-Syafi'i," *Jurnal Al-Hikmah* 12, no. 1 (2011): 85–101.



pattern of legal reasoning, even though this may yield differences in fiqh outcomes based on existing situations and conditions.

Nevertheless, it is not imperative to dismiss the wealth of classical or medieval Islamic scholarship. It is evident, however, that contemporary thought need not rigidly adhere to the outcomes of medieval or classical scholarly inquiries if some of these findings prove irrelevant to contemporary challenges. Nonetheless, any elements that remain pertinent can still serve as guiding principles. This approach aligns with the notion of “preserving old concepts that remain beneficial (relevant) while embracing newer perspectives that prove more advantageous (more relevant)”. This aligns with the guidance provided in the Quran, specifically in Surah Az-Zumar, verse 18, which asserts that “those who listen to words (opinions), then follow what is best among them, those are the people whom God has given guidance, and they are the people who have reason”. In fact, classical scholars, including the four imams—Abu Hanifah, Malik, al-Shafi’i, and Ahmad bin Hanbal—did not seek to establish distinct schools of jurisprudence (*madhhab*) within Islam.<sup>30</sup>

Hence, it can be inferred that the four imams of the *madhhab* conveyed a message and urged Muslims not to regard their opinions as ultimate and beyond questioning. They underscored that their legal derivations were rooted in the Quran and the Sunnah of the Prophet, thereby advising subsequent generations to derive their laws from these same sources. Therefore, contemporary Islamic thinkers ought to emulate the practices of the Prophet’s companions and classical scholars, particularly in comprehending *fiqh* (Islamic law).

Various methodologies of *ijtihad* have been devised by scholars, perpetually subject to debate regarding their legitimacy in deducing legal rulings (*istinbat al-ahkam*) to determine Islamic law (*fiqh* provisions). Therefore, any *ijtihad* methodology must undergo a reconstruction of paradigms in alignment with scientific advancements. This reconstructive approach can be executed through two models: Firstly, the formulation of Qur’anic verse interpretations based on the *Makkiyah* and *Madaniyah* concepts, which provide characteristics as both an immediate response to the Prophet’s real circumstances and a long-term response whose truth and function can be discerned in the future. Secondly, the formulation of legal reasoning utilizing the concepts of *Nasikh* and *Mansukh* of Qur’anic verses, which linguistically yield diverse interpretations, necessitating emphasis on discerning the intent and purpose behind abrogating (*nasikh*) and abrogated (*mansukh*) verses. Thirdly, the formulation of employing the concepts of *maslahah* (public interest) and *istihsan* (juristic preference) in legal enactments. Fourthly, the formulation of utilizing the concept of *ijma’* (consensus of Muslim scholars) as conceptualized by traditional *fiqh* scholars; however, given the varied definitions of *ijma’*, contextualizing its boundaries within contemporary society becomes imperative.<sup>31</sup>

Reformulating specific concepts within established *ijtihad* methodologies by Islamic jurists (*fuqaha’*) constitutes an endeavor to address contemporary challenges, which have become increasingly intricate. Classical *ijtihad* methods, often treated as dogma or relics of the past, are now rendered obsolete as the circumstances and evolution of Muslim societies have undergone significant change.

<sup>30</sup> Moh Turmudi, “Ijtihad Pada Masa Kontemporer (Konteks Pemikiran Islam Dalam Fiqh Dan Ushul Fiqh),” *Tribakti: Jurnal Pemikiran Keislaman* 25, no. 1 (2014).

<sup>31</sup> Johari Johari et al., “Istihsan Method and Its Relevance to Islamic Law Reform: Content Analysis of Fatwa of Majelis Ulama Indonesia on Corneal Transplant,” *De Jure: Jurnal Hukum Dan Syaria’iah* 15, no. 1 (2023): 1–20.

### ***Maqāṣid al-Sharī'ah* as a Contemporary Method of *Ijtihad***

The concept of *Maqāṣid al-Sharī'ah*, also known as the objectives of Sharia, underscores the preservation and safeguarding of the five fundamental human necessities: religion, life, intellect, lineage, and property. Within the framework of contemporary *ijtihad*, the utilization of the *Maqāṣid al-Sharī'ah* concept emerges as a pivotal method for interpreting and evolving Islamic law, ensuring its alignment with the contemporary challenges and transformations of society, thereby providing solutions to emerging legal dilemmas.<sup>32</sup>

In numerous instances, *Maqāṣid al-Sharī'ah* can function as a method of *ijtihad* suitable for modern times. Firstly, it pertains to the safeguarding of Human Rights. Ensuring human rights protection stands as a central objective of *Maqāṣid al-Sharī'ah*. In contemporary *ijtihad*, this principle can be utilized to align Islamic law with globally recognized human rights standards. Additionally, it involves community empowerment. The objective of enhancing societal well-being, both socially and economically, constitutes an integral aspect of *Maqāṣid al-Sharī'ah*. In the context of modern *ijtihad*, Islamic law can be developed to support initiatives promoting economic empowerment, education, and overall welfare. Moreover, it concerns social and economic justice. *Maqāṣid al-Sharī'ah* underscores the significance of justice. In contemporary *ijtihad*, Islamic law can be applied to address issues of social and economic inequality, potentially through the implementation of policies aimed at wealth redistribution.<sup>33</sup>

Another pertinent aspect concerns environmental conservation. The preservation of ecological balance and environmental protection aligns with the objectives of Sharia. In contemporary *ijtihad*, Islamic law can be adapted to address modern environmental challenges and promote sustainable practices. Furthermore, the issue of pluralism and inter-religious harmony is also a fundamental objective of Sharia. Through *Maqāṣid al-Sharī'ah*, Islamic law can be leveraged to foster interfaith harmony and pluralism, encompassing the protection of minority rights, tolerance, and the appreciation of religious diversity. Similarly, technological innovation poses a significant concern. In response to technological advancements, *Maqāṣid al-Sharī'ah* can serve as a framework for determining how Islamic law perceives and responds to technological progress without compromising Islamic ethical principles. Additionally, efforts to alleviate poverty and unemployment are crucial. With a focus on general welfare, *Maqāṣid al-Sharī'ah* can guide Muslim scholars in conducting contemporary *ijtihad* to address poverty and unemployment issues through the formulation of inclusive economic policies.<sup>34</sup>

Implementing *Maqāṣid al-Sharī'ah* as a contemporary *ijtihad* method necessitates a profound comprehension of the principles and objectives of Sharia. This entails engaging in dialogue and collaborating with Islamic scholars to devise solutions that are congruent with the requirements of the era while upholding the essence of Islamic teachings. A comprehensive understanding of *Maqāṣid al-Sharī'ah* is indispensable in the endeavor to derive legal rulings from their sources (*istinbat al-aḥkam*). This requirement stems from the necessity for a jurist to be proficient in a framework of laws

<sup>32</sup> Allina Mustaufiatin Ni'mah, "Legalitas Impor Vaksin Covid-19 Perspektif Maqashid Syariah," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2021, 11–24.

<sup>33</sup> Iffatin Nur and Reni Puspitasari, "Postgender Fiqh: The Views of MUI's and KUPI's Ulema on Postgenderism from Maqāṣid Sharī'ah Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (2023): 152–76.

<sup>34</sup> Maftukhatusolikah Maftukhatusolikah and Muhammad Rusydi, "The Commodification of Religion in the Maqāṣid Al-Shariah Perspective," *Mazahib*, 2018, 35–60.

established as a method. Certain scholars, like al-Shaṭibi, prioritize a scholar's command of *Maqāṣid al-Sharī'ah* as the foremost prerequisite among several conditions for engaging in *ijtihād*.<sup>35</sup>

*Maqāṣid al-Sharī'ah* provides a framework that facilitates the process of *ijtihād* for jurists in establishing definitive legal rulings and discerning benefits and harms. Prioritizing *Maqāṣid al-Sharī'ah* in *ijtihād* is crucial for jurists as it emphasizes the consideration of benefits (*maslaha*) in legal deliberations. Consequently, the concept of *Maqāṣid al-Sharī'ah* is imperative for fostering the development of a jurisprudence that is humanistic, adaptable, and equitable. Proficiency in *Maqāṣid al-Sharī'ah* enables a jurist to discern whether a legal injunction remains applicable to a specific circumstance or if changes in societal dynamics render the injunction obsolete.<sup>36</sup>

The advancement of science and technology in the contemporary era necessitates Islamic scholars to meticulously refurbish the reservoirs of Islamic scholarship with creativity and innovation. It is imperative for these scholars to consistently engage in *ijtihād*, aligning it with the demands of their era and ensuring its accountability, particularly concerning interpretations by past scholars. Given the integral role of *ijtihād* in Islamic jurisprudence, its study remains relevant as it serves to refine and rejuvenate *fiqh* legal outcomes, serving both as a purification and a contemporary adaptation.<sup>37</sup>

According to Wahbah al-Zuhaili, *ijtihād* stands as the life force of Islamic law. Should this process cease, Islamic law risks stagnation and falling behind the evolving dynamics of society. In the context of contemporary *ijtihād*, Yusuf Qardawi provides insight into two forms: *al-ijtihād al-intiqā'i* and *al-ijtihād al-inshā'i*. The former entails selecting the most robust opinion from existing legal rulings in Islamic jurisprudence, abundant with fatwas and legal verdicts. The latter involves deducing new legal conclusions from issues previously unaddressed by scholars, whether historical or contemporary.<sup>38</sup>

In adjudicating the lineage of an illegitimate child through DNA testing results, it is imperative to contextualize such evidence within the framework of *Maqāṣid al-Sharī'ah* and adhere to the *fiqh* principle of *al-'amalū bi al-maqasid*, which posits that actions are judged by their intended objectives.<sup>39</sup> DNA testing represents an advancement in human scientific and technological progress. Within the Islamic framework, the acquisition of knowledge and the development of beneficial innovations are highly valued as crucial elements for the advancement of humanity. This sentiment is echoed in a saying of the Prophet Muhammad, who emphasized the significance of knowledge by stating, "Whoever seeks a good life in this world and in the Hereafter, let them seek knowledge".<sup>40</sup>

Abu Ishaq Al-Shatibi elucidated that at its core, Islamic law is designed to bring about benefits and advantages for humanity, both in the worldly life and the Hereafter. This concept of benefit, as articulated by Al-Shatibi, constitutes the objective of Islamic law, known as *Maqāṣid al-Sharī'ah*. Essentially, every provision within the Sharia, whether comprehensive or specific, is underpinned by a purpose or intention aimed at achieving human welfare.<sup>41</sup>

<sup>35</sup> Akmal Marhalifams, "Fiscal Policy in the Spectrum As-Shari'ah Maqashid: Study of Al-Syatibi Thinking in the Book of Al-Muwafaqat," *Li Falah: Jurnal Studi Ekonomi Dan Bisnis Islam* 8, no. 1 (2023): 75–85.

<sup>36</sup> Ridwan, "Ijtihad Pada Era Kontemporer (Konteks Pemikiran Islam Dalam Fiqh Dan Maqashid Al-Syariah)."

<sup>37</sup> Yusuf Al-Qardhawi, *Al-Ijtihad Al-Mu'ashir Baina Al-Intibaath Wa Al-Infiraat* (Surabaya: Risalah Gusti, 1995).

<sup>38</sup> Turmudi, "Ijtihad Pada Masa Kontemporer (Konteks Pemikiran Islam Dalam Fiqh Dan Ushul Fiqh)."

<sup>39</sup> Iftitah Utami, "Eksistensi Tes Deoxyribo Nucleic Acid Dalam Menentukan Nasab," *Medina-Te: Jurnal Studi Islam* 12, no. 2 (2016): 143–60.

<sup>40</sup> Eka Kartini Gaffar, *Menebar Kebaikan Itu Indah* (Elex Media Komputindo, 2017).

<sup>41</sup> Asy-Syathibi, *Al-Muwafaqat Di Ushul Al-Syariah* (Kairo: Mustafa Muhammad, n.d.).

If we relate Al-Shatibi's perspective to the evidence provided by DNA testing, it can be linked to the concept of *maqasid daruriyyat*, specifically the preservation of lineage (*hifz an-nasl*). This consideration can influence the mechanism of *ijtihad* in establishing lineage, aiming to safeguard and uphold the child's rightful descent, particularly concerning their biological father. Additionally, establishing clarity regarding lineage imposes financial obligations on the biological father to provide support.

Islamic jurisprudence requires a meticulous examination of DNA testing to ascertain its benefits and objectives. Is the intent behind the DNA test for noble or harmful purposes, aiming to either harm or not harm others? If the objective of a DNA test is to establish a child's lineage or biological relationship with their parents, particularly determining the truth regarding their biological father, then it serves the child's best interest. However, if the purpose of DNA testing contradicts established Islamic provisions or commands, it would undoubtedly be deemed prohibited.<sup>42</sup>

Regarding the utilization of DNA testing as a means of establishing a child's lineage within the context of Islamic law in Indonesia, references can be found in Aceh regulations, which implicitly address the application of DNA testing. Specifically, within Aceh, the utilization of DNA test results as evidence has been incorporated into governmental regulations or *qanun* concerning the determination of children's lineage resulting from adultery. This stipulation is outlined in Aceh Qanun number 6 of 2014, pertaining to Jinayat Law, articulated in Article 44, paragraph (2), which stipulates: "A plaintiff who identifies their adulterous partner as referenced in Article 42, who is pregnant, may substantiate their accusation through a DNA test (Deoxyribo Nucleic Acid) from the child they give birth to". Upon closer examination, the regulations outlined in Article 44, paragraph (2) of this Qanun primarily concentrate on establishing evidence through DNA testing for identifying the lineage or paternity of the individual accused of adultery, who is typically the male involved.<sup>43</sup> This provision does not specifically address the determination of civil relations concerning illegitimate children, as articulated in Article 43 of the Marriage Law subsequent to the Constitutional Court Decision.

### The Impact of DNA Identification Technology in Islamic Jurisprudence

The DNA molecule serves as the primary repository of genetic information within a living cell. Genes, as constituent units of DNA, contribute to the determination of hereditary traits. In essence, genes represent fundamental genetic instructions that differentiate individuals, races, ethnicities, and species across the spectrum of living organisms. This is attributed to genes serving as the foundational genetic data that enable cells to synthesize proteins. Through these proteins, every aspect of an individual's physical, physiological, and biochemical characteristics is regulated.<sup>44</sup> The utilization of DNA in the process of ascertaining lineage is not a novel concept and is perceived as compliant with Sharia principles. The Qur'an, serving as a comprehensive guide to life, has established overarching principles and methodologies for resolving legal issues pertaining to emerging matters.

<sup>42</sup> Nik Azlan Nik Man and Rusjdi Ali Muhammad, "Penggunaan Analisis Asid Deoksiribonukleik (DNA) Sebagai Alat Pembuktian Kes: The Usage of Deoxyribonucleic Acid (DNA) as Evidence," *Journal of Ifta and Islamic Heritage* 2, no. 2 (2023): 1-31.

<sup>43</sup> Zainal Arifin and Zaenul Mahmudi, "Mandatory Wills for Adultery Children, Analysis of the Compilation of Islamic Law from the Perspective of Maqasid Syariah Al-Syatibi," *International Journal of Law and Society (IJLS)* 1, no. 1 (2022): 36-47.

<sup>44</sup> Tajqia Qalbu Rahayu, Karwiyah Karwiyah, and Adinda Putri Pertiwi, "The Role of DNA Tests on the Status of Li'an's Children From the Results of A Legal Marriage From the Perspective of Islamic Law and Positive Law in Indonesia," *Jurnal Hukum Lex Generalis* 3, no. 2: 148-166.

This adaptation reflects the inherent flexibility of Islamic Sharia, aligning with the evolving societal landscape.<sup>45</sup>

The *ijtihad* method can be employed to address contemporary cases concerning the rights of illegitimate children who are being denied acknowledgment by their biological fathers. In tackling this issue, the author endeavors to elucidate the understanding and resolution, ensuring clarity. In Islam, marriage stands as the sole sanctioned avenue for procreation and the lawful preservation of lineage. Unlike other creatures that roam freely and engage in instinctual reproduction, humans are bound by Islamic regulations that uphold dignity and respect. These regulations serve to foster relationships between men and women in a manner consistent with Islamic principles, thereby promoting human welfare and goodness for all.<sup>46</sup>

As per the Indonesian dictionary, an illegitimate child is defined as a child born to a woman who is not legally married to the man with whom she engages in sexual relations, as recognized by both positive law and the religious principles she follows.<sup>47</sup> According to Islamic jurisprudence, illegitimate children are offspring born out of wedlock, stemming from sexual relations outside the bounds of marriage.<sup>48</sup> Within this framework, there are several scenarios that may be regarded as instances of illegitimacy. Firstly, there is the case of a child born of adultery (*zina*), wherein sexual relations occur between unmarried individuals, resulting in the birth of a child. Secondly, there is the concept of a *mu'anah* child, born to a married woman whose husband disclaims paternity and accuses her of adultery, invoking the *li'an* oath against her. Thirdly, there is the category of a doubtful child, born to a woman with whom a man engages in intimate relations under dubious circumstances. In this context, *shubhat*, as elucidated by Jawad al-Mughniyyah, involves a man having relations with a woman who is impermissible for him due to his lack of awareness regarding the prohibition. While Islamic scholars concur that children born out of wedlock or adultery (*zina*) do not inherit lineage from their biological fathers and are solely linked to their mothers, there exists divergence among scholars regarding the legal standing of such children vis-à-vis their biological fathers.<sup>49</sup>

From the perspective of Islamic jurisprudence, the legitimacy of a child's lineage can stem from three primary scenarios. Firstly, it arises from a valid marriage. Scholars concur that children born to a woman within the bounds of a valid marriage are attributed to her husband, thereby establishing him as the child's legal father. Secondly, it arises from a *fasid* marriage, characterized by deficiencies in its contractual conditions. Even in such cases, children born of this union are recognized as belonging to their biological father. Thirdly, legitimacy may arise from relationships categorized as *wata'* (intimate relationships) that are deemed dubious or suspicious (*shubhat*). Here, the term *shubhat* denotes a state of uncertainty.<sup>50</sup>

According to Islamic jurisprudence, children born out of wedlock are commonly equated with offspring of adultery. Scholars concur that adultery does not establish paternity, and therefore, a

<sup>45</sup> Agus Riwanto, M Noor Harisudin, and Viddy Firmandiaz, "Addressing Campus Sexual Violence: A Collaborative Governance Approach to Legal Policy," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2023, 225–44.

<sup>46</sup> Materan Materan, "Rekonstruksi Metodologi Hukum Islam Kontemporer," *Mazahib*, 2012.

<sup>47</sup> Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia* (Jakarta: Prenada Media, 2022).

<sup>48</sup> Anshoruddin, *Hukum Pembuktian Menurut Hukum Acara Islam Dan Hukum Positif* (Pustaka Pelajar, 2004).

<sup>49</sup> Siti Marlina, "Harta Bersama Dalam Perkawinan Poligami: Tinjauan Hukum Islam Dan Undang-Undang No 1 Tahun 1974," in *Nalar Fiqh: Forum Kajian Hukum Keluarga*, vol. 17 (Fakultas Syariah UIN Sulthan Thaha Saifuddin Jambi, 2017).

<sup>50</sup> Sari Pusvita, "Keperdataan Anak Diluar Nikah Dalam Putusan Mahkamah Konstitusi Dan Implikasinya Terhadap Harta Warisan," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 1, no. 2 (2018): 31–51.

child born from such circumstances should not be attributed to the father's lineage, despite being biologically related to the man who engaged in adultery with the mother. Their rationale lies in the belief that lineage is a divine gift bestowed by God, whereas adultery constitutes a punishable offense under Islamic law and does not merit any form of inheritance or recognition.<sup>51</sup>

In mainstream civil law, the concept of an "illegitimate child" denotes offspring born out of wedlock, arising from a relationship between individuals who are not married to each other, at least one of whom may be married to another person. Consequently, under general civil law, illegitimate children are those born outside the confines of marriage. Hence, the legal terminology in civil law does not specifically define such children as "children of adultery", encompassing instead those born to a woman lacking a valid marital union with the man responsible for the child's birth.<sup>52</sup>

Concerning the aforementioned matters, it remains imperative to safeguard the rights of children, including their entitlement to ascertain their lineage, as Islam mandates the preservation of offspring, prohibiting their wastefulness, deception, or falsification. Safeguarding progeny aligns with the objectives of Sharia, or *Maqāṣid al-Sharīah*. Islam underscores the child's entitlement to clarity regarding their descent, shielding them from potential indignity or neglect.<sup>53</sup>

In Wahbah al-Zuhaili's perspective, children possess five fundamental rights towards their parents, comprising the entitlement to ascertain their lineage (*nasab*), receive maternal nursing (*radha'ah*), obtain proper care (*hadanah*), benefit from guardianship (*walayah*), and receive sustenance (*nafaqah*). The fulfillment of children's rights is best achieved through the lawful marriage of both parents. Concerning children born outside of wedlock, their rights, encompassing inheritance, guardianship, financial support, and overall care, fall solely upon their mothers, who bear the responsibility both materially and spiritually, alongside their maternal relatives.<sup>54</sup>

The discourse surrounding DNA verification serves as an alternative method for ascertaining lineage. Scholars have widely concurred that three primary mechanisms—namely the doctrine of *al-walad lil firash* (child belongs to the bed), confession, and testimony—are fundamental in determining lineage (*nasab*). Nevertheless, the majority of scholars equate DNA testing with *al-qiyafah* (physiognomy), wherein genealogical experts interpret physical traits. However, in cases of discrepancy between *al-qiyafah* and laboratory analysis, precedence should be given to scientific findings, which are substantiated by empirical research and deemed less prone to error compared to *al-qiyafah*, which relies on subjective interpretation.<sup>55</sup>

A contemporary scholar, Abdul Karim al-Zaydan, exemplifies the necessity of confirming a child's lineage through medical expertise, particularly when medical analysis establishes a biological connection between the child and their parents through genetic testing. Al-Zaydan underscores Islam's embrace of valid scientific discoveries and studies, particularly when viewed from a worldly perspective. He highlights Prophet Muhammad's respectful consideration of conclusions drawn from authentic evidence and observations, showcasing Islam's compatibility with empirical

<sup>51</sup> Mutiara Fahmi, "Penetapan Nasab Anak Mula'annah Melalui Tes DNA (Studi Atas Metode Istinbāt Yūsuf Al-Qaraḍāwī)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 3, no. 1 (2019): 133–50.

<sup>52</sup> Muh Tamimi, "Tes DNA Dalam Menetapkan Hubungan Nasab," *Istinbath: Jurnal Hukum Islam IAIN Mataram* 13, no. 1 (2014): 83–98.

<sup>53</sup> Zakariya Ahmad Al Barry and Chadidjah Nasution, "Hukum Anak-Anak Dalam Islam," (No Title), 1977.

<sup>54</sup> Wahbah Az-Zuhaili, "Fiqh Islam Wa Adillatuhu, Terj.," Abdul Hayyie al-Kattani, dkk. Jakarta (ID): Gema Insani Press (2011).

<sup>55</sup> Muhammad Nasir Muhammad, *Al-Ithbat bil Khibrah* (Jordan: Dar an-Nafais, 2005), 216–217.

findings. Furthermore, al-Zaydan asserts that science in Islam operates within the framework of monotheism, adhering to principles set forth by God through His messenger and subject to the Quran. He emphasizes that a monotheistic approach to science fosters a methodology aligned with Sharia, where compliance does not stifle creativity or innovation, as Islam grants freedom of inquiry, as articulated in the Prophet Muhammad's statement: "You know better about the affairs of your world".<sup>56</sup>

DNA technology extends beyond its application in the medical domain and proves highly beneficial in resolving legal disputes, notably in determining an individual's lineage.<sup>57</sup> In general, the introduction of DNA testing represents a novel mechanism that warrants consideration in determining lineage, supplementing traditional methods like *al-qiya'ah*. This aligns with the essence of Islamic Sharia, which endeavors to address societal needs and resolve challenges with the most equitable and optimal solutions across all situations.<sup>58</sup>

As per the consensus among scholars, a judge is prohibited from issuing a verdict or passing a sentence without substantiating evidence that confirms a right. Referred to as the principle of legality, this overarching rule serves as the primary guideline to ensure that rights rightfully belonging to individuals remain protected and are not unlawfully appropriated by others. This principle applies universally across legal systems, governing both public and private matters alike.<sup>59</sup>

The outcomes derived from a DNA examination represent a valuable component of evidence that a judge may consider in adjudicating a legal matter. Through DNA analysis, the biological connections among individuals within a family can be discerned by juxtaposing their respective DNA profiles.<sup>60</sup> The primary function of DNA is to transmit genetic material from one cell to another and from parents to offspring. From the standpoint of evidentiary classification, DNA testing falls within the realm of indicative evidence (*qarinah*). Similar to *qarinah*, DNA test results offer indications or clues about an occurrence. However, DNA testing is more precise as it involves the interpretation of clues or indicators within the human body provided by expert witnesses (*al-hibra'*), particularly forensic expert physicians. Additionally, the identification process can be categorized as expert testimony, as it entails the expertise of forensic medicine professionals.<sup>61</sup>

Drawing on these parallels, DNA test outcomes can be integrated as evidence to reinvigorate the formats of *qarinah* within Islamic law, while preserving the essence of its significance.<sup>62</sup> The universal value inherent in the concept of *qarinah* evidence in Islamic jurisprudence can thus be expanded, encompassing any clues or indicators closely linked to circumstances that evoke strong conviction.<sup>63</sup>

<sup>56</sup> Abdul Karim al-Zaydan, *al-Mufasssal fi Ahkam al-Mar'ah wa Bayt al-Muslim*, vol. 9 (Libanon: Muassasah ar-Risalah, 1993), 414.

<sup>57</sup> Yahaya Ibrahim Abikan, "Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of Zina Under Islamic Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 83–96.

<sup>58</sup> Yusuf al-Qardhawi, *Awamil al-Sa'ah wa al-Murunah fi al-Syariah al-Islamiyyah* (Kaherah: Dar al-Sahwah, 1985), 9-10.

<sup>59</sup> Syaikh Mahmoud Syaltout and Syaikh M Ali As-Sayis, *Perbandingan Mazhab Dalam Masalah Fiqih* (Bulan Bintang, 1978).

<sup>60</sup> Abdul Samat Musa, "Constitutional Law: An Overview of the Islamic Approach and Its Contemporary Relevance," in *Proceedings Of The 1st International Conference On Indonesian Legal Studies (Icils 2018)* (Atlantis Press, 2018).

<sup>61</sup> Ahmad Yudianto, *DNA Touch Dalam Identifikasi Forensik* (Scopindo Media Pustaka, 2020).

<sup>62</sup> Muhammad Hazim Ahmad, Ruqayyah Razak, and Nurul Syahirah Saharudin, "Al-Quran Dan Penerimaan Kaedah Saintifik Dalam Pembuktian Kes," *Jurnal Darul Quran*, 2019.

<sup>63</sup> Muhammad Hazim Ahmad et al., "Analisis Awal Terhadap Isu-Isu Kebolehterimaan Asid Deoksiribonukleik DNA Sebagai Bahan Bukti Di Mahkamah Syariah (Preliminary Analysis of Admissibility Issues of Deoxyribonucleic Acid DNA as Evidence in Syariah Court)," *UMRAN - International Journal of Islamic and Civilizational Studies* 6, no. 2-2 SE- (October 2019), <https://doi.org/10.11113/umran2019.6n2-2.392>.

## Conclusion

Based on the research findings, it can be inferred that Islamic courts should incorporate certified DNA tests, endorsed by medical professionals for accuracy, to establish lineage, aligning with the esteemed status of lineage emphasized in Islam. While the provisions of Islamic family law in Indonesia consider traditional perspectives in lineage determination, it is necessary to refine these regulations with a stipulation mandating DNA testing when lineage disputes arise, thereby dispelling all uncertainties. This approach also prevents erroneously attributing paternity, a practice clearly proscribed in Islam. Upholding the sanctity of lineage, highly esteemed for preservation, Islamic courts, serving as bastions of justice, must exercise prudence in adjudicating matters of lineage. Testimonies and expert opinions, recognized by the court as *qarinah* and integral components of evidentiary proceedings, should be carefully considered in trial deliberations.

Furthermore, while Sharia distinguishes between Shariah and man-made laws, Islam does not impede the utilization of technology and scientific advancements in ascertaining genealogy. In fact, Islam encourages seeking expertise in resolving contemporary issues. Hence, aligning with the imperative of preserving lineage within the objectives of Sharia, a more inclusive and meticulous approach must be adopted by the courts of justice.

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