



Reconstructing the Indonesian Legal System through the Lens of *Maṣlahah Mursalah*

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Abstract: This article examines the construction of the Indonesian legal system through the theoretical lens of *maṣlahah mursalah*, an Islamic legal principle centered on public interest and benefit. The study contributes to the expansion of Islamic legal scholarship within the realm of legal politics in Indonesia. Employing a normative legal research method, it integrates conceptual, historical, and statutory approaches to examine the relevance and application of *maṣlahah mursalah* in the national legal framework. The findings indicate that *maṣlahah mursalah* can serve as a foundational legal theory for constructing a just legal system, especially one that aligns with societal needs and promotes the common good. The Indonesian legal system's development, when viewed through the prism of *maṣlahah mursalah*, reveals two key dimensions: first, the legal construction rooted in the Pancasila-based system as constitutionally mandated by the 1945 Constitution, and second, the partial institutionalization of Islamic law within the national legal order. This dual structure reflects Indonesia's efforts to harmonize religious values with national legal development, offering a model for integrating Islamic jurisprudence with modern state law.

Keywords: *Legal Construction, Legal System, Indonesian Legal System, Maṣlahah Mursalah.*

Abstrak: Artikel ini mengkaji konstruksi sistem hukum Indonesia melalui lensa teori *maṣlahah mursalah*, sebuah prinsip hukum Islam yang berpusat pada kepentingan dan kemaṣlahatan publik. Penelitian ini berkontribusi pada perluasan kesarjanaan hukum Islam dalam ranah politik hukum di Indonesia. Dengan menggunakan metode penelitian hukum normatif, penelitian ini mengintegrasikan pendekatan konseptual, historis, dan perundang-undangan untuk menguji relevansi dan penerapan *maṣlahah mursalah* dalam kerangka hukum nasional. Temuan penelitian ini menunjukkan bahwa *maṣlahah mursalah* dapat berfungsi sebagai teori hukum dasar untuk membangun sistem hukum yang adil, terutama yang sesuai dengan kebutuhan masyarakat dan mempromosikan kebaikan bersama. Pembangunan sistem hukum Indonesia, jika dilihat melalui prisma *maṣlahah mursalah*, menunjukkan dua dimensi kunci: pertama, konstruksi hukum yang berakar pada sistem berbasis Pancasila sebagaimana diamanatkan secara konstitusional oleh Undang-Undang Dasar 1945, dan kedua, pelembagaan parsial hukum Islam dalam tatanan hukum nasional. Struktur ganda ini mencerminkan upaya Indonesia untuk menyelaraskan nilai-nilai agama dengan pembangunan

hukum nasional, yang menawarkan sebuah model untuk mengintegrasikan yurisprudensi Islam dengan hukum negara modern.

Kata Kunci: Konstruksi Hukum, Sistem Hukum, Sistem Hukum Indonesia, *Maṣlaḥah Mursalah*.

Introduction

Public law studies are generally dominated by conventional legal theories from the West, as well as in the study of the legal system. This can be seen from the analysis of legal systems, which generally refer to two legal system theories, namely the European Continental known as the Civil Law System, and the Anglo Saxon legal system known as the Common Law System.¹ On the one hand, the Indonesian legal system must be built based on needs by looking at the situation and social conditions² relevant to Indonesian pluralism's noble values. One of these noble values is the matter of benefit, which comes from the rules of Islamic law. Therefore, the use of Islamic legal principles in studying the Indonesian legal system as a legal theory that upholds the doctrine of the supremacy of benefit (*maṣlaḥah*) is interesting in a pluralist society.

The use of *maṣlaḥah mursalah* Islamic legal rules has been widely used in private law studies.³ Among the forms of the study is *maṣlaḥah mursalah* in building contemporary sharia economic law,⁴ *maṣlaḥah mursalah* as a substantial effort in overcoming income and wealth inequality in Indonesia,⁵ termination of employment during the pandemic in the perspective of *maṣlaḥah mursalah*,⁶ the power of husband and wife communication in building family resilience to prevent divorce,⁷ legal age of marriage from the standpoint of SDGs and *maṣlaḥah* in legal policy change,⁸ the concept of *urf* and *maṣlaḥah* on joint property in Malaysian law.⁹ However, there are also *maṣlaḥah* studies in the field

¹ Mary Garvey Algero, "The Sources of Law and the Value of Precedent: A Comparative and Empirical Study of a Civil Law State in a Common Law Nation," *Louisiana Law Review* 65, no. 2 (2005): 775–822.

² Syahrizal Abbas and Ramzi Murziqin, "Sharia-Based Regional Regulations in the Indonesian National Law System," *Jurnal Ilmiah Peuradeun* 9, no. 3 (September 30, 2021): 529, <https://doi.org/10.26811/peuradeun.v9i3.673>; Sayuti Sayuti and Illy Yanti, "Freedom of Speech Without a Direction: Criticism of Promotion of Freedom of Speech in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (June 30, 2023), <https://doi.org/10.30631/alrisalah.v23i1.1389>.

³ Aida Dewi et al., "Legal Protection for Rape Victims in Indonesia: Seeking an Ideal Concept," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 1 (June 30, 2021): 121–30, <https://doi.org/10.30631/alrisalah.v21i1.791>; Azni Azni et al., "Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Jurnal Ilmiah Peuradeun; Vol 13 No 2 (2025); Jurnal Ilmiah PeuradeunDO - 10.26811/Peuradeun.V13i2.2047*, May 30, 2025; Moh. Mukri et al., "The Implementation of the Maṣlaḥah Principle in Cultivating Religious Moderation in the State Islamic Universities," *Al-'Adalah* 21, no. 2 (December 26, 2024): 371, <https://doi.org/10.24042/adalah.v21i2.23953>; Shohibul Adib, Tahrir Rosadi, and Muh Hanif, "Religious Moderation in Contestation: Dynamics and Impacts of Intergroup Tensions in Karangduwur Village, Petanahan, Kebumen," *International Journal of Social Science and Religion (IJSSR)* 6, no. 1 SE- (January 2, 2025): 1–20, <https://doi.org/10.53639/ijssr.v6i1.289>.

⁴ Nur Asiyah and Abdul Ghofur, "Kontribusi Metode Maṣlaḥah Mursalah Imam Malik Terhadap Pengembangan Hukum Ekonomi Syari'ah Kontemporer," *Al-Ahkam* 27, no. 1 (2017): 59–82, <https://doi.org/10.21580/ahkam.2017.27.1.1349>.

⁵ Tholkhatul Khoir and Eman Sulaiman, "Maṣlaḥah Mursalah: A Substantial Effort to Overcome Income and Wealth Inequality in Indonesia," *Shirkah: Journal of Economics and Business* 9, no. 3 (2024): 360–77, <https://doi.org/10.22515/shirkah.v9i3.716>.

⁶ Restu Fitria, Muhammad Adnan Azzaki, and Abdul Mustaqim, "Work Termination During The Covid-19 Pandemic in Indonesia Reviewed from Theory Maṣlaḥah Mursalah," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 22, no. 1 (2022): 51–62, <https://doi.org/10.19109/nurani.v22i1.11008>.

⁷ Mufrod Teguh Mulyo et al., "The Power of Husband-Wife Communication in Building Family Resilience and Preventing Divorce: A Study of Maṣlaḥah Mursalah," *Al-Manahij: Jurnal Kajian Hukum Islam*, 2023, 125–36.

⁸ Edy Setyawan et al., "Legal Age for Marriage: SDGs and Maṣlaḥah Perspectives in Legal Policy Change in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 183–198, <https://doi.org/10.24090/mnh.v17i2.9506>.

⁹ Mualimin Mochammad Sahid, Setiyawan Gunardi, and Nur Muhammad Hadi Zahalan, "Konsep Uruf dan Maṣlaḥah Sebagai Sumber Rujukan: Status Wanita Terhadap Harta Sepencarian dalam Perundangan Islam di Malaysia," *'Abqari Journal* 23, no. 2 (2020): 139–56, <https://doi.org/10.33102/abqari.vol23no2.357>.

of public law, including the Indonesian government's policy in handling Rohingya refugees from the perspective of *maṣlaḥah mursalah*,¹⁰ The role of the Corruption Eradication Commission (KPK) in monitoring the distribution of social assistance from a *maṣlaḥah mursalah* perspective,¹¹ and the application of the theory of *al-maṣlaḥah al-mursalah* in political Islamic law in Indonesia after the Reformation.¹² In addition, there is an expansion of the study of Islamic law in general, including Islamic law (sharia) and politics in the context of globalization,¹³ The role of *maqāṣid al-sharī'ah* in ensuring justice and rehabilitation in Indonesia's correctional system.¹⁴ Specifically, the use of *maṣlaḥah mursalah* in the study of legal systems in general, and especially the Indonesian legal system, has not been found.

The study of *maṣlaḥah mursalah* in the Indonesian legal system aims to complement the study of public law in political and constitutional law. This study also attempts to map the position of *maṣlaḥah mursalah* as a legal theory based on the principle of public interest.¹⁵ Therefore, the focus of the study in this paper is whether the theory of *maṣlaḥah mursalah* can be used as a theory of legal system construction. How is the role of *maṣlaḥah mursalah* theory in constructing the Indonesian legal system? The results of this study are expected to map the position of Islamic law values in the construction of a plural Indonesian legal system to counter radicalism that rejects the democracy of the Unitary State of the Republic of Indonesia and Pancasila as its basis because it is considered a form of though government that is not following Islamic law.¹⁶ On the other hand, this study is also essential considering the composition of the population with a majority Muslim background in Indonesia, which indirectly contributes to coloring the legal, and political process to build legal awareness.¹⁷ Therefore, this study is essential to emphasize the position of Islamic law that can develop dynamically in a democratic climate, as echoed by post-Islamists.¹⁸

The complexity of the problem of structuring the role of Islamic law in Indonesia needs to be studied by looking at the urgency of benefits in the construction of the legal system. Structuring and applying Islamic law in Indonesia with a pluralistic society background cannot be done in black and white and textually. This is because considering that basically, Islamic law is present with the aim of benefit (*maṣlaḥah*) for humans as *rahmatan lil alamin*.¹⁹ The results of the study show that *maṣlaḥah*

¹⁰ Almirah Meida Risfina, Amirul Haqi, and Hafidhuddin Rosyad, "Government Policy in Handling Rohingya Refugees Based on Maṣlaḥah Mursalah Perspective," *Islamica: Jurnal Studi Keislaman* 18, no. 2 (2024): 75–94, <https://doi.org/10.15642/islamica.2024.18.2.75-94>.

¹¹ Nur Lailatul Musyafaah et al., "The Corruption Eradication Commission Role In Supervising Of The Social Assistance Funds Distribution From The Maslahah Mursalah Perspective," *Hutanasyah: Jurnal Hukum Tata Negara* 1, no. 2 (2023): 83–98, <https://doi.org/10.37092/hutanasyah.v1i2.520>.

¹² Mulyadi Mulyadi, "Aplikasi Teori Al-Maslahah Al-Mursalah Dalam Politik Hukum Islam Di Indonesia Pasca Reformasi 1998-2019" (UIN Sunan Gunung Djati Bandung, 2021).

¹³ Masykuri Abdillah, "Sharia and Politics in The Context of Globalization and Society 5.0," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (2022), <https://doi.org/10.15408/ajis.v22i2.28959>.

¹⁴ Bunyamin Bunyamin et al., "Reforming Indonesia's Correctional System: The Role of Maqāṣid Al-Syarī'ah in Ensuring Justice and Rehabilitation," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (2025): 52–71, <https://doi.org/10.18860/j-fsh.v17i1.29258>.

¹⁵ Vivi Ariyanti and Supani, "Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslahah Perspective," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024), <https://doi.org/10.24090/mnh.v18i1.8280>.

¹⁶ Ilham Kurniawan, "Memaknai Radikalisme Di Indonesia," *TA'LIM: Jurnal Studi Pendidikan Islam* 3, no. 1 (2020): 70–82, <https://doi.org/10.52166/talim.v3i1.1848>.

¹⁷ Achmad Irwan Hamzani, *Hukum Islam dalam Sistem Hukum di Indonesia*, Revised Ed (Kencana, 2020).

¹⁸ Zuly Qodir, "Post-Islamism And Reform Islamic Law: The Challenges And Future Of Political Islam In Indonesia," *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (2023), <https://doi.org/10.15408/ajis.v23i2.31484>.

¹⁹ Raihana Zainal Abidin, Muhammad Nazir Alias, and Nur Wakhidah, "The Importance of Applied Behavior Analysis (ABA) Therapy in Nurturing Children with Autism Spectrum Disorder (ASD) According to Maqāṣid Al-Sharī'ah," *El-USrah: Jurnal Hukum Keluarga* 7, no. 2 (December 31, 2024): 742, <https://doi.org/10.22373/ujhk.v7i2.26607>.

mursalah as one of the theories in the construction of the legal system, can be a solution to mapping a legal system based on the principle of *maṣlaḥat* supremacy. In the construction of the Indonesian legal system, *maṣlaḥah mursalah* has a significant role in building a model of a legal system that is conceived prismatically by taking some of the good sides of specific legal systems based on legal certainty and substantial justice. As for the regulation and enforcement of Islamic law in Indonesia, it is carried out partially by applying specific Islamic laws through a legislative process, that basically refers to and considers the urgency of *maṣlaḥat* as stipulated in Article 49 of Law No. 3 of 2006.

The urgency of using *Maṣlaḥah Mursalah* as a Legal Theory

The word “*maṣlaḥah*” comes from the Arabic language and is absorbed into the word “*maṣlaḥat*” which means something that brings goodness, benefit, and use. In Arabic, it is a masdar form of the verb “*salaha*” which means the opposite of badness or damage. Its plural form, “*maṣhalih*” also means goodness, benefit, usefulness, or goodness.²⁰ The purpose of *maṣlaḥah* is to protect or maintain something that the sharia wants to achieve (*maqashid sharia*), namely the maintenance of religion, soul, mind, offspring, and property. Anything that aims to maintain the five objectives of sharia is a form of *maṣlaḥah*,²¹ and anything that negates it is *mafsadah*.²² Eliminating *mafsadah* includes *maṣlaḥah*.²³

Maṣlaḥah is classified into three forms, namely the first *maṣlaḥah* whose existence is legitimized by *shar’i*, the second *maṣlaḥah* which does not get legitimized by *shar’i*, and the third is *mashlahah*, whose existence has no juridical basis from *shar’i* and there is no prohibition against it.²⁴ The three forms of *maṣlaḥah* are known as *maṣlaḥah mu’tabarah*, *maṣlaḥah mulgha*, and *maṣlaḥah mursalah*.²⁵ Imam Malik defined *maṣlaḥah mursalah* as a form of benefit that is neither explicitly regulated in the text nor rejected. However, this benefit must not contradict the *nash*, the primary law source.²⁶ On the other hand, Syatibi classifies *maṣlaḥah* based on the level of urgency into three, namely *maṣlaḥat dharuriyat* (primary), *maṣlaḥat hajiyat* (secondary), and *maṣlaḥat tahsiniyat* (tertiary).

²⁰ M Usman, “Zakat Distribution for Handling Transgender in Indonesia: A Perspective of *Maṣlaḥah Mursalah*,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 357–76, <https://doi.org/10.22373/sjhc.v7i1.16934>.

²¹ Afif Noor et al., “Maslahah-Based Protection of Fund Recipients in Fintech Lending Through Empowerment and Justice,” *El-Mashlahah* 15, no. 1 (2025): 1–20, <https://doi.org/10.23971/el-mashlahah.v15i1.7786>.

²² Siti Nur Fitriana and Iffatin Nur, “Regulation of Foreign Workers Based on Job Creation Act of Maslahah Perspective,” *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 179, <https://doi.org/10.31958/juris.v20i2.4274>.

²³ Budi Rahmat Hakim et al., “Reactualization of Maslahat and Social Justice Principles in the Contextualization of Fiqh Zakat,” *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 102–18, <https://doi.org/10.18592/sjhp.v24i1.12909>.

²⁴ Abu Hamid Al Ghazali, *Al-Mustasyfa* (Jakarta: Daarul Kutub, 1993).

²⁵ Zezen Zainul Ali, “The Urgency of Patriotism in Maintaining the Unity in the Republic of Indonesia in the Perspective of Maslahah,” *El-Mashlahah* 11, no. 2 (2021): 116–26, <https://doi.org/10.23971/elma.v11i2.2958>. It needs to raise awareness as a step to prevent conflicts that arise and consequently cause divisions within the country. The emergence of interpretations between Patriotism and religion that they cannot be combined, so they have willing to change the state ideology to other ideology, such as khilafah ideology through the emergence of radicalism, extremism, and separatism groups. The research was a literature review using literature data from related books and articles. Data analysis used a qualitative analysis. This study was expected to become a scientific treasure and be practiced in the life of the nation and state. Patriotism explicitly does not available stated in either the Qur’an or Hadith. However, in principle, Islamic law will always answer the problems to provide benefits for mankind, which is the *maslahah*. Having a love for the homeland is *mubah* (permitted).

²⁶ Desi Norma Siamtina et al., “The Legal System of the All-You-Can-Eat Ticket System at Tlogo Argo-Tourism, Indonesia: A *Maṣlaḥah Al-Mursalah* Perspective,” *Journal of Islamic Law* 4, no. 1 (2023): 88–103, <https://doi.org/10.24260/jil.v4i1.1150>; Maskur Rosyid, “Reading Fatwas of MUI a Perspective of Maslahah Concept,” *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 1 (June 2, 2019): 91, <https://doi.org/10.18592/sjhp.v19i1.2726>.

Maṣlaḥah mursalah is also known as *istidlal mursal*.²⁷ *Maṣlaḥah mursalah* is a method of determining laws based on benefits, but it is not supported by detailed arguments but by the meaning of some arguments.²⁸ This method results from logical induction from some propositions or *nash*, not partial propositions like the *qiyas* method.²⁹ So, *maṣlaḥah mursalah* is more oriented towards considering the interests of human life to attract a benefit from something to avoid the impact of *mudharat*.³⁰ *Maṣlaḥah mursalah* is a legal theory based on the principle of public interest.³¹

Justice is the primary virtue that must exist in a social institution.³² In constructing the legal system, *maṣlaḥah* theory can function as an instrument to realize social justice for all Indonesian people. *Maṣlaḥah mursalah* has an essential role in flexibly solving legal problems in the contemporary era.³³ The flexibility of the law application model in Islam is a superior characteristic that is not owned by other laws in the world to provide convenience to humanity.³⁴ Thus, *maṣlaḥah mursalah* is a means to expand the scope of Islamic law studies on problems that are not directly regulated by Islamic law sources.³⁵

Legal theory has the function of detailing the urgency of legal principles in forming regulations and decision-making, guiding the formation of laws, guiding the process of determining decisions by the courts, and providing a basis for the implementation of the functions of administrative organs.³⁶ Based on this function, *maṣlaḥah mursalah* fulfills the criteria of legal theory to be widely used in various fields of law, including state administration public law as a study of legal politics in the legal system. Thus, expanding the use of *maṣlaḥah mursalah* theory in various legal practices is a very important step and idea to show the existence of moderate Islamic law during pluralistic Indonesian society.

The perspective of *Maṣlaḥah Mursalah* in the Legal Construction of Pancasila and the 1945 Constitution as the Indonesian Legal System

Friedman analogizes the legal system to a big circle in which there are small boxes as sub-systems, most of which are based on collective consent as part of the system. The system is run by rules or norms, where all sub-systems are connected to the state as a power structure.³⁷ In the legal system, there are three elements of law: legal structure, legal substance, and legal culture.³⁸ In more detail, it can be said that in a legal system, there are basic principles as basic thoughts, some of which are formulated in the form of laws and regulations.³⁹

²⁷ Abu Hamid Muhammad Al-Ghazali, *Al-Mankhul Min Ta'liqotil Ushul* (Beirut: Darul Fikr, 1998).

²⁸ Dewan Hisbah Persis, *Turuq Al-Istinbath* (Bandung: PersisPers, 2018).

²⁹ Ali Sodikin, *Fiqh dan Ushul Fiqh: Sejarah, Metodologi dan Implementasinya di Indonesia* (Yogyakarta: Beranda, 2012).

³⁰ Sapiudin Shidiq, *Ushul Fiqh* (Jakarta: Kencana, 2011).

³¹ Ariyanti and Supani, "Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective."

³² John Rawls, *A Theory of Justice*, Rev. ed., (Cambridge, Mass: Belknap Press of Harvard Univ. Press, 2003).

³³ Khoir and Sulaiman, "Maṣlaḥah Mursalah: A Substantial Effort to Overcome Income and Wealth Inequality in Indonesia."

³⁴ Moh. Ahsanuddin Jauhari, *Filsafat Hukum Islam* (Bandung: Liventurindo, 2020).

³⁵ Imron Rosyadi et al., "Syathibi's Thoughts on Maslaha Mursalah and Its Impact on The Development of Islamic Law," *Journal of World Thinkers* 1, no. 01 (2024): 63–74.

³⁶ Peter Mahmud Marzuki, *Teori Hukum "The House of Law Is the House of Mankind"*, 2nd ed. (Jakarta: Kencana, 2022).

³⁷ Lawrence M Friedman, *Sistem Hukum : Perspektif Ilmu Sosial* (Bandung: Nusamedia, 2019).

³⁸ Lawrence M Friedman, *American Law* (London: Norton&Company, 1984).

³⁹ I Dewa Gede Atmadja, "Asas-Asas Hukum Dalam Sistem Hukum," *KERTHA WICAKSANA* 12, no. 2 (2018): 145–55, <https://doi.org/10.22225/kw.12.2.2018.145-155>.

The Indonesian national legal system can be interpreted as a legal system that applies throughout Indonesia's territory, including all elements of law that are dependent on one another, sourced from Pancasila and articles contained in the 1945 Constitution.⁴⁰ The civil law and common law legal systems indirectly influenced the development of Indonesia's national legal system. The development of the legal system in Indonesia was initially driven and influenced by the civil law system because it was considered a legacy legal system.⁴¹ The civil law legal system has an administrative character, while the common law system has a judicial character.⁴² However, over time, there has been a shift in the view that the legal system practiced in Indonesia is a mixed legal system. The development of legal systems in the world has given birth to a combination of legal systems, and it is almost certain that no country fully implements civil law or common law so the combination between the two cannot be denied. The combination of legal systems between civil law (continental Europe) and common law is slowly showing significant reconciliation.⁴³

The combination of the practice of applying civil law and common law systems in the Indonesian legal system can be seen from the practice of written legal codification with an administrative character. However, the Indonesian legal system also embraces the common law system's judicial character, which involves judges' role in determining the law. Combining legal systems that gave birth to a mixed legal system can be called a form of *maṣlahah* legal practice because the combination is based on public benefit conditionally. This practice is similar to codifying the Qur'an during the time of Caliph Abu Bakr with the aim of public benefit.⁴⁴

As for the legal substance debate regarding the style of the Indonesian legal system, it has been started since the time of the formulation of the constitution by the bodies that have been formed to prepare for an independent Indonesia consisting of the Indonesian Independence Preparation Efforts Investigation Board (BPUPKI) and the Indonesian Independence Preparation Committee (PPKI). There were two crucial debates in the BPUPKI meeting: the debate based on an independent Indonesia and the regulation of the article on human rights. Differences of opinion in regulating the article on human rights occurred between Soekarno and Soepomo, who did not want to regulate the article in detail, and Hatta and Yamin, who tried to restrain the article in detail.⁴⁵

The previous debate that was quite draining was formulating the basis of an independent Indonesia. History records that during the formulation of the basis of Indonesia in the BPUPKI meeting, there was a heated debate among the founding figures of the nation, which had reached a dead end, so it was decided to form a small committee to inventory and formulate the basic proposals of Indonesia. The small committee is called Team Nine because it comprises nine people divided into nationality groups and Islamic leaders.⁴⁶

On June 22, 1945, the team of nine succeeded in formulating the basis of an independent Indonesia by formulating five precepts known as the "Jakarta Charter," with the provision of the first precept

⁴⁰ Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi*, 2nd ed. (Jakarta: Rajawali Pers, 2010).

⁴¹ Jimly Asshiddiqie, *Konstitusi dan konstitusionalisme Indonesia*, 1st ed. (Jakarta: Sinar Grafika, 2011).

⁴² Steffany Steffany, "Comparison of Civil Law and Common Law in Australia and Surrounding Countries," *Jurnal Daulat Hukum* 5, no. 3 (2022): 156–64, <https://doi.org/10.30659/jdh.v5i3.24389>.

⁴³ Bernardo Sordi, "Révolution, Rechtsstaat and the Rule of Law: Historical Reflections on the Emergence and Development of Administrative Law," in *Comparative Administrative Law* (Edward Elgar Publishing, 2017), 23–37, <https://doi.org/10.4337/9781784718671.00008>.

⁴⁴ Muhammad bin Shalih Al-Utsaymin, *Ushul Fi Tafsir: Syarhu Ushul Tafsir* (Beirut: Daarul Wathon, 2013).

⁴⁵ Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi*.

⁴⁶ Moh. Mahfud M. D, *Konstitusi Dan Hukum Dalam Kontroversi Isu* (Jakarta: Rajawali Pers, 2009), 5.

stating “the obligation to carry out Islamic law for its adherents.” On the afternoon of August 17, after declaring himself an independent state, according to history, Hatta received information from a young Japanese admiral that representatives of groups from the eastern region objected to the contents of the first principle as referred to in the Jakarta Piagam, therefore Hatta on the morning of August 18, 1945, before the enactment of the 1945 Constitution as the basic constitution, invited several representatives of national figures from among Islamic leaders to conduct a brief discussion with various considerations which then resulted in the first principle in Pancasila being “Belief in One God” as stated in the preamble of the 1945 Constitution.⁴⁷

What has been done by Hatta and the national figures referred to above in the history of the construction of the Indonesian legal system, the author calls it the formulation of legal policies under the principles of *maṣlahah mursalah* theory. The legal policy is based on the principle of broad public benefit under Islamic law principles.⁴⁸ In this case, *maṣlahah mursalah* as a legal theory functions as an alternative road guide in constructing the legal basis of an independent Indonesia as a reference in the government regulated in the 1945 Constitution.

The legal practice of the basic formulation of independent Indonesia, as above, has a substance similar to the legal practice that was done by Caliph Umar when the penalty for cutting hands for thieves was not applied during the famine season.⁴⁹ This is a series of legal policy strategies or politics to avoid harm and create benefits per the basic principles of Islamic law. The consensus of ushul scholars confirms that the laws of shari’a must contain a benefit for humans, and the laws of shara’ are revealed by shari’ to maintain His goals for creatures.⁵⁰

Sharia contains political ideas in the form of general principles set out in the Qur’an and Sunnah, such as consensus, pluralism, equality, justice, brotherhood, and peace. There is no definitive command on the form of the state system or institutions in Islam. Therefore, there are various forms of political thought or *ijtihad* of scholars on political systems that are appropriate to their situation and conditions, such as the caliphate system, kingdom, or republic system. This means there are variations in ideas and practices between the political systems of the classical and contemporary periods due to different conditions and situations. The caliphate system itself does not have a definite and precise regulatory basis. Still, it is the result of *ijtihad* of scholars based on *maṣlahat*, which is the leading theory in Islamic political thought (*fiqh al-siyasah*).⁵¹ Thus, the model of formulating a legal system in Indonesia through a deliberation process by prioritizing aspects of benefit to realize justice institutionally is under Sharia principles.

The substance of sharia as a rule of law that is universally applied carries a mission of benefit (*maṣlahah*) for humans.⁵² *Maṣlahat* is something that brings benefits and is based on common sense.⁵³ The basic concept of sharia is not set to burden human life. Still, it is harmonized with the

⁴⁷ C S T Kansil and Christine, *Empat Pilar Berbangsa dan Bernegara* (Jakarta: Rineka Cipta, 2011).

⁴⁸ Rosyadi et al., “Syathibi’s Thoughts on Maslahah Mursalah and Its Impact on The Development of Islamic Law.”

⁴⁹ Nailul Rahmi, “Hukuman Potong Tangan Perspektif Al-Qur’ An Dan Hadis,” *Jurnal Ulunnuha* 7, no. 2 (2018): 53–70, <https://doi.org/10.15548/ju.v7i2.254>.

⁵⁰ Nur Hadi and Sabariyah Sabariyah, “Falsafah Hikmah Tasyri’ Perespektif Syekh Ali Ahmad Al-Jurjawi,” *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 4, no. 2 (2019): 201–20, <https://doi.org/10.25217/jm.v4i2.496>.

⁵¹ Abdillah, “Sharia and Politics in The Context of Globalization and Society 5.0.”

⁵² Muhammad Harfin Zuhdi and Mohamad Abdun Nasir, “Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1818–39, <https://doi.org/10.22373/sjhk.v8i3.24918>.

⁵³ Setyawan et al., “Legal Age for Marriage: SDGs and Maslahah Perspectives in Legal Policy Change in Indonesia.”

nature of human ability to implement it to bring benefits to the universe, not only for Muslims. Therefore, the role of *maṣlahah* in the construction of the Indonesian legal system in determining the basis of an independent Indonesia is a form of application of the function of Islamic legal values that are intended for all groups regardless of background by upholding the supremacy of *maṣlahat*.

Globalization has had a significant impact on Islamic law and Islamic politics in Muslim countries, which has brought changes to the country's legal system, such as democracy and protection of human rights, by making adjustments in the form of Islamization of national law based on *ijtihad* as a form of reformulation of Islamic law to realize the benefits of Islam.⁵⁴ This includes the regulation of the legal system that does not have a strict regulatory construction in the provisions of Islamic law, which certainly requires a process of *ijtihad* as an effort to formulate rules that can be based on the theory of *maṣlahah mursalah*, as is the case in the construction of the Indonesian legal system.

Indonesia has chosen to construct its legal system with a prismatic conception by giving birth to the Pancasila legal system.⁵⁵ Pancasila has an essential role as a way of life and guiding norms to realize the ideals of law.⁵⁶ The Pancasila legal system is constructed by drawing *maṣlahat* from several concepts under Indonesian legal needs by considering the background of a pluralistic society. The construction mapping model of the Pancasila legal system is under the legal principle of *maṣlahah mursalah*, which upholds the supremacy of *maṣlahat* as the basic principle of determining the law.

The perspective of *Maṣlahah Mursalah* in the Institutionalization of Islamic Law in Indonesia

Although the provisions of the first principle in Pancasila have changed, it does not mean that Islamic law has been completely denied. Then, the national legal system based on Pancasila becomes incompatible with the values of Islamic teachings. *Maṣlahah* has two functions: first, providing benefits to safeguard public interests, and second, providing benefits to protect individual interests.⁵⁷ In the construction of national law, *maṣlahah* has two functions, namely, first, the application of Islamic law as a positive law partially intended for Muslims; second, the function of Islamic law as a value that is not only intended for Muslims but for all citizens.

The first principle in Pancasila has become the primary basis for all believers to be able to worship under their respective religions and beliefs, which are then emphasized in Article 29 of the 1945 Constitution. Especially for Muslims in Indonesia as the majority population, which certainly has a significant influence in determining the direction of legal policy,⁵⁸ The state provides a forum for the enforcement of specific Islamic laws through religious courts as stipulated in Article 24 paragraph (2) of the 1945 Constitution.

The regulation of the Islamic law enforcement mechanism in the 1945 Constitution is a form of compromise on the application of religious law in Indonesia. The compromise attitude of the model

⁵⁴ Abdillah, "Sharia and Politics in The Context of Globalization and Society 5.0."

⁵⁵ Jeje Zainudin, *Politik Hukum Islam: Konsep, Teori, dan Praktik di Indonesia*, Cetakan 1 (Bandung: CV Mega Rancagé Press : Persis Pers, 2019).

⁵⁶ Ilham Dwi Rafiqi, "Legal Ideals Pancasila in the Development of a National Environmental Legal System," *Audito Comparative Law Journal (ACLJ)* 4, no. 3 (2023): 134–46, <https://doi.org/10.22219/aclj.v4i3.28017>.

⁵⁷ Nofiardi Nofiardi, "Testimonium de Auditu Witness: Comparison of *Maṣlahah* in the Settlement of *Syiqāq* in the Religious Court of the Border Regions," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 1016–36, <https://doi.org/10.22373/sjhk.v7i2.11493>.

⁵⁸ Bambang Iswanto and Miftah Faried Hadinatha, "Sharia Constitutionalism: Negotiating State Interests and Islamic Aspirations in Legislating Sharia Economic Law," *AHKAM: Jurnal Ilmu Syariah* 23 (2023): 235–58.

of application of religious law is under the theory of compromise of the application of religious law introduced by Anderson.⁵⁹ The attitude of compromise in the legal politics of the application of law in Indonesia as a religious nation-state has provided opportunities for Muslims to fight for the content of shar'i material so that it can be stated in the form of constitutional legislation through the legislative process, either in the form of laws or at the level of regional regulations.

The middle way of applying Islamic law in Indonesia through the institutionalization of specific Islamic laws is indirectly a crystallization of the various debates surrounding the basis of independent Indonesia, considering the *maṣlahat* aspect as part of the Pancasila legal system. The pattern of application and institutionalization of Islamic law partially in Indonesia is a form of symbiotic application of religious law. Therefore, applying Islamic law in specific legal fields is symbiotically a series of elaborations of the first principle of Pancasila.

As a state of law regarding the provisions of Article 1 paragraph (3) of the 1945 Constitution, legal arrangements in Indonesia are regulated based on laws and regulations. The types of rules referred to are regulated in Article 7, paragraph (1) of Law No. 12 of 2011. Then, based on Article 2 of Law No. 12 of 2011, it is emphasized that "Pancasila is the source of all sources of state law". Pancasila as the nation's philosophy, serves as a spiritual foundation in Indonesian law.⁶⁰ Therefore, the regulation of legal provisions in Indonesia refers to Pancasila as a legal reference system, including the regulation of Islamic law enforced through religious courts, as referred to above.

The material provisions of Islamic law regulated in Indonesia, which are intended for Muslims and people who subject themselves to their provisions, are regulated in Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts which consists of marriage law, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and shari'ah economics. Further arrangements for the provisions of Islamic law as intended are regulated in the law and its implementing regulations, such as Law No. 1 of 1974 concerning marriage and its amendments, Law No. 23 of 2011 concerning Zakat Management, Law No. 21 of 2008 concerning Sharia Banking and other regulations.

In addition to regulating the application of specific Islamic laws nationally for Muslims and those who submit themselves to its provisions, some regions specifically have the privilege to regulate and apply Islamic law locally, as in Aceh Province. Aceh's specialty in implementing Islamic law is based on Law No. 11/2006 on the Government of Aceh, which regulates the regulation of the application of certain Islamic sharia described in legal products in the form of Qanun by upholding the principle of *maṣlahah* supremacy with non-discrimination. This is evidenced by the presence of non-Muslims who also choose to submit themselves voluntarily to Islamic law.⁶¹

The regulation of the application of Islamic law in Indonesia is an essential part of the construction of the Indonesian legal system based on Pancasila. The Pancasila state is not religious because the religious state is only based on one particular religion. However, the Pancasila state is also not secular because secular states generally do not want to participate in religious affairs. The Pancasila state is a form of state called a religious nation-state, which is a religious nation-state that protects and

⁵⁹ J N D Anderson, *Hukum Islam di Dunia Modern* (Surabaya: Ammar Press, 1991).

⁶⁰ Vincentius Setyawan, "Pancasila As A Philosophical Basis Of Law Formation In Indonesia," *NUSANTARA: Journal of Law Studies* 2, no. 1 (2023): 1-8.

⁶¹ Mursyid Djawas et al., "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (2023), <https://doi.org/10.15408/ajis.v23i1.32127>.

facilitates the development of all religions.⁶² Therefore, from several forms of existing legal systems, Indonesia has determined its national legal system, namely the Pancasila legal system.⁶³

The partial institutionalization of Islamic law in Indonesia in the Pancasila legal system elaborates the first principle of “Belief in One God.” The partiality of legal institutionalization is a function of the application of Islamic law, which is only aimed at Muslims. In practice in Indonesia, specific Islamic laws do not only apply to Muslims but also to non-Muslims who submit themselves to the provisions of Islamic law, as happened in Aceh. Applying Islamic law in Indonesia is partially based on the principle of benefit, which is to look at the background of a pluralistic society to realize the objectives of Islamic law for the benefit of individuals and society in general.⁶⁴ This shows that Islamic law can adjust to the practice of democracy in Indonesia. Thus, the democratic process in Indonesia is in line with the values of Islamic teachings.⁶⁵

With all its advantages, Islamic law is a rule of God that aims to provide goodness and convenience to humankind. Thus, Islamic law has several characteristics not possessed by any law in the world. These features include its flexible nature.⁶⁶ The flexibility of applying Islamic law can refer to the consideration of the benefit of the ummah in achieving Sharia’s objectives. The formulation of the Pancasila legal system in Indonesia is a series of applications of the function of Islamic law as a value for all human beings as *rahmatan lil alamīn*. At the same time, the partiality of the institutionalization of Islamic law in Indonesia is the function of Islamic law as a value aimed at the Muslim ummah.

Conclusion

The findings in this article conclude that *maṣlaḥah mursalah* can be used as a legal theory in the construction of a legal system that can give birth to a mixed system and has a broader relevance that is not limited to certain legal studies. The construction of the legal system in Indonesia from the perspective of *maṣlaḥah mursalah* theory can be viewed from two forms, namely first, from the model of legal system preparation and regulation that gave birth to the Pancasila legal system which is constructed prismatically. This can be seen from the final formulation of the first principle of Pancasila and the regulation of Islamic law in the 1945 Constitution, which also emphasizes the function of Islamic law as a value not only intended for Muslims. Second, in terms of the regulation and application of Islamic law in a compromise as an integral part of the Indonesian legal system under the theory of *maṣlaḥah mursalah*. This can be seen from the material of the careful institutionalization of Islamic law through legislation in the form of statutes, regional regulations, or other regulations in force in Indonesia, which contain partial provisions of Islamic law intended for Muslims and people who subject themselves to it based on the legal principle of benefit.

⁶² Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi*.

⁶³ Zainudin, *Politik Hukum Islam: Konsep, Teori, dan Praktik di Indonesia*.

⁶⁴ Ariyanti and Supani, “Examining Muslims’ Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective.”

⁶⁵ Surya Sukti et al., “Political Dynamics of Islamic Law in the Reform Era: A Study of the Response of Muhammadiyah Cadres in Central Kalimantan,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 1022, <https://doi.org/10.22373/sjhk.v6i2.12415>; Bani Syarif Maula, “Post-Islamism and the Rise of Sharia Laws in Contemporary Indonesia: Aspirations of Implementing Islamic Laws in a Democratic Era,” *International Journal of Social Science and Religion (IJSSR)* 4, no. 2 SE- (June 8, 2023): 163–84, <https://doi.org/10.53639/ijssr.v4i2.137>.

⁶⁶ Jauhari, *Filsafat Hukum Islam*.

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References

- Abbas, Syahrizal, and Ramzi Murziqin. "Sharia-Based Regional Regulations in the Indonesian National Law System." *Jurnal Ilmiah Peuradeun* 9, no. 3 (September 30, 2021): 529. <https://doi.org/10.26811/peuradeun.v9i3.673>.
- Abdillah, Masykuri. "Sharia and Politics in The Context of Globalization and Society 5.0." *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (2022). <https://doi.org/10.15408/ajis.v22i2.28959>.
- Adib, Shohibul, Tahrir Rosadi, and Muh Hanif. "Religious Moderation in Contestation: Dynamics and Impacts of Intergroup Tensions in Karangduwur Village, Petanahan, Kebumen." *International Journal of Social Science and Religion (IJSSR)* 6, no. 1 SE- (January 2, 2025): 1–20. <https://doi.org/10.53639/ijssr.v6i1.289>.
- Al-Ghazali, Abu Hamid Muhammad. *Al-Mankhul Min Ta'liqotil Ushul*. Beirut: Darul Fikr, 1998.
- Al-Utsaymin, Muhammad bin Shalih. *Ushul Fi Tafsir: Syarhu Ushul Tafsir*. Beirut: Daarul Wathon, 2013.
- Algero, Mary Garvey. "The Sources of Law and the Value of Precedent: A Comparative and Empirical Study of a Civil Law State in a Common Law Nation." *Louisiana Law Review* 65, no. 2 (2005): 775–822.
- Ali, Zezen Zainul. "The Urgency of Patriotism in Maintaining the Unity in the Republic of Indonesia in the Perspective of Maslahah." *El-Mashlahah* 11, no. 2 (2021): 116–26. <https://doi.org/10.23971/elma.v11i2.2958>.
- Anderson, J N D. *Hukum Islam di Dunia Modern*. Surabaya: Ammar Press, 1991.
- Ariyanti, Vivi, and Supani. "Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective." *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024). <https://doi.org/10.24090/mnh.v18i1.8280>.
- Asiyah, Nur, and Abdul Ghofur. "Kontribusi Metode Maṣlaḥah Mursalah Imam Malik Terhadap Pengembangan Hukum Ekonomi Syari'ah Kontemporer." *Al-Ahkam* 27, no. 1 (2017): 59–82. <https://doi.org/10.21580/ahkam.2017.27.1.1349>.
- Asshiddiqie, Jimly. *Konstitusi dan konstitusionalisme Indonesia*. 1st ed. Jakarta: Sinar Grafika, 2011.
- Atmadja, I Dewa Gede. "Asas-Asas Hukum Dalam Sistem Hukum." *KERTHA WICAKSANA* 12, no. 2 (2018): 145–55. <https://doi.org/10.22225/kw.12.2.2018.145-155>.
- Azni, Azni, Muhammad Hafis, Asril Amirul Zakariah, Adi Harmanto, Miftahuddin Miftahuddin, and M Ihsan. "Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts." *Jurnal Ilmiah Peuradeun; Vol 13 No 2 (2025): Jurnal Ilmiah Peuradeun* DO - 10.26811/Peuradeun.V13i2.2047, May 30, 2025.
- Bunyamin, Bunyamin, Firdaus Arifin, Ihsanul Maarif, Robi Assadul Bahri, and Mohd Kamarulnizam

- Abdullah. "Reforming Indonesia's Correctional System: The Role of Maqāṣid Al-Syarī'ah in Ensuring Justice and Rehabilitation." *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (2025): 52–71. <https://doi.org/10.18860/j-fsh.v17i1.29258>.
- Dewi, Aida, Khudzaifah Dimiyati, Natangsa Subakti, Absori Absori, and Siti Syahida Nurani. "Legal Protection for Rape Victims in Indonesia: Seeking an Ideal Concept." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 1 (June 30, 2021): 121–30. <https://doi.org/10.30631/alrisalah.v21i1.791>.
- Djawas, Mursyid, Andi Sugirman, Bukhari Ali, Muqni Affan, and Idham Idham. "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia." *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (2023). <https://doi.org/10.15408/ajis.v23i1.32127>.
- Fitria, Restu, Muhammad Adnan Azzaki, and Abdul Mustaqim. "Work Termination During The Covid-19 Pandemic in Indonesia Reviewed from Theory Maṣlaḥah Mursalah." *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 22, no. 1 (2022): 51–62. <https://doi.org/10.19109/nurani.v22i1.11008>.
- Fitriana, Siti Nur, and Iffatin Nur. "Regulation of Foreign Workers Based on Job Creation Act of Maslahah Perspective." *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 179. <https://doi.org/10.31958/juris.v20i2.4274>.
- Friedman, Lawrence M. *American Law*. London: Norton&Company, 1984.
- . *Sistem Hukum : Perspektif Ilmu Sosial*. Bandung: Nusamedia, 2019.
- Ghazali, Abu Hamid Al. *Al-Mustasfa*. Jakarta: Daarul Kutub, 1993.
- Hadi, Nur, and Sabariyah Sabariyah. "Falsafah Hikmah Tasyri' Perespektif Syekh Ali Ahmad Al-Jurjawi." *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 4, no. 2 (2019): 201–20. <https://doi.org/10.25217/jm.v4i2.496>.
- Hakim, Budi Rahmat, Muhammad Nafi, Hidayatullah, and Herlinawati. "Reactualization of Maslahat and Social Justice Principles in the Contextualization of Fiqh Zakat." *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 102–18. <https://doi.org/10.18592/sjhp.v24i1.12909>.
- Hamzani, Achmad Irwan. *Hukum Islam dalam Sistem Hukum di Indonesia*. Revised Ed. Kencana, 2020.
- Iswanto, Bambang, and Miftah Faried Hadinatha. "Sharia Constitutionalism: Negotiating State Interests and Islamic Aspirations in Legislating Sharia Economic Law." *AHKAM: Jurnal Ilmu Syariah* 23 (2023): 235–58.
- Jauhari, Moh. Ahsanuddin. *Filsafat Hukum Islam*. Bandung: Liventurindo, 2020.
- Kansil, C S T, and Christine. *Empat Pilar Berbangsa dan Bernegara*. Jakarta: Rineka Cipta, 2011.
- Khoir, Tholkhatul, and Eman Sulaiman. "Maṣlaḥah Mursalah: A Substantial Effort to Overcome Income and Wealth Inequality in Indonesia." *Shirkah: Journal of Economics and Business* 9, no. 3 (2024): 360–77. <https://doi.org/10.22515/shirkah.v9i3.716>.
- Kurniawan, Ilham. "Memaknai Radikalisme Di Indonesia." *TA'LIM : Jurnal Studi Pendidikan Islam* 3, no. 1 (2020): 70–82. <https://doi.org/10.52166/talim.v3i1.1848>.
- Mahfud MD, Moh. *Membangun Politik Hukum, Menegakkan Konstitusi*. 2nd ed. Jakarta: Rajawali Pers, 2010.

- Mahmud Marzuki, Peter. *Teori Hukum “The House of Law Is the House of Mankind.”* 2nd ed. Jakarta: Kencana, 2022.
- Maula, Bani Syarif. “Post-Islamism and the Rise of Sharia Laws in Contemporary Indonesia: Aspirations of Implementing Islamic Laws in a Democratic Era.” *International Journal of Social Science and Religion (IJSSR)* 4, no. 2 SE- (June 8, 2023): 163–84. <https://doi.org/10.53639/ijssr.v4i2.137>.
- Mukri, Moh., Agus Hermanto, Hanif Hanif, Is Susanto, and Rochmad Rochmad. “The Implementation of the Maslahah Principle in Cultivating Religious Moderation in the State Islamic Universities.” *Al-’Adalah* 21, no. 2 (December 26, 2024): 371. <https://doi.org/10.24042/adalah.v21i2.23953>.
- Mulyadi, Mulyadi. “Aplikasi Teori Al-Maslahah Al-Mursalah Dalam Politik Hukum Islam Di Indonesia Pasca Reformasi 1998-2019.” UIN Sunan Gunung Djati Bandung, 2021.
- Mulyo, Mufrod Teguh, Khoiruddin Nasution, Samin Batubara, Siti Musawwamah, and Raihanah Abdullah. “The Power of Husband-Wife Communication in Building Family Resilience and Preventing Divorce: A Study of Maṣḥalah Mursalah.” *Al-Manahij: Jurnal Kajian Hukum Islam*, 2023, 125–36.
- Musyafaah, Nur Lailatul, Risma Fauziyyah, Rozinatul Khusnah, and Syaiful Alim. “The Corruption Eradication Commission Role In Supervising Of The Social Assistance Funds Distribution From The Maslahah Mursalah Perspective.” *Hutanasyah : Jurnal Hukum Tata Negara* 1, no. 2 (2023): 83–98. <https://doi.org/10.37092/hutanasyah.v1i2.520>.
- Nofiardi, Nofiardi. “Testimonium de Auditu Witness: Comparison of Maṣḥalah in the Settlement of Syiqāq in the Religious Court of the Border Regions.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 1016–36. <https://doi.org/10.22373/sjhk.v7i2.11493>.
- Noor, Afif, Ali Maskur, Arifana Nur Kholiq, Aisa Rurkinantia, Saifudin Saifudin, Arina Hukmu Adila, and Maruf Maruf. “Maslahah-Based Protection of Fund Recipients in Fintech Lending Through Empowerment and Justice.” *El-Mashlahah* 15, no. 1 (2025): 1–20. <https://doi.org/10.23971/el-mashlahah.v15i1.7786>.
- Persis, Dewan Hisbah. *Turuq Al-Istinbath*. Bandung: PersisPers, 2018.
- Qodir, Zuly. “Post-Islamism And Reform Islamic Law: The Challenges And Future Of Political Islam In Indonesia.” *AHKAM : Jurnal Ilmu Syariah* 23, no. 2 (2023). <https://doi.org/10.15408/ajis.v23i2.31484>.
- Rafiqi, Ilham Dwi. “Legal Ideals Pancasila in the Development of a National Environmental Legal System.” *Audito Comparative Law Journal (ACLJ)* 4, no. 3 (2023): 134–46. <https://doi.org/10.22219/aclj.v4i3.28017>.
- Rahmi, Nailul. “Hukuman Potong Tangan Perspektif Al-Qur`An Dan Hadis.” *Jurnal Ulunnuha* 7, no. 2 (2018): 53–70. <https://doi.org/10.15548/ju.v7i2.254>.
- Rawls, John. *A Theory of Justice*. Rev. ed.,. Cambridge, Mass: Belknap Press of Harvard Univ. Press, 2003.
- Risfina, Almirah Meida, Amirul Haqi, and Hafidhuddin Rosyad. “Government Policy in Handling Rohingya Refugees Based on Maṣḥalah Mursalah Perspective.” *Islamica: Jurnal Studi Keislaman* 18, no. 2 (2024): 75–94. <https://doi.org/10.15642/islamica.2024.18.2.75-94>.
- Rosyadi, Imron, Arafiq Fathul Haq Rumaf, Meti Fatimah, and Najib Yaman. “Syathibi’s Thoughts on Maslahah Mursalah and Its Impact on The Development of Islamic Law.” *Journal of World Thinkers* 1, no. 01 (2024): 63–74.

- Rosyid, Maskur. "Reading Fatwas of MUI a Perspective of Maslahah Concept." *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 1 (June 2, 2019): 91. <https://doi.org/10.18592/sjhp.v19i1.2726>.
- Sahid, Mualimin Mochammad, Setiyawan Gunardi, and Nur Muhammad Hadi Zahalan. "Konsep Uruf dan Maslahah Sebagai Sumber Rujukan: Status Wanita Terhadap Harta Sepencarian dalam Perundangan Islam di Malaysia." *'Abqari Journal* 23, no. 2 (2020): 139–56. <https://doi.org/10.33102/abqari.vol23no2.357>.
- Sayuti, Sayuti, and Illy Yanti. "Freedom of Speech Without a Direction: Criticism of Promotion of Freedom of Speech in Indonesia." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (June 30, 2023). <https://doi.org/10.30631/alrisalah.v23i1.1389>.
- Setyawan, Edy, Muhammad Chairul Huda, Afif Muamar, Didi Sukardi, and Muhammad Feby Ridho Pangestu. "Legal Age for Marriage: SDGs and Maslahah Perspectives in Legal Policy Change in Indonesia." *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 183–198. <https://doi.org/10.24090/mnh.v17i2.9506>.
- Setyawan, Vincentius. "Pancasila As A Philosophical Basis Of Law Formation In Indonesia." *NUSANTARA: Journal of Law Studies* 2, no. 1 (2023): 1–8.
- Shidiq, Sapiudin. *Ushul Fiqh*. Jakarta: Kencana, 2011.
- Siamtina, Desi Norma, Muhammad Chairul Huda, Sukron Ma'mun, and Nastangin Nastangin. "The Legal System of the All-You-Can-Eat Ticket System at Tlogo Argo-Tourism, Indonesia: A Maṣlaḥah Al-Mursalah Perspective." *Journal of Islamic Law* 4, no. 1 (2023): 88–103. <https://doi.org/10.24260/jil.v4i1.1150>.
- Sodikin, Ali. *Fiqh dan Ushul Fiqh: Sejarah, Metodologi dan Implementasinya di Indonesia*. Yogyakarta: Beranda, 2012.
- Sordi, Bernardo. "Révolution, Rechtsstaat and the Rule of Law: Historical Reflections on the Emergence and Development of Administrative Law." In *Comparative Administrative Law*, 23–37. Edward Elgar Publishing, 2017. <https://doi.org/10.4337/9781784718671.00008>.
- Steffany, Steffany. "Comparison of Civil Law and Common Law in Australia and Surrounding Countries." *Jurnal Daulat Hukum* 5, no. 3 (2022): 156–64. <https://doi.org/10.30659/jdh.v5i3.24389>.
- Sukti, Surya, Tulus Warsito, Zuly Qodir, and Hasse Jubba. "Political Dynamics of Islamic Law in the Reform Era: A Study of the Response of Muhammadiyah Cadres in Central Kalimantan." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 1022. <https://doi.org/10.22373/sjhc.v6i2.12415>.
- Usman, M. "Zakat Distribution for Handling Transgender in Indonesia: A Perspective of Maṣlaḥah Mursalah." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 357–76. <https://doi.org/10.22373/sjhc.v7i1.16934>.
- Zainal Abidin, Raihana, Muhammad Nazir Alias, and Nur Wakhidah. "The Importance of Applied Behavior Analysis (ABA) Therapy in Nurturing Children with Autism Spectrum Disorder (ASD) According to Maqāṣid Al-Sharī'ah." *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (December 31, 2024): 742. <https://doi.org/10.22373/ujhk.v7i2.26607>.
- Zainudin, Jeje. *Politik Hukum Islam: Konsep, Teori, dan Praktik di Indonesia*. Cetakan 1. Bandung: CV Mega Rancagé Press : Persis Pers, 2019.

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

