



Reconstruction of Marriage Law: Judges' Progressive Reasoning Based on *Maqāṣid* in Addressing Divergent Interpretations in Indonesian Courts

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Abstract: This study elucidates the rationale behind judges' decisions to permit the registration of interfaith marriages, unregistered or underhanded marriages, and underage marriages. These three issues are subject to divergent opinions, reflecting the multi-interpretational nature of social reality. This study reveals the judicial process of law discovery in resolving rules subject to multiple interpretations. Employing a qualitative approach, primary data were obtained through interviews with judges from the Surabaya District Court and the Sumenep Religious Court. The findings indicate that in addressing cases characterized by ambiguity, lack of regulation, and multiple interpretations, judges rely not only on the Marriage Law but also on human rights provisions and the supreme legal authority of the Indonesian Constitution. Upon recognizing a legal vacuum, the judges opted to revert to higher norms, exercising judicial discretion. Reconstruction occurs when judges, encountering a lack of clear rules, prioritize human rights and the constitution over strict textual interpretations of *fiqh*. This progressive approach allows judges to balance contextual norms with the evolving objectives of sharia in society, thereby fostering justice in marital matters.

Keywords: *Maqāṣid*, Progressive, *Rechvinding*, Judge, Marriage law

Abstrak: Penelitian ini menjelaskan dasar pemikiran di balik putusan hakim yang mengizinkan pencatatan perkawinan beda agama, perkawinan yang tidak dicatatkan atau di bawah tangan (nikah siri), dan perkawinan di bawah umur. Ketiga isu ini memiliki pendapat yang berbeda-beda, yang mencerminkan sifat realitas sosial yang multitafsir. Penelitian ini mengungkapkan proses penemuan hukum dalam menyelesaikan aturan yang memiliki multi tafsir. Dengan menggunakan pendekatan kualitatif, data primer diperoleh melalui wawancara dengan para hakim di Pengadilan Negeri Surabaya dan Pengadilan Agama Sumenep. Temuan penelitian menunjukkan bahwa dalam menangani kasus-kasus yang ditandai dengan ambiguitas, kurangnya peraturan, dan multitafsir, para hakim tidak hanya mengandalkan UU Perkawinan tetapi juga pada ketentuan hak asasi manusia dan otoritas hukum tertinggi Konstitusi Indonesia. Setelah menyadari adanya kekosongan hukum, para hakim memilih untuk kembali ke norma yang lebih tinggi, menggunakan diskresi yudisial. Rekonstruksi terjadi ketika para hakim, yang menghadapi kurangnya aturan yang jelas, memprioritaskan hak asasi manusia dan konstitusi di atas interpretasi tekstual yang ketat terhadap fikih. Pendekatan progresif ini memungkinkan para hakim untuk menyeimbangkan norma-norma kontekstual dengan tujuan syariah yang berkembang di masyarakat, sehingga mendorong keadilan dalam masalah perkawinan.

Kata kunci: *Maqāṣid*, Progresif, Penemuan hukum, Hakim, Hukum perkawinan

Introduction

The positivization of Islamic law within state legislation has consistently posed challenges, both during its formulation and in its subsequent application, leading to ongoing dialectical tensions. This issue is evident in the Marriage Law; since the enactment of Law No. 1 of 1974, there has been no significant revision that adequately reflects the contextual and social changes within society.¹ Even with updates, such as the amendment to the marriage age stipulated in Law Number 16 of 2019,² there remains significant stagnation. This lack of comprehensive reform has resulted in a cluster of issues characterized by multi-interpretations, both within individual chapters and between different laws.

There are three significant issues of multi-interpretation within marriage law that pose serious challenges: firstly, ambiguity between chapters within a law; secondly, lack of clarity on whether certain practices are prohibited or permitted, leading to diverse understandings and practices within the community; and thirdly, conflicting provisions where certain actions are prohibited in some laws but exceptions or allowances are provided in others.³ These legally binding chapters suffer from vagueness despite their designation.⁴ Within marriage law, multiple interpretations arise across nearly every aspect,^{5,6} prompting judges in both courts and communities to frequently exercise their own discretion. Some of the provisions within marriage law susceptible to multiple interpretations include the following:

Firstly, concerning the validity of marriage, ambiguity arises from the provisions of Chapter 2(1) and (2). Paragraph (1) asserts that a marriage is considered valid if conducted in accordance with religious and belief systems, whereas paragraph (2) stipulates that a marriage is valid only upon registration with the Office of Religious Affairs. This dichotomy suggests that while paragraph (1) recognizes the legality of unregistered marriages, paragraph (2) emphasizes the requirement for registration to confer legal validity.⁷ Various interpretations exist regarding the validity of marriage, either according to religious provisions or requiring registration. According to paragraph (1), adherence to religious provisions suffices to validate a marriage, even without registration.⁸

¹ Nurliana Nurliana et al., "Second Puberty in Marriage Islamic Family Law Perspective," *International Journal of Islamic Thought and Humanities* 2, no. 1 (2023): 01–11, <https://doi.org/10.54298/ijith.v2i1.55>.

² Arif Sugitanata, Siti Aminah, and Ahmad Muhasim, "Living Law and Women Empowerment: Weaving Skills as a Marriage Requirement in Sade, West Nusa Tenggara," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 145, <https://doi.org/10.14421/ahwal.2022.15108>; Nuruddin Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 2 SE-Articles (December 31, 2023): 313–30, <https://doi.org/10.24090/volksgeist.v6i2.9844>; Arbanur Rasyid et al., "Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari'a," *Jurnal Ilmiah Peuradeun* 12, no. 2 (May 30, 2024): 763–86, <https://doi.org/10.26811/peuradeun.v12i2.1182>.

³ Salma Salma, Hasanatul Wahida, and Muhammad Adib bin Samsudin, "Ignoring Family Law Administrative Procedure: Falsifying Death of Spouses for the Registration of New Marriage in Lengayang Muslim Community," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 1, <https://doi.org/10.14421/ahwal.2022.15101>.

⁴ Abd. Basir et al., "Support for Islamic Understanding from Families Information of Piety for The Millennial Generation," *Nazhruna: Jurnal Pendidikan Islam* 4, no. 2 (2021): 434–46, <https://doi.org/10.31538/nzh.v4i2.1603>.

⁵ Khairuddin Hasballah, Dhaiful Mubarrak, and Saddam Rasanjani, "Disparity in Judge Decisions in Resolving RAD Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City," *El-Ushrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 249–61.

⁶ Syaikh Syaikh et al., "The Maqashid Sharia Construction on Inheritance in Dayak Ngaju Customs within the Tumbang Anoi Agreement," *El-Mashlahah* 13, no. 2 (2023): 181–202.

⁷ Priscilla Dewi Kirana and Qudwatin Nisak, "The Role of UNICEF in Addressing Child Marriage Issues in Indonesia," *Gender Equality: International Journal of Child and Gender Studies* 8, no. 2 (2022): 216, <https://doi.org/10.22373/equality.v8i2.14029>; Muhammad Ishom, "The Loose Interpretation of Dominus Litis Principle in Marriage Dispensation for Underage Marriage in Banten," *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (2023).

⁸ Khairil Azmi Nasution, "The Urgency of Fiqh Rules in Islamic Civil Law," *IJRS: International Journal Reglement & Society* 1, no. 1 (2022): 116–23.

The legal implications of chapters with multiple interpretations significantly affect the prevalence of *nikah sirri* (unregistered marriages), which remains prevalent in Indonesia, particularly within Javanese and Madurese communities. *Nikah sirri* finds its basis in the legality affirmed by Chapter 2(1) regarding the validity of marriages conducted in accordance with respective religious beliefs. Within the community, Chapter 2(1) of UUP No. 1 of 1974 is perceived to legitimize the practice of *nikah sirri*.⁹ This understanding is supported by the community's customary practices and interpretations of *fiqh*.¹⁰ The vagueness and ambiguity within these two chapters foster the interpretation that marriage registration serves primarily as an administrative formality¹¹ rather than a determinant of marital validity.

Secondly, concerning interfaith marriage, Chapter 2(1) of Law No. 1 of 1974 implicitly indicates the “permissibility” of such unions. This interpretation arises from the provision that marriage is considered valid according to any religion. Within the community, there is an understanding that interfaith marriages are permissible, provided that each spouse adheres to their respective religious customs and beliefs during the marriage contract.¹² Similarly, according to Law No. 23/2006, the population and civil registry office is authorized to issue marriage certificates for interfaith marriages upon court authorization.¹³ This administrative process confers legal recognition to interfaith marriages.

Differing perspectives regarding the “permissibility” of interfaith marriages stem from varying interpretations of chapters within laws and across different legal frameworks. Chapters 40 and 44 of the Compilation of Islamic Law in Indonesia (KHI) explicitly prohibit Muslim women from marrying non-Muslim men, indicating that Indonesian marriage regulations do not endorse interfaith unions. The conflicting interpretations between Chapter 2(1) of the Marriage Law and Chapter 40 of the KHI create contradictory social norms. This issue was notably highlighted in June 2022 when the Surabaya Religious Court approved an interfaith marriage application, underscoring the real-world implications of these conflicting interpretations.¹⁴

⁹ Afif Thohir Furqoni and Abdul Mukti Thabrani, “Islamic Legal Ethics to Marital Rare: Juxtaposing Mu’āsyarah Bi Al-Ma’rūf and Ḍarār Ma’nawī Principles,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 127, <https://doi.org/10.14421/ahwal.2022.15107>.

¹⁰ Durotun Nafisah, “Comparative Analysis of Islamic Family Law and Normative Law: Examining the Causes of Divorce in Purwokerto, Indonesia,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2016): 1–23, <https://doi.org/10.22373/sjhk.v8i2.16825>. Bani Syarif Maula and Vivi Ariyanti, “Justice Negotiations for Women: Divorce Cases Due to Domestic Violence in Religious Courts,” *Jurnal Hukum Islam* 20, no. 1 (June 2022): 155–80, <https://doi.org/10.28918/jhi.v20i1.6024>.

¹¹ Fadil, Zidna Mazidah, and Zaenul Mahmudi, “Fulfillment of Women’s Rights After Divorce: Dynamics and Transformation in the Legal Journey,” *De Jure: Jurnal Hukum Dan Syar’iah* 16, no. 1 (2024): 1–20, <https://doi.org/10.18860/j-fsh.v16i1.25713>.

¹² Azhar Azhar, “Islamic Law Reform in Indonesia from the Perspektive of Maqāsid Al-Sharī’ah: Kerinci’s Intellectual Views,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 750–69, <https://doi.org/10.22373/sjhk.v8i2.15051>; Ahmad Rajafi, Arif Sugitanata, and Vinna Lusiana, “The ‘Double-Faced’ Legal Expression: Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia,” *Journal of Islamic Law* 5, no. 1 SE-Articles (February 29, 2024), <https://doi.org/10.24260/jil.v5i1.2153>; Abd. Karim Faiz, Zulfahmi AR, and Ahmad Izzuddin, “Between State Law and Islamic Law: The Practice of Divorce Outside the Situbondo Religious Courts, Indonesia,” *Journal of Islamic Law* 3, no. 2 (August 31, 2022): 176–92, <https://doi.org/10.24260/jil.v3i2.848>.

¹³ Indira Hastuti, Edy Sanjaya, and Budi Prasetyo, “Interfaith Marriage And Its Legal Consequences For Children Born According To Islamic Law,” *International Journal of Educational Research & Social Sciences* 3, no. 1 (2022): 509–17, <https://doi.org/10.51601/ijersc.v3i1.303>.

¹⁴ Idham Payapo, Wahda Z. Imam, and Suwarti Suwarti, “Analysis of Interfaith Marriage Law in the Marriage Law and Law Number 23 of 2006 Concerning Population Administration Perspective,” *Journal of Social Science* 4, no. 2 (2023): 455–70, <https://doi.org/10.46799/jss.v4i2.540>; Hasyim Sofyan Lahilote et al., “Judge’s Dilemma in Marriage Dispensation in the Religious Court,” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (June 2022): 52–60, <https://doi.org/10.30631/alrisalah.v22i1.979>.

Thirdly, regarding underage marriage, Chapter 1 of Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage, stipulates that the minimum age for marriage for both men and women is 19 years.¹⁵ However, in Chapter 2 of Law No. 16 of 2019, an exception is provided for marriages conducted under the age of 19. Consequently, the prevailing public understanding is that underage marriage is permissible under the law. This aspect of the marriage law once again contributes to multiple interpretations, leading to perceived “violations” within the community.¹⁶

The presence of such multi-interpretable chapters and laws in community practice engenders diverse perspectives and even “contradictions” in regulations. This is evident in three aspects: 1) the prevalence of *nikah sirri*, which arises due to varying interpretations of paragraphs 1 and 2 of Chapter 1 of the Marriage Law, contributing to the continued prevalence of unregistered marriages; 2) the intersection of religious marriage laws, facilitating the practice of interfaith marriages through various means, such as marriages conducted abroad and subsequently registered at the Population and Civil Registry Office or authorized by district courts; 3) the ambiguity surrounding the minimum marriage age, allowing underage marriages to persist within society.¹⁷ Therefore, judges responsible for adjudicating marriage disputes¹⁸ in court must adeptly analyze chapters with multiple interpretations in line with legal principles aimed at maximizing benefits and preventing harm. Similarly, religious leaders (such as *kiyai*, *ustadh*, *tengku*) who influence social norms must interpret justice within each multi-interpretable chapter of the Marriage Law without deviating from the principles of justice and societal welfare.¹⁹ This legal discovery is known as *richtvinding*. Judges are tasked not only with aligning with the intentions of the law but also with contextualizing its relevance to the customs, circumstances, and values of contemporary society.²⁰

Progressive *maqāṣid* represents a formulation of legal discovery (*richtvinding*) that integrates *Uṣūl al-Fiqh* and contemporary social legal theory,²¹ proving highly effective in interpreting chapters within modern laws characterized by multiple interpretations.²² The progressive *maqāṣid* method synthesizes *maqāṣid al-sharī'ah* theory from Islamic legal methodology with progressive

¹⁵ Ahmad Arif Masdar Hilmy and Ria Cahyaning Utami, “The Dowry Classing Concept Based on Women’s Criteria at Karangsono, Wonorejo, Pasuruan; A Study of Berger and Luckmann’s Social Construction,” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 1 (2021): 137–60, <https://doi.org/10.19105/al-ihkam.v16i1.4561>.

¹⁶ Megawati Megawati, Sitti Nurkhaerah, and Andi Markarma, “Legal Analysis of the Impact of Unregistered Marriage on Voter Data in Palu City,” *International Journal of Contemporary Islamic Law and Society* 5, no. 2 (2023): 49–56, <https://doi.org/10.24239/ijcils.vol5.iss2.74>.

¹⁷ Muhammad Latif Fauzi, “Actors and Norms in an Islamic Marriage: A Study of Madura Community in Rural Eastern East Java,” *Journal of Indonesian Islam* 13, no. 2 (2019): 297–325, <https://doi.org/10.15642/JIIS.2019.13.2.297-325>.

¹⁸ Arifki Budia Warman et al., “From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 SE-Articles (December 26, 2023): 161–83, <https://doi.org/10.18326/ijtihad.v23i2.161-184>.

¹⁹ Andi Hidayat Anugrah Ilahi, “The Evaluation of Early Marriage Law Renewal in Indonesia,” *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 7, no. 1 (2021): 129; “Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage,” *MILRev: Metro Islamic Law Review* 3, no. 1 SE-Articles (April 4, 2024): 1–21, <https://doi.org/10.32332/milrev.v3i1.8907>.

²⁰ Epon Umasih, Agus Sholahuddin, and Kridawati Sadhana, “Social Behavior of Early Marriage (Study on the Phenomenology of Early Marriage in Tanjungsiang District, Subang Regency, of Indonesia),” *International Journal of Research in Social Science and Humanities* 02, no. 05 (2021): 20–32, <https://doi.org/10.47505/ijrss.2021.9195>.

²¹ Toha Andiko, Zurifah Nurdin, and Efrinaldi, “Implementation of Restorative Justice in a Customary Court in Rejang Lebong District, Bengkulu, Indonesia: A Maqāṣid Al-Sharī'ah Review,” *Juris: Jurnal Ilmiah Syariah* 23, no. 1 (2024): 93–106, <https://doi.org/10.31958/juris.v23i1.12008>.

²² M. Noor Harisudin and Muhammad Choriri, “On the Legal Sanction against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda’s Maqasid Al-Shariah Perspective,” *Samarah* 5, no. 1 (2021): 471–95, <https://doi.org/10.22373/sjhk.v5i1.9159>.

legal theory pioneered by Sujipto Raharjo, incorporating foundational elements of legal reform. This interdisciplinary approach has given rise to a method of legal research known as “progressive *maqāsid*”.²³

This research falls within the research area of “legal and social institutions” with a specialization in the area of case studies, where the method of legal discovery and the interpretation of authority towards an object are the targets.²⁴ This research was conducted in East Java with two mapping variables; courts and community institutions.²⁵ The research was conducted in district courts where judges adjudicate cases involving multiple interpretations, such as those concerning the recognition of marriages (*ithbat nikah*), marriage dispensations, and interfaith marriages. Concurrently, social institutions hold authority in addressing societal norms and regulations that evolve and give rise to multiple interpretations.²⁶ The court variables encompass judges from the Surabaya District Court and the Sumenep District Court.

Results and Discussion

Overview of the Multiple Interpretation Problems

In Indonesia and several other countries adhering to the civil law system, judges are granted specific authority to explore the law (*ijtihad*) in cases where legislation does not provide clear guidance. Chapter 27 of Law No. 14 of 1970 mandates that judges, as enforcers of law and justice, must explore, follow, and understand the legal values prevalent within society.²⁷ Under such regulations, judges must possess the ability to engage in legal discovery (*rechtvinding*) when faced with legal vacuums, multiple interpretations, and ambiguities.²⁸ Therefore, the following illustrates a case of multi-interpretive marriage law that was adjudicated by a judge:

Firstly, the legalization of interfaith marriage. A case involving the legalization of an interfaith marriage was presented to the Surabaya District Court by a Muslim male and a female applicant. They sought a marriage certificate from the Surabaya City Population and Civil Registry Office. After review, the office returned the application, stating that the marriage certificate could not be issued due to insufficient requirements.²⁹

The applicants maintained their intent to marry based on their respective beliefs, rather than adopting their partner’s religion. Consequently, they petitioned the Surabaya District Court to mandate the registration of their marriage with the Surabaya City Population and Civil Registry

²³ Tengku Mohd Azizuddin Tuan Mahmood et al., “Issues And Challenges Of Zakat Institutions Achieving Maqasid Syariah In Malaysia,” *AZKA International Journal of Zakat & Social Finance* 2, no. 1 (2021): 119–37, <https://doi.org/10.51377/azjaf.vol2no1.46>.

²⁴ Tuan Mahmood et al. Andika Mubarok, “Normative Juridical Analysis of the Decision South Jakarta District Court No. 508/Pdt.p/2022/PN.Jkt.Sel about Interfaith Marriage,” *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 2 (2023): 111–120, <https://doi.org/10.24090/el-aqwal.v2i2.9335>.

²⁵ Muhammad Ramdhan, *Metode Penelitian* (Surabaya: Cipta Media Nusantara, 2021).

²⁶ Zuchri Abdussamad, *Metode Peneitian Kualitatif* (Bandung: Syakir Media Press, 2021).

²⁷ Haerunnisa Yunus, Rusli Rusli, and Abidin Abidin, “The Concept of A Marriage Agreement in the Compilation of Islamic Law,” *International Journal of Contemporary Islamic Law and Society* 2, no. 2 (2020): 33–45, <https://doi.org/10.24239/ijcils.vol2.iss2.20>; Firdaus Firdaus et al., “Post-Divorce Child’s Nafaqah Māḍiyah: An Analysis of the Shifting from Fulfilment to the Assertion of Ownership Rights,” *Al-Ahkam; Vol 33, No 1 (2023): AprilDO - 10.21580/Ahkam.2023.33.1.14566*, April 30, 2023.

²⁸ Mega Puspita and Nindya Octariza, “The Rule Minimum Age of Marriage in Islamic Family Law in the Muslim World,” *International Journal of Social Science and Religion (IJSSR)* 3, no. 3 SE- (July 2022): 185–98, <https://doi.org/10.53639/ijssr.v3i3.71>.

²⁹ Asy’ari and Triansyah Fisa, “Interfaith Marriage in Perspectives of Classical and Modern Scholars,” *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 2 (2022): 287–300, <https://doi.org/10.24090/mnh.v16i2.6772>.

Office. They argued that religious differences should not be a barrier to marriage, asserting their stance based on human and civil rights.

The judge of the Surabaya District Court approved the marriage based on several considerations: 1) Chapter 27 of the Indonesian Constitution affirms that all Indonesian citizens possess the human right to marry fellow citizens, regardless of religious differences, while Chapter 29 guarantees the freedom of citizens to practice their respective religions; 2) Chapter 10, paragraph (1) of Human Rights Law No. 39/1999 states that every individual has the right to form a family and procreate through legal marriage of their own free will; 3) Although interfaith marriage is not explicitly addressed in Marriage Law No. 1/1974, it is a reality within society and a social need that must be legally addressed to prevent negative effects on social and religious life.³⁰

Secondly, the legalization of unregistered marriages. Multiple interpretations within the Marriage Law, particularly in Chapter 2(1) and (2), have led to the public perception that unrecorded marriages are permissible by the state. This belief persists because the state offers a solution through applications for marriage recognition (*ithbat nikah*) to religious courts. Paragraph (1) states that marriages are recognized according to their respective religions, while Paragraph (2) recommends registration with the Office of Religious Affairs (KUA). The marriage ceremony and its registration are hierarchical legal events that often involve various dispensations. Consequently, *ithbat nikah* has become a common legal practice.

Nikah sirri, or underhanded marriage, is not explicitly defined in the law but refers to informal or unregistered marriages. In Sumenep, the occurrence of underhanded marriages is relatively minimal, indicating that the people of Kangean engage in *nikah sirri* less frequently compared to other regions. However, on the island of Madura, including Sumenep and its surroundings, the prevalence is higher. According to a judge of the Religious Court, while serving at another religious court in 2017, the Sumenep Religious Court handled thousands of cases of marriages not recorded at the KUA or civil registration office.

The Sumenep community demonstrates a commendable legal awareness regarding the importance of marriage registration, largely supported by the influence of ulama and religious figures. Consequently, the community generally avoids marriages without the involvement of KUA or Marriage Registrar officials. While there are positive aspects to this practice, it also has negative effects, especially in the current era where all marriages need to be officially recorded, highlighting the adverse consequences of *nikah sirri*.

According to the judge or chairman of the Sumenep Religious Court, *ithbat nikah* refers to the legalization of a marriage. This process can be initiated in the Religious Court by Muslims. For non-Muslims, the process involves the civil registry office. If the conditions are satisfied, the application is approved and formalized by the Religious Court in accordance with relevant laws and regulations. This applies to legal events from the past that were not previously recorded but are now formally recognized through the Religious Court.³¹

Thirdly, the state has established regulations regarding the minimum marriage age for prospective brides. According to Law No. 1 of 2016 amending Law No. 1 of 1974, the minimum age

³⁰ Kadriah Kadriah, Teuku Saiful, and Muhammad Naufal Hidayat, "Interreligious Marriage According to Indonesian Legislation," *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* 549, no. Iclhr 2020 (2021): 462–68, <https://doi.org/10.2991/assehr.k.210506.060>.

³¹ Umasih, Sholahuddin, and Sadhana, "Social Behavior of Early Marriage (Study on the Phenomenology of Early Marriage in Tanjungsiang District, Subang Regency, of Indonesia)."

for marriage is set at 19 years for both men and women. Individuals below this age limit may apply for marriage dispensation. The availability of marriage dispensation serves as a means to circumvent the prohibition of the minimum marriage age limit.³² This aspect is subject to various interpretations within society and requires judges to adjudicate fairly in court while upholding legal norms and addressing societal realities.

The decision from the Religious Court of Sumenep numbered 95/Pdt.P/2020/PA.Smp concerns a marriage dispensation. The applicants for this dispensation are both parents: Applicant I, aged 37, a Muslim engaged in private work, and Applicant II, aged 36, a Muslim housewife living with her husband. Both applicants petitioned the Sumenep Religious Court seeking permission to marry off their biological daughter.³³ The applicants sought dispensation to allow their daughter to marry, citing reasons that their 15-year-old child was already in close association with her prospective husband and that there were concerns about potential disgrace to the family.

The Judges' Approach to Adjudicating Cases with Multiple Interpretations

Based on the case explanation above, the judge establishes a distinction through a deliberative process that is implicitly not specified in the marriage law, rooted in the purpose as an area of *ijtihad*. Below, the judge's method of *rechtvinding* (legal discovery) is elaborated upon in each aspect:

The first aspect is about resolving the multiple interpretations of interfaith marriage. Examining the case in the Surabaya District Court, where the applicants belong to different religions (the husband is Muslim and the wife is Christian), the judge's distinction allows both parties to maintain their religious beliefs while intending to marry and establish a household. This approach is supported by Chapter 29 of the Constitution, which guarantees freedom of belief in God. Moreover, Chapter 28B, paragraph (1) of the Constitution underscores every individual's right to form a family and have children through legal marriage. This provision aligns with Chapter 29 of the Constitution, which ensures the state's obligation to uphold citizens' freedom to practice their respective religions.³⁴

From the judge's consideration above, the multifaceted distinction in determining interfaith marriage cases can be observed across four aspects. Firstly, legal and normative considerations constitute the judicial foundation utilized by court judges.³⁵ This aspect addresses legal vacuums by applying established legal norms.

“For instance, if the legality of interfaith marriage remains ambiguous and subject to multiple interpretations regarding its permissibility under our legal framework, we can adopt a decisive approach by invoking legislative norms, specifically the Constitution and provisions of Human

³² Juli Amira Maulidar, Aliasuddin, and Chenny Seftaria, “The Early-Age Marriage in Indonesia: Comparison between Urban and Rural Areas,” *International Journal of Advanced Research in Economics and Finance* 3, no. 3 (2021): 196–204.

³³ Suriah Suriah et al., “A Qualitative Study on the Perspectives of Adolescents on Early Marriage at Small Island in Indonesia,” *Open Access Macedonian Journal of Medical Sciences* 10, no. E (2022): 378–85, <https://doi.org/10.3889/oamjms.2022.8557>.

³⁴ Aam Slamet Rusydiana and Mohammad Mahbubi Ali, “The Application of Maqasid Shariah on Banking Industry,” *Maqasid Al-Shariah Review* 1, no. 1 (2022), <https://doi.org/10.58968/msr.v1i1.261>; Siti Zubaedah, Andi Tira, and Almusawir Almusawir, “Implementation of Diversion on Examining the Process of Children in Conflict with the Law,” *Jurnal Ilmiah Peuradeun* 11, no. 1 (January 30, 2023): 221, <https://doi.org/10.26811/peuradeun.v11i1.777>; Nurunnisa Nurunnisa et al., “Implications of Annulment of Marriage on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law,” *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (July 4, 2023): 1–23, <https://doi.org/10.18592/sjhp.v23i1.9523>.

³⁵ Ane Fany Novitasari et al., “The Meaning of Maturity in Marriage from Perspective of Islamic Law,” *International Journal of Educational Review, Law & Social Sciences (IJERLAS)* 3, no. 6 (2023): 1940–44, <https://doi.org/https://radjapublika.com/index.php/IJERLAS>.

Rights Law. Given that Chapter 1 of the Marriage Law and Chapters 4 and 40 of the Compilation of Islamic Law (KHI) do not explicitly regulate the permissibility of interfaith marriage, we revert to the essence and objectives of the law, which emphasize benefit and justice”.³⁶

The second aspect is societal context. By acknowledging societal norms as integral in deciding interfaith marriage cases, the court cannot overlook sociological considerations. This includes evaluating the psychological, sociological, and religious perspectives experienced by the applicants.³⁷ Based on these criteria, the societal context of interfaith marriage manifests in the following ways: 1) the individual’s necessity for legal recognition for reasons such as offspring, religious commitment, and rationale; 2) the firm belief that interfaith marriage does not undermine one’s faith; 3) satisfaction with the reality of interfaith marriage; 4) unanimous approval from the entire family and guardians; and 5) a shared objective to establish a harmonious and affectionate family (*sakinah, mawaddah, wa rahmah*).

The third aspect is about legal legitimacy that encompasses three indicators: 1) textual benefit, which includes verses from the Qur’an and historical precedents from the Prophet that permit interfaith marriage; 2) practical benefit, where interfaith marriages demonstrate greater harmony and lower divorce rates, indicating happiness resulting from such unions; 3) weighing the balance between benefits, specifically considering the *maslahah* (beneficial aspects) of interfaith marriage against potential harms if such marriages do not occur.³⁸

“The texts do not present contradictions, as there is no Qur’anic text that explicitly condemns such marriages, allowing judges to exercise *ijtihad* while prioritizing overall societal benefit. It is essential to ensure equity for both parties without fostering inequality within society. Existing interfaith marriages must receive legal protection to safeguard the rights of their children and spouses”.³⁹

The fourth aspect concerns *maqāṣid al-sharī’ah*, encompassing the following points: 1) *ḥifẓ al-dīn*, ensuring that even in interfaith marriages, the male party’s religious beliefs are not compromised and may even be strengthened; 2) *ḥifẓ al-nafs*, safeguarding the right to life and livelihood; 3) *ḥifẓ al-‘aql*, preventing errors in thinking, cognitive patterns, and mental health through interfaith marriages; 4) *ḥifẓ al-nasl*, protecting children from divorce and ensuring their well-being despite differing religious backgrounds; 5) *ḥifẓ al-māl*, maintaining property and wealth through the legalization of marriage.⁴⁰

“Regarding the objective, it is evident that the intention of the provision is to safeguard the children and the wife, the progeny stemming from the marriage, and to uphold their dignity. Compared to non-registration, considering their civil rights is paramount. While religious marriages are not endorsed, prioritizing the protection of offspring and civil rights aligns more closely with the goals of Islamic law”.⁴¹

³⁶ Moh. Taufik, *Interview* (Surabaya, 17 May 2024)

³⁷ Siti Rohmah, Moh Anas Kholish, and Andi Muhammad Galib, “Human Rights and Islamic Law Discourse: The Epistemological Construction of Abul A’la Al-Maududi, Abdullahi Ahmed An-Naim, and Mashood A. Baderin,” *Justicia Islamica* 19, no. 1 (2022): 153–70, <https://doi.org/10.21154/justicia.v19i1.3282>.

³⁸ Rumi Suwardiyati et al., “Sharia and Human Right Compatibility in Determining the Age of Marriage in Indonesia,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 21, no. 2 (2021): 263–74.

³⁹ Toniwijaya, *Interview* (Surabaya, 10 April 2024).

⁴⁰ Soni Zakaria, “The Contextualization Of The Māqāṣid Āl-Šyārīāh Jasser Auda Theory In The Concept And Practice Of Islamic Family Law,” *Al-‘Adl* 14, no. 2 (2021): 83, <https://doi.org/10.31332/aladl.v14i2.2396>.

⁴¹ Hakim, *Interview* (Surabaya, 19 May 2024)

Based on these four aspects, a judge’s ruling in an interfaith marriage application case has evolved into a jurisprudential decision—a precedent that subsequent judges can use as a normative legal foundation.⁴² This decision marks the second distinct marriage ruling following a judge’s decision in 2012.⁴³ Based on this pattern of differentiation, it can be concluded that interfaith marriage is supported by a robust legal norm and aligns with the objectives of law to establish justice. Further details are provided in the table below:

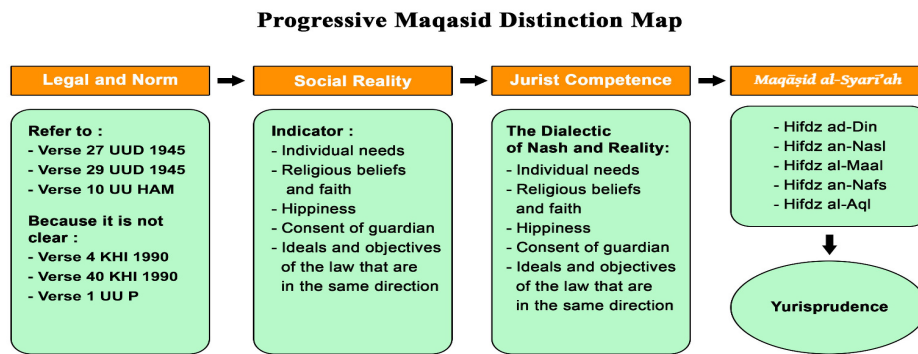


Figure 1

Progressive Maqāsīd Distinction Map

Progressive Maqāsīd Reasoning towards Judge’s *Rechtvinding*

The Qur’an consistently emphasizes the importance of religious freedom, regardless of the context, whether in times of peace or conflict. This emphasis suggests that religious freedom is a fundamental concern of Sharia.⁴⁴ The foundational logic for interpreting verses on interfaith marriage must be grounded in the universal value of religious freedom as upheld by the Qur’an. Consequently, the Qur’an does not advocate anything that contradicts this principle. If any differences appear, they must be understood in a partial (*juz’iy*) context, meaning their validity is specific to certain conditions. The application of partial provisions differs from universal ones (*kulliy*),⁴⁵ serving to reinforce the universal principles.

In fact, the prohibition of interfaith marriages under normal circumstances may contradict the aforementioned logic.⁴⁶ Therefore, the Qur’an does not fundamentally question the validity of marriage. The issue arises when it is linked to an emergency situation that undermines the values of religious freedom. In the absence of such a situation, interfaith marriage reverts to its basic principles. This exemplifies the flexibility inherent in the Qur’an.

⁴² Suud Sarim Karimullah, “For True Humanity: Harmonization of Islamic Law and Human Rights Towards Universal Justice,” *Matan : Journal of Islam and Muslim Society* 5, no. 2 (2023): 40, <https://doi.org/10.20884/1.matan.2023.5.2.9125>.

⁴³ Mufrod Teguh Mulyo et al., “The Power of Husband-Wife Communication in Building Family Resilience and Preventing Divorce: A Study of Maşlahah Mursalah,” *Al-Manahij: Jurnal Kajian Hukum Islam*, 2023, 125–36.

⁴⁴ Muhammad Nurfikri Amin and Fadil Sj, “Interfaith Marriage from the Perspective of Maqashid Al-Syari’ah Jasser Auda (Analysis of Decision Number 916/Pdt.P/2022/PN.Sby),” *Mutawasith: Jurnal Hukum Islam* 6, no. 2 (2023): 156–67.

⁴⁵ Luqman Rico Khashogi, “Menakar Rekonstruksi Maqashid Syariah Telaah Genealogis Pendekatan System Jasser Auda,” *POLITEA: Jurnal Politik Islam* 5, no. 1 (2022): 64–82.

⁴⁶ Kusnan, Muhammad Damar Hulan Bin Osman, and Khalilurrahman, “Maqashid Al Shariah in Economic Development: Theoretical Review of Muhammad Umer Chapra’s Thoughts,” *Millah: Journal of Religious Studies* 21, no. 2 (2022): 583–612, <https://doi.org/10.20885/millah.vol21.iss2.art10>.

Employing the pattern of interpretation of *maqāṣid al-sharī'ah* and progressive law has reached a culmination in contemporary times, with many thinkers dedicating serious attention to this field. Generally, progressive *maqāṣid* theory emphasizes four aspects: 1) Classification: *Maqāṣid al-sharī'ah* in a hierarchical format, encompassing 'āmmah (general), khāṣṣah (specific), and juz'īyah (partial) structures; 2) Purpose: The objectives of Sharia, which encompass not only protection but also the level of development; 3) Scope: The extent of *maqāṣid al-sharī'ah*, which includes the family, community, nation, and the world; and 4) Source of Argumentation: The foundational references for *maqāṣid al-sharī'ah*, derived from the Qur'an and the Hadith.⁴⁷

Jasser Auda, a Muslim thinker focused on *maqāṣid al-sharī'ah*, promotes a systemic approach to comprehending the provisions of sharia. His methodology involves applying six system characteristics: cognitive, open, holistic, interrelated hierarchies, multidimensionality, and meaningfulness. These six characteristics, as proposed by Jasser Auda, serve as an epistemological framework to address the contradictions found in various verses.⁴⁸ The following provides an operational explanation of these characteristics:

Firstly, the cognitive nature refers to understanding the interpretation of the Qur'an according to the interpreter's competence, which inevitably leads to diverse interpretations.⁴⁹ This is particularly significant for the interpretation of contradictory verses, resulting in a variety of understandings.⁵⁰ Such contradictions in verses generate two distinct interpretations.

Secondly, holistic interpretation. The verses of the Qur'an form a unified whole, with each verse interconnected, particularly those sharing a common theme, even if they appear contradictory. Consequently, a rule cannot be understood through a single biased argument.⁵¹ This approach also applies to contradictory verses, which should not be understood in isolation from other verses with similar themes.

Thirdly, openness. To achieve an interpretation that is refreshing and valuable, understanding contradictory verses must include openness. Contradictory verses are texts that invite multiple perspectives, leading to a variety of interpretations.⁵² The intersection of the text's horizon and the reader's horizon occurs when openness is embraced.

Fourthly, interconnected hierarchies. The hallmark of a system is the interrelation of its hierarchies. Scholars categorize the goals of the Qur'an into three levels: general, specific, and particular. The general goal is the overarching aim of the 'Qur'an. The specific goal is what a group of verses with a common theme seeks to achieve. The particular goal is what is intended by an individual

⁴⁷ Muhammad Habib Adi Putra and Umi Sumbulah, "Memaknai Kembali Konsep Nusyuz Dalam Kompilasi Hukum Islam Perspektif Gender & Maqashid Syariah Jasser Auda," *Egalita* 15, no. 1 (2020).

⁴⁸ Mohammad Zaini Yahaya, Muhammad Adib Samsudin, and Mhd Izhar Ariff Mohd Kashim, "An Analysis of Muslim Friendly Hotel Standards in Malaysia According to the Maqasid Syariah Perspective," *International Journal of Islamic Thought* 18, no. May 2021 (2020): 43–53, <https://doi.org/10.24035/IJIT.18.2020.180>.

⁴⁹ A Sutrisno, "The Concept of Maqasid Sharia According to Jasser Auda," *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 8 (2022).

⁵⁰ Asrizal Saiin et al., "The Domination of Islamic Law in Customary Matrimonial Ceremonies: Islamic Values within the Malay Marriage Tradition in Kepulauan Riau," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 320–41, <https://doi.org/10.14421/ahwal.2023.16207>.

⁵¹ Mu'tashim Billah, "Complete and Incomplete Calculation: Expert Systems Apps on the Special Cases of Islamic Inheritance Law," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 180–210, <https://doi.org/10.14421/ahwal.2023.16201>.

⁵² Hamdiah Latif, "Mengkritisi Teori Naskh Dengan Pendekatan Maqashid: Telaah Pemikiran Jasser Auda," *Jurnal Ilmiah Al-Mu'ashirah: Media Kajian Al-Qur'an Dan Al-Hadits Multi Perspektif* 19, no. 1 (2022): 52–60, <https://doi.org/https://jurnal.ar-raniry.ac.id/index.php/almuashirah/>.

verse.⁵³ Thus, these levels are interconnected and do not contradict each other. If approached this way, no contradiction exists between the verses, as the specific goals are encompassed within the broader specific and general goals.⁵⁴

Fifthly, multidimensionality. This characteristic addresses the explanation of contradictory verses. An understanding rooted in multidimensionality does not conclude that a verse is contradictory; rather, it recognizes that the wording may appear contradictory.⁵⁵ The key point is that the strength of the *hujjah* (proof) of a verse is not solely determined by its clear wording but also by the extent to which the argument aligns with the consistency of the Qur'an in addressing the same subject matter as the verse in question.

Sixthly, purposefulness. This characteristic implies that the entire system leads to a common point, which is the final product or result, namely the rule of law. When interpreting contradictory verses, even though the input is the same, the outcomes or products of understanding will vary due to differences in processing methods.⁵⁶ The crucial aspect is that the meaning of the verse is comprehended.⁵⁷ This comprehension does not imply that the product of processing it into a law is unimportant; rather, it underscores that the legal provisions and the intended purpose should be in harmony.

Thus, the above concept represents an application of the progressive *maqāshid* method in operational steps to analyze conflicting verses using the *maqāshid al-sharī'ah* approach. Firstly, it involves identifying the conflicting verses, a crucial step that impacts the validity of subsequent conclusions. Secondly, it entails identifying the meaning of the verse, which goes beyond mere textual redaction to include its contextual relevance. Through this process, partial *maqāshid al-sharī'ah* emerges as an integral part of the analysis.

The Qur'an delineates two dimensions in the context of interfaith marriage: the dimension of *al-hifz* (preservation) and the dimension of *al-tanmīyah* (development).⁵⁸ The first dimension clearly pertains to the prohibition of interfaith marriage, aimed at safeguarding individuals from coercion by those who do not tolerate religious freedom.⁵⁹ Simultaneously, permitting interfaith marriage upholds the principle of religious freedom, crucial for fostering a pluralistic society.⁶⁰

This comprehension can be promoted as a solution for the issue of interfaith marriage in Indonesia. The government needs to address this escalating phenomenon by formulating marriage regulations

⁵³ Ah. Soni Irawan, "Maqāshid Al-Sharī'ah Jasser Auda Sebagai Kajian Alternatif Terhadap Permasalahan Kontemporer," *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (2022): 39–55, <https://doi.org/10.51675/jaksya.v3i1.192>.

⁵⁴ Herlina, "Caring for Elderly Parents with Dementia in Indonesia: A," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 980–97, <https://doi.org/10.22373/sjhk.v8i2.22734>.

⁵⁵ Bani Syarif Maula and Ilyya Muhsin, "Interfaith Marriage and the Religion–State Relationship: Debates between Human Rights Basis and Religious Precepts," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 791–820, <https://doi.org/10.22373/sjhk.v8i2.19479>.

⁵⁶ Ayesha Farooq and Muhammad Sultan Shah, "Interfaith Marriages: In the Light of Islamic and Sociological Perspectives," *Al-Qantara* 9, no. 1 (2023): 356–63.

⁵⁷ Edy Setyawan et al., "Legal Age for Marriage: SDGs and Masalah 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>.

⁵⁸ Murshida Khatun, Amirul Islam, and AKM Abdul Latif, "Bridging Hearts and Cultures : Embracing Interfaith Marriages in Islam," *International Journal of Social Sciences & Humanities* 9, no. 1 (2024): 53–74, <https://doi.org/http://ijssh.ielas.org>.

⁵⁹ Hazar Kusmayanti et al., "Judges' Acceptance of Sharia-Inspired Laws in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 199–214, <https://doi.org/10.24090/mnh.v17i2.7716>.

⁶⁰ Syufa'at, Syed Muhammad Saad Zaidi, and Mutholaah, "Sandwich Generation in Contemporary Indonesia: Determining Responsibility in Caring for Elderly under Islamic Law and Positive Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 167–81, <https://doi.org/10.24090/mnh.v17i2.9371>.

grounded in the principle of religious freedom. Consequently, it becomes feasible to elucidate the contradiction among the three verses concerning interfaith marriage in their respective contexts. Therefore, the fundamental rationale behind the verse prohibiting interfaith marriage is rooted in the concern that it may infringe upon the preserved freedom of religion in Islam.⁶¹ Conversely, the principle underlying the verse permitting interfaith marriage is based on fostering mutual respect for religious freedoms. Below is an outline for resolving chapters with multiple interpretations through progressive *maqāṣid* theory.

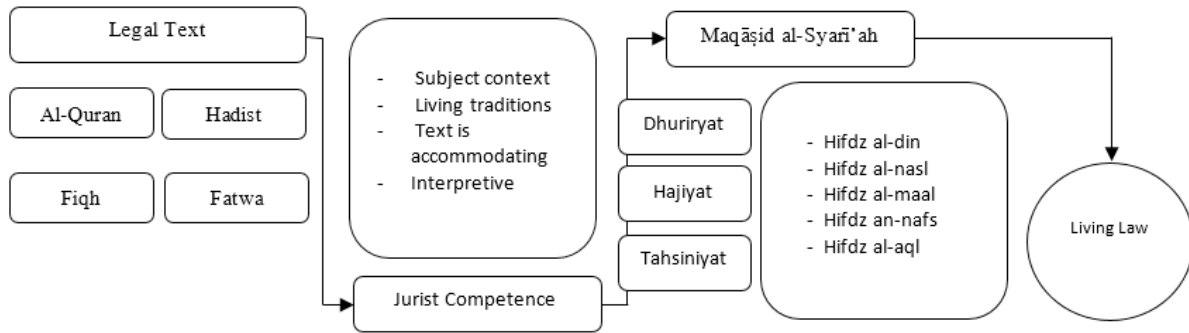


Figure 2
Resolving Multi-interpretation Chapters through Progressive *Maqāṣid*

Conclusion

From the results of the above research and analysis, two important conclusions can be drawn. The first point is that judges employ a progressive *maqāṣid* distinction in resolving and deciding cases involving chapters with multiple interpretations of marriage law, such as interfaith marriage, *ithbat nikah*, and marriage dispensation. This first distinction is based on legislation, specifically the relevant chapters of the Indonesian Constitution and the Human Rights Act. This approach is necessitated by the ambiguity and multiple interpretations present in certain laws. According to the Constitution and Human Rights Act, the second distinction is based on the reality of the applicant or the community, who feel the need to enhance religious observance, experience happiness, and align with the purpose of the law. Subsequently, it is measured by the benefit of the text, reality, and choosing the nearest benefit. Finally, the distinction is based on the five components of *maqāṣid al-sharī'ah*. These four stages of distinction produce jurisprudence. The second point is the relevance of progressive *maqāṣid* employed by judges in granting applications for interfaith marriage, *nikah sirri*, and underage marriage cases. This is based on three stages: 1) legal text, which involves gathering answers from the Qur'an, hadith, *fiqh*, and fatwas of contemporary scholars, organized by their respective topics; 2) jurist competence, which is linked to the context of the litigant, the traditions prevailing in the community, and the ability to accommodate and interpret these factors; 3) *maqāṣid*, which involves selecting the level of the subject's needs based on the *ḍarūriyyāt* hierarchy, namely *ḍarūrīy*, *ḥājjiy*, and *taḥsīniy*. These three processes produce social behavior as a normative basis for determining cases with multiple interpretations.

⁶¹ Isman et al., "Penelitian Hukum Empiris Berbasis Teori Maqashid Syariah Jasser Auda," *Al-Afkar: Journal for Islamic Studies* 6, no. 4 (2023): 14–29, <https://doi.org/10.31943/afkarjournal.v6i4.730>. Empirical.

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