



Islamic Law Reform in Indonesia from the Perspective of *Maqāṣid Al-Sharī'ah*: Kerinci's Intellectual Views

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Abstract: Benefits cannot be achieved without going through reform, namely efforts to apply the law to the reality of society. So, reform is a necessity, although these steps do not mean replacing the teachings and laws that are absolute, fundamental, and universal and have been stated in authentic provisions. Reformation has quite wide room for movement in renewing ways of understanding, interpreting, reformulating, and conducting studies of Islamic law that are outside the area of Qath'iyyah, namely the provisions of Zhanniyyah, which are included in the scope of the area of reform. This research is included in the empirical legal method, which is explained by an analysis of the theory of maqāṣid al-sharī'ah according to intellectuals in Kerinci. This method provides an explanation of Islamic law that can be applied in the current era through renewal with maqāṣid al-sharī'ah analysis. Data was collected through in-depth interviews and a literature study. This study concludes that the renewal of Islamic law from the perspective of maqāṣid al-sharī'ah has three ways: first, prioritizing the worship aspect; second, the muamalah aspect; and third, a combination of both. The third method is a combination of ways of knowing maqāṣid al-sharī'ah through a pronunciation approach and a meaning approach. Utility, as the content of Islamic law, which is systematized through maqāṣid al-sharī'ah analysis, is of course not only seen in technical articles but must also be seen as something that contains philosophical values so that it becomes a universal and dynamic identity. According to Islamic intellectuals in Kerinci, the compilation of Islamic law has urgency and relevance to maqāṣid al-sharī'ah and is still very much needed as a step to reform Islamic law in Indonesia.

Keywords: Reform of Islamic law, *maqāṣid al-sharī'ah*, compilation of Islamic law

Abstrak: Kemaslahatan tidak akan dapat diraih tanpa melalui jalan pembaharuan, yakni upaya aplikasi hukum dalam realitas masyarakat. Jadi pembaharuan adalah sebuah keniscayaan, meskipun langkah tersebut bukan berarti mengganti ajaran dan hukum yang bersifat mutlak, mendasar, dan universal, yang telah tertuang dalam ketentuan otentik. Reformasi memiliki ruang gerak yang cukup luas dalam memperbaharui cara memahami, memaknai, merumuskan kembali, dan melakukan telaah terhadap hukum Islam yang berada di luar wilayah qath'iyah yaitu ketentuan zhanniyyah yang termasuk dalam lingkup wilayah pembaharuan. Penelitian tersebut termasuk dalam metode hukum empiris yang dianalisis dengan teori analisis *maqāṣid al-sharī'ah* menurut para intelektual di Kerinci. Metode ini memberikan penjelasan dalam hukum Islam yang dapat diterapkan pada era saat ini melalui pembaharuan dengan analisis *maqāṣid al-sharī'ah*. Data dikumpulkan dengan cara wawancara mendalam dan studi literatur. Kajian ini menyimpulkan bahwa pembaharuan hukum Islam dalam perspektif *maqāṣid al-sharī'ah* memiliki tiga cara, pertama mengutamakan aspek ibadah, kedua aspek muamalah, dan ketiga gabungan keduanya. Ketiga metode tersebut merupakan kombinasi cara mengetahui *maqāṣid al-sharī'ah* melalui pendekatan pengucapan dan pendekatan makna. Kemanfaatan sebagai kandungan hukum Islam yang disistematisasikan melalui analisis *maqāṣid al-sharī'ah*, tentunya tidak hanya dilihat dalam arti teknis, tetapi juga harus dilihat sebagai sesuatu yang mengandung nilai-nilai filosofis, sehingga menjadi identitas universal dan dinamis. Menurut para intelektual Islam di Kerinci bahwa kompilasi hukum Islam memiliki urgensi dan relevansi dengan *maqāṣid al-sharī'ah* dan masih sangat dibutuhkan sebagai langkah pembaharuan hukum Islam di Indonesia.

Kata Kunci: Pembaharuan hukum Islam, *maqāṣid al-sharī'ah*, kompilasi hukum Islam

Introduction

Islamic law originates from the Qur'an and al-Sunnah which are then transformed into national law in Indonesia as a nation state. Positivization of law in Indonesia which later became known as laws or other legal regulations.¹

¹ Euis Nurlaelawati, "Change and Continuity: The Kompilasi and Indonesian Islamic Courts," *Studia Islamika* 12, No. 1 (2007). Muslihun Muslihun, "Legal Positivism, Positive Law, and the Positivisation of Islamic Law In Indonesia," *Ulumuna: Journal of Islamic Studies* 22, No. 1 (2018). Muhammad Akmansyah, "Al-Qur'an Dan Al-Sunnah Sebagai Dasar Ideal Pendidikan Islam," *Ijtimaiyya: Jurnal Pengembangan Masyarakat Islam* 8, no. 2 (2015), p. 127–42.

The law that mentions a lot about *maqāṣid al-sharī'ah* related to worship or *mu'amalah* issues.² Both have provided alternatives in every discussion related to the dimensions of life. Meanwhile, Islamic law came to eliminate or minimize difficulties and create prosperity for human in living life.³

Islamic law discusses aspects of life as a whole, both personal relationships, relationships with other people, and with the creator. Islamic law contains laws and guidelines from waking up to sleeping. The institutionalization of Islamic law always pays attention to the benefit of humans which is implemented through the analysis of *maqāṣid al-sharī'ah*. *maqāṣid al-sharī'ah* is to place the life of the world according to its rights.⁴ The reforms aspired to by Islam, are reforms aimed at the comprehensive improvement of every problem of mankind. A person's creativity is greatly influenced by his flexibility in applying his rights and his piety is greatly influenced by the straightness of faith as a source of ethics and thought. Social empowerment begins with individual piety and shari'a rules and the environment that influences them.⁵

The Qur'an was revealed by Allah to the Prophet Muhammad PBUH to improve human behavior. At the beginning, the Qur'an was revealed to improve a patriarchal culture, an oppressive economic system, a despotic and corrupt political system at the same time. In the midst of such a system, life is no longer valuable and valuable. The Qur'an has come to repair the system that has been damaged,⁶ elevate human identity to become an honorable and

² Siska Lis Sulistiani, "Analisis Maqashid Syariah Dalam Pengembangan Hukum Industri Halal Di Indonesia," *Law and Justice* 3, no. 2 (2019), p. 91–97. Nabila Zatadini and Syamsuri Syamsuri, "Konsep Maqashid Syariah Menurut Al-Syatibi Dan Kontribusinya Dalam Kebijakan Fiskal," *Al-Falah: Journal of Islamic Economics* 3, no. 2 (2018), p. 1–16.

³ Rohmatun Nafiah and Ahmad Faih, "Analisis Transaksi Financial Technology (Fintech) Syariah Dalam Perspektif Maqashid Syariah," *Iqtishadia Jurnal Ekonomi & Perbankan Syariah* 6, no. 2 (2019), p. 167–75.

⁴ Majdah Zawawi and Khadijah Othman, "An Overview of Shari'ah Compliant Healthcare Services in Malaysia," *Malaysian J Consum Fam Econ* 3, no. 1 (2018), p. 91–100. Selamah Abdullah Yusof et al., "Holistic Development and Wellbeing Based on Maqasid Al-Shari'ah: The Case of South Kalimantan, Indonesia," *Journal of Economic Cooperation & Development* 40, no. 4 (2019), p. 1–21.

⁵ Harun Joko Prayitno, et. al., "The Progressivist Value of Character Education Regarding Social Piety of K.H.A. Dahlan's Teachings in Sang Pencerah's Novel: A Prophetic Socio-Pragmatic Study," *International Journal of Innovation, Creativity and Change* 12, no. 6 (2020), p. 66–90.

⁶ Amalina Setiani and Muhammad Labib Syauqi, "The Perfection of Religion in the Qur'an: QS Al-Mā'idah Verse 3 in the View of Ibnu 'Abbas and Hamka's Interpretation," *International Journal of Social Science and Religion (IJSSR)*, 2020, p. 213–32.

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noble creature, prevent society from all forms of oppression and misery and create a just, egalitarian, and social order. sovereign and independent, as well as in harmony and peace.⁷ *Maslahah's* role in establishing the law is very dominant. The legal products produced by Islamic law are universal and true, covering worldly and hereafter, physical and spiritual, material and spiritual benefits. *Maslahah* as a method of reforming Islamic law has been proven to be able to answer various contemporary problems, and at the same time make Islamic law able to adapt to the development and progress of the times.⁸ So that all problems that arise in the midst of society can be resolved legally. Therefore, benefit is a factor that must be considered in establishing the law.

Based on the elaborative above, Abdul Wahhab Khallaf said that if the application of the law is not based on benefit, then new problems and demands for development will be ignored. This is not in accordance with the intention of the Sharia which always wants to realize the benefit for all mankind. The urgency of *maqāṣid al-sharī'ah* in the reform of Islamic law is clear. But the problem is how the mechanism and form of reform that must be taken so as to allow reforms that have been sharpened by the analysis of *maqāṣid sharia* can play a good role in providing alternative solutions to legal problems that arise today.

This research is included in the empirical legal method which is explained by analysis of the theory of *maqāṣid al-sharī'ah*. This method provides an explanation of Islamic law that can be applied in the current era through renewal with *maqāṣid al-sharī'ah* analysis. Data collection was carried out through in-depth interviews with Islamic intellectuals in Kerinci, while literature studies took the form of journal articles and relevant Islamic

⁷ Handan Arici and A K Hacer, "A Perspective on Sustainable Ecology in the Light of the Qur'an," *OPUS Journal of Society Research* 19, no. 46 (2022), p. 380–92. Yusuf Maigida Abdulrahman, "History And Moral Education In Nation Building: A Discourse On The Nigeria's Broken Systems," *Archives of Business Review* 8, no. 4 (2020).

⁸ Laleh Eftekhari, "The Role of Scientific-Educational Centers in Achieving Qur'an-Based Humanities," *International Journal of Multicultural and Multireligious Understanding* 9, no. 2 (2022), p. 117–28.

law books.⁹ Researchers took reference sources from Islamic law books and the latest research references that have the same concentration.¹⁰

Reform of Islamic Law in the Compilation of Islamic Law

The reform of Islamic law through the analysis of *maqāṣid al-sharī'ah*, has been able to realize the benefit of the Islamic ummah in various aspects of life.¹¹ In Indonesia, this can be seen in the various products of legislation made by the state, starting from the Law. No. 7/1989, concerning Religious Courts, Law. No. 1/1974, concerning Marriage, the Law on Zakat, the Law on Sharia Economics, the Law on Waqf, to the Compilation of Islamic Law in Indonesia.

An example of a reformed Islamic legal system in Indonesia which is based on considerations of benefit,¹² namely regarding the registration of marriages and divorces must be carried out in front of a Religious Court trial and attended by two witnesses. Article 10 of the KHI states, that: "Referral can only be proven by a copy of the Referral Registration Book issued by the

⁹ Victoria Clarke et al., "Editorial Introduction to the Special Issue: Using Story Completion Methods in Qualitative Research," *Qualitative Research in Psychology* (Taylor & Francis, 2019). Manju Gundumogula, "Importance of Focus Groups in Qualitative Research," *International Journal of Humanities and Social Science (IJHSS)* 8, no. 11 (2020): 299–302; M C Umanilo, et. al., "Utilization of Qualitative Methods in Research Universities," *Education Science* 20 (2019).

¹⁰ Muhammad Annas Budiarto and Unik Hanifah Salsabila, "Optimizing Islamic Education Towards the Golden Era of Indonesia," *Tafkir: Interdisciplinary Journal of Islamic Education* 3, no. 1 (2022), p. 1–19. Efrinaldi Efrinaldi, Toha Andiko, and Taufiqurrahman Taufiqurrahman, "The Paradigm of Science Integration in Islamic University: The Historicity and Development Pattern of Islamic Studies in Indonesia," *Madania: Jurnal Kajian Keislaman* 24, no. 1 (2020), p. 97–108. Chantal Pouliot, "Being a Science Education Researcher and a Concerned Citizen against Epistemological Anesthesia," in *Critical Issues and Bold Visions for Science Education* (Brill, 2018), p. 221–31.

¹¹ Abdul Qoyum, "Maqasid Ash-Shari'ah Framework and the Development of Islamic Finance Products: The Case of Indonesia," *Tazkia Islamic Finance and Business Review* 12, no. 2 (2018). Asrul Hamid and Dedisyah Putra, "The Existence of New Direction in Islamic Law Reform Based on The Construction of Ibnu Qayyim Al-Jauziyah's Thought," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (2021), p. 247–57. Dania Nalisa Indah and Syaifuddin Zuhdi, "The Childfree Phenomenon in the Perspective of Human Rights and Maqashid Al-Shari'ah," in *International Conference on Community Empowerment and Engagement (ICCEE 2021)* (Atlantis Press, 2022), p. 222–31.

¹² Sri Wahyuni, "Legal Transplant: Influence of The Western Legal System in The Muslim Countries," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 19, no. 1 (2022), p. 21–37. Nurrohman Syarif, "The Discourse and Practice of Islamic Family Law in Indonesia," *Psychology and Education Journal* 58, no. 1 (2021), p. 5201–12.

Marriage Registrar." Whereas article 165, it is stated: "A reconciliation that is carried out without the consent of the ex-wife can be declared invalid by a decision of the Religious Court". permission from the first wife for the husband to be polygamous. This requirement is carried out on the basis of consideration of the public interest and to maintain the integrity and longevity of the household in a marriage.

Regarding age restrictions in marriage, as stated in Article 15 of the KHI which reads: "For the benefit of the family and household, marriage may only be carried out by the prospective bride and groom who have reached the age stipulated in Article 7 of Law no. 1/1974,¹³ namely the prospective husband is at least 19 years old and the prospective wife is at least 16 years old. Even though Islam does not explicitly stipulate the age limit for marriage (QS. Al-Nisa ', 6). However, some scholars such as Ibn Shubramah Uthmsan al-'Uqbi, Abu Bakr al-'Asham, and Muhammad 'Uqlah argued that fathers should not marry off their young children, both boys and girls, until they reach adulthood. According to them, because the purpose of marriage is not merely to vent sexual desires, but the most important thing is to foster a harmonious household in line with article 3 of the KHI, concerning the purpose of marriage: "Marriage aims to realize a *sakinah*, *mawaddah* household life. and *rahman*" (QS. Al-Ruum, 21). Efforts to achieve these goals require mental and physical maturity. Even the efforts to achieve the purpose of marriage as referred to in the paragraph above, that in the implementation of marriage the two prospective brides must have matured and have perfect intellectual abilities. Because marriage at a young age is the main factor causing and triggering the high divorce rate. And other negative impacts that are fatal for husbands and wives. So for the benefit of husband and wife, the maturing age of marriage needs to be considered.

Considering the magnitude of the dangers and negative impacts arising from early marriage, both on the integrity of the household, on the personal self of husband and wife, on economic, education and population problems, efforts to mature the age of marriage in the sense of trying to postpone the implementation of marriage until someone is mature enough physically, psychologically and mentally, is a human endeavor that deserves

¹³ Ayu Ratna Dewi Ali, "Analisis Pandangan Hakim Pengadilan Agama Kelas 1A Tanjung Karang Terhadap Putusan Mahkamah Konstitusi Nomor 30-74/PUU-XII/2014 Tentang Batas Usia Perkawinan Dalam Pasal 7 Ayat (1) Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (UIN Raden Intan Lampung, 2019). Qadar Maufiroh, "Implementasi Revesi Undang-Undang No. 1 Tahun 1974 Pasal 7 Tentang Batas Usia Nikah Di Kantor Urusan Agama (KUA) Kecamatan Sampang," *IQTISODINA* 3, no. 1 (2020).

respect and accountability, so that people are not trapped by dangers that threaten the existence of the household and the integrity of marriage.

Article 52 of the KHI states that: "At the time of marriage with a second, third and fourth wife, an agreement may be made regarding the place of residence, turn time and household expenses for the wife to be married." The provisions of this article aim to realize a peaceful and happy domestic life and prove the husband's justice in polygamy.

In the field of inheritance law, the reforms in Islamic inheritance law in Indonesia adopted in the KHI in Indonesia are essentially a response to various social changes that have implications for the division of roles and responsibilities of family members and a large-scale shift in the position and social stratification in the family. and family structure in kinship maps. The principle of replacement of heirs and mandatory wills has begun to be accepted in Islamic inheritance law in various Islamic countries. Likewise the need for rethinking in various classical inheritance concepts. The model of Islamic law reform in the field of inheritance in Indonesia can be seen through article by article analysis of the Compilation of Islamic Law in Indonesia.

a. Heir Replacement

The heir replacement model in the KHI is regulated in article 185: "(1). An heir who dies before the heir, then his position can be replaced by his son, except for those mentioned in article 173. (2). The share of the successor heirs may not exceed that of the heirs who are equal to the heirs being replaced. The concept of heir replacement in Indonesia was first initiated by Hazairin. According to him, the replacement of this heir has a clear reference in Islamic law QS. Al-Nisa', 33.

According to Cammack, Hazairin contributed to the development of Islamic Inheritance Law in Indonesia, not only to Indonesian Islamic legal thought but to Islamic legal thought in general. Hazairin's theory is that the Qur'an and the Prophet's hadith support what he supports. refers to the Islamic inheritance law system which is bilateral in nature. According to Hazairin, the bilateral inheritance theory is considered something that makes no sense or even cannot be understood by observers in Indonesia. However, this theory is a concept extracted from Islamic law which is appropriate to the conditions of Indonesian society. Indonesian inheritance law is the product of a very complex process. A complex combination of forces, both social and

ideological. Any attempt to identify trends in legislation or project future directions of development is bound to be incomplete and selective.¹⁴

The concept of replacement of heirs adopted in the Compilation of Islamic Law in Indonesia aims to achieve justice in the distribution of inheritance, so that assets do not accumulate in one person or in one particular group, in addition to further strengthening family relations which is the main goal in the distribution of inheritance.

b. Mandatory Will

One form of reform of Islamic inheritance law in Indonesia is the institutionalization of mandatory wills, as explained in Article 209 of the KHI, which reads: “(1). The inheritance of the adopted child is divided based on the articles 176 to 193 mentioned above, while the adoptive parents who do not receive a will are given a mandatory will as much as 1/3 of the inheritance of their adopted child. (2). An adopted child who does not receive a will is given a mandatory will as much as 1/3 of the inheritance of his adoptive parents.

According to the majority of scholars, the evidence of the will contained in the letter al-Baqarah, verse 180 is inscribed with the verse on inheritance (QS. al-Nisa', verse 11). That is, it is not permissible to testify to the heirs, because: (1), they have received a share of the inheritance left by the heirs, (2), there is an affirmation of the hadith which says it is not permissible to testify to the heirs. According to Ibn Hazm, the law of the will in the verse is not authorized, but is reserved for heirs who do not get a share of the inheritance, because they are hindered by the heirs who are more important or do not become heirs at all, but he has been instrumental to the heir, as long as it does not exceed the number of heirs. one third of the estate.

In Indonesia, mandatory will is only directed at the relationship between the adopted child and his adoptive parents. The form of reform of Islamic inheritance law in Indonesia, especially in the issue of mandatory will, clearly shows the difference with Islamic jurists in general. In Egyptian inheritance law, mandatory wills are reserved for heirs who do not inherit, such as descendants through the female line. The mandatory will used in inheritance laws in various Islamic countries is the result of *ijtihad*. However, the mandatory will, aims to give the right to adopted children and adoptive parents to obtain a certain share of the inheritance for their services to the heir. Moreover, the distribution of inheritance through a mandatory will is also

¹⁴ Mark Cammack, “Islamic Inheritance Law in Indonesia: The Influence of Hazarrin's Theory of Bilateral Inheritance,” *Studia Islamika* 10, No. 1 (2003).

aimed at the realization of benefits for the heirs and people who have a relationship with the heir.

c. Peace in the Division of Inheritance

The principle of peace in the distribution of inheritance, in the Compilation of Islamic Law in Indonesia, is contained in article 183, that: "The heirs can agree to make peace in the distribution of inheritance, after each is aware of his share". This principle of peace, based on QS. Al-Hujurat, 10. Besides that, Umar ibn al-Khattab's advice to the Muslims so that those who have affairs can choose the peaceful way. Umar said. "It is permissible to establish peace among the Muslims, except for peace which aims to make lawful what is unlawful and forbid what is lawful."

This principle is a new breakthrough against the 2: 1 formula in Islamic inheritance law. In Indonesia, the view on the principle of equal rights between men and women develops together and changes the division of roles between men and women. The issue of equity is raised because of the inappropriateness between the demands of sharia on the one hand and social reality on the other. Between men and women in modern times, already have the same role in many sectors, and both become the backbone of the family in the economic field.

The most basic Islamic inheritance norm in the distribution of inheritance differently between men and women is the fact that there are differences in the division of social roles in economic activities. In the event of a shift, there is also a legal shift in the distribution of inheritance between men and women. Guided by this, the principle of peace in the distribution of inheritance, seeks to eliminate social jealousy and realize the common good in a fair and wise manner between fellow heirs.

Guardianship of minors In article 184 of the KHI, it is stated: "For heirs who are immature or unable to carry out their rights and obligations, they are appointed as guardians based on the judge's decision at the suggestion of family members. The provisions of this article, although never discussed in fiqh books, but for the benefit of the minor, this article can be accepted. In addition, the provisions of this article are also in line with the intent of the word of Allah.

ولا تؤتوا السفهاء أموالكم التي جعل الله لكم قياماً وارزقوهم فيها واكسوهم
وقولوا لهم قولا معروفا (النساء: ٥)

Meaning: "And do not hand over to people whose minds are not perfect, their wealth which is in your power which Allah has made as the basis of life. Give them shopping and clothing from the proceeds of this treasure and speak to them good words." (QS. an-Nisa 4: 5).

d. Inheritance Sharing System

In Article 187 and 188 KHI, it is stated: Article 187, paragraph (1), when the heir leaves the inheritance, then by the heir during his lifetime or by the heirs several people can be appointed as the executor of the distribution of the inheritance with the following tasks: a. record in a register of inheritance in the form of movable or immovable objects which are then ratified by the heirs concerned, if necessary, the value is assessed in money. b. calculate the amount of expenditure for the benefit of the testator in accordance with article 175 paragraph (1) sub a, b and c. (2). The remainder of the expenditure referred to above is an inheritance that must be distributed to the entitled heirs. Article 188: "The heirs either jointly or individually can submit a request to the other heirs to distribute the inheritance. If any of the heirs do not agree to the request, then the person concerned can file a lawsuit through the Religious Court for the distribution of the inheritance. Even though the provisions of these two articles are not regulated in fiqh, but because they are in accordance with the principle of benefit, these two articles can be accepted.

The distribution of heritage in Indonesia is influenced by community customs and cultural factors. For example, in Aceh, there are provisions that reconcile Islamic law and local customs in several situations, such as the treatment of joint property, inheritance rights for people of different religions, and the requirement for adopted children to have a mandatory will as an alternative heir. Customary accommodation in Islamic law emerged because of its existence, adaptability, and inherent legal dynamism, as well as the supportive sociological conditions and characteristics of Acehnese society. Likewise with the allocation of inherited wealth to the Banjar and Dayak ethnic communities in Kalimantan. Dynamic adaptation of laws and customs can be seen in various forms of discounts, especially in terms of inheritance rights for granddaughter successors. There has been an adaptation to Islamic law, with a focus on prioritizing *maqāṣid al-sharī'ah*.¹⁵

¹⁵ Ali Abubakar, et.al., "The Postponement of The Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh in The Perspective of 'Urf Theory and Legal Pluralism," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023). Mursyid Djawas,

e. Collective Inheritance System (Non-Fragmentation)

The principle of Islamic inheritance law stipulates that inheritance is distributed to the rightful heirs based on their respective shares with various methods so that there is no remainder. But the Compilation of Islamic Law in Indonesia adheres to a collective inheritance system. This can be seen in Article 189, which reads: "(1) If the inheritance to be divided is in the form of agricultural land with an area of less than 2 hectares, the unity is to be maintained as before, and used for the common interest of the heirs concerned. (2) If the provision in paragraph (1) of this article is not possible because some of the heirs concerned need money, then the land can be owned by one or more heirs by paying the price to the rightful heirs in accordance with the provisions of paragraph (1) of this article. with their share."

This collective principle, in addition to protecting the possibility of loss or reduction of economic value due to being distributed in fragments to the entitled heirs, is also to maintain the unity of the heirs. The distribution of inheritance collectively is based on considerations of benefit using the *istihsan* method. Although in the Compilation of Islamic Law in Indonesia the deviation from the principle of fragmentation of inheritance is limited to land (agricultural land of less than 2 hectares), but based on the legal reason (*ratio legis*) of this deviation, it is to maintain the economic value of the land. Even this deviation can actually be applied to other assets, such as houses, vehicles and so on. At first glance, the legal reform in the KHI in the field of inheritance is a compromise on local customs of indigenous peoples who often try to maintain the integrity of family land with a collective inheritance system, however, if examined further, the reforms carried out in this matter are more of an implementation strategy of the rules. *takharuj* in classical inheritance law. However, by the formulators of the KHI, the regulation was modified in such a way that it can be applied to inheritance in the form of land of less than two hectares to maintain its economic value.

In the field of waqf law, witnesses are needed in the waqf pledge as referred to in article 218 KHI, that: "(1), the party who makes waqf must clearly and firmly pledge his will to *nadzir* before the Official Making the Waqf Pledge Deed as referred to in article 215 paragraph (6) which then pours it in the form of a Waqf Pledge, witnessed by at least 2 witnesses. Likewise with the recording of waqf assets and waqf land certification, the appointment

et.al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin law Review* 10, No. 1 (2024).

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of *nadzir* with a series of duties and responsibilities, as stated in article 220 of the KHI which reads: "(1), *Nadzir* is obliged to manage and be responsible for the waqf wealth and its results, and the implementation of waqf in accordance with its objectives according to the provisions stipulated by the Minister of Religion. (2), *Nadzir* is required to make periodic reports on all matters that are his responsibility as referred to in paragraph (1) to the Head of the local District Office of Religious Affairs and the local Camat. (3) The procedure for making the report as referred to in paragraph (2) is carried out in accordance with the regulation of the Minister of Religion". Likewise with the development and improvement of administration and other technical provisions. All of them aim to create legal order and waqf administration in society. For this reason, a broader and proportionate understanding is needed in line with modern legal demands, where authentic evidence is an unavoidable necessity, for the sake of achieving the purpose of waqf itself.

Islamic Law Reform in Indonesia Perspective of *Maqāṣid al-Sharī'ah* According to Intellectuals in Kerinci

In essence, *maṣlaḥah* is a concept that aims to provide benefits and welfare for humans while preventing danger or damage. *Maṣlaḥah* includes all interests that contribute to human survival, overall fulfillment of life, and physical gain and human well-being. intellectual attributes necessary for a prosperous life. Imam Malik defines *maṣlaḥah al-mursalah* as a form of benefit that is not explicitly canceled or mentioned explicitly in religious texts (nash). However, it must not conflict with the text which is the main source of guidance.¹⁶

From Imam Malik's concept of *maṣlaḥah*, it later developed into *maqāṣid al-sharī'ah* which was formulated more comprehensively by al-Syatibiy. The concept of *maqāṣid al-sharī'ah* is then divided into three, namely: First, *maṣlaḥah ḍaruriyyah* (primary public interest). This level relates to everything that is important for human life, fulfilling primary needs that are very necessary for human well-being, both in this world and in the afterlife. Second, *maṣlaḥah ḥajiyyah* (tertiary public interest). This level concerns the benefits that individuals really desire to alleviate difficulties and overcome obstacles. *Maṣlaḥah ḥajiyyah* addresses secondary needs which, although not essential for human survival, nevertheless play an important role

¹⁶ 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 (JIL)* 4, No.1 (2023). p. 99

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in reducing challenges and obstacles. Third, *maṣlahah taḥsiniyyah* (tertiary public interests). This tier introduces complementary benefits that offer flexibility and enhancements to the previously mentioned benefits.¹⁷

Islamic law reform in Indonesia through the compilation of Islamic law has become an interesting discussion not only among Islamic intellectuals in Indonesia in general, but also among Islamic intellectuals in Kerinci, Jambi, namely from Islamic organizations such as Nahdlatul Ulama, Muhammadiyah and academics from Islamic educational institutions.

Referring to the explanation above, according to the Chairman of the Indonesian Ulema Council of Kerinci Regency, the importance of changing Islamic law in Indonesia is based on the recognition of social dynamics, developments over time, and the ever-changing needs of society. Wise and contextual changes to Islamic law can help ensure relevance and justice in responding to the demands of the times. For example, recognizing the importance of protecting women's rights, Islamic law can be updated to guarantee gender equality in marriage, inheritance rights, and protection against domestic violence. In many cases, the practice of dividing inheritance that has been carried out by religious courts has provided justice for women and has prioritized gender equality.¹⁸

Furthermore, it can be said that the application of KHI in the context of the national legal order is the harmonization and accommodation of Islamic law in the Indonesian constitutional system. Indonesia as a country based on law provides space for Islamic law and even customary law within the framework of the national legal framework. This can support changes and development of national law so as to create peace and social stability. In this way, justice, equality, and protection of the rights of all citizens will be realized, especially those related to the laws of marriage, gifts, and inheritance as contained in the Compilation of Islamic Law.¹⁹

In line with that, Martunus Rahim, an academic from the Kerinci State Islamic Institute, explained the importance of reforming Islamic law in

¹⁷ Desi Norma Siamtina, et.al., "The Legal System of the All-You-Can-Eat Ticket System at Tlogo Argo-Tourism, Indonesia, p. 100. Fikri Fikri, et.al., "Transformation of Maqāṣid Shari'ah in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 1 (2023).

¹⁸ Interview with Dr. Usman Yahya, Chairman of the Indonesian Ulema Council of Kerinci Regency, April 30, 2024.

¹⁹ Interview with Dr. Usman Yahya, Chairman of the Indonesian Ulema Council of Kerinci Regency, April 30, 2024.

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Indonesia. The term Islamic law reform does not mean that the law that previously existed was obsolete, but that the law was reviewed with a broad understanding according to the concept of *Rahmatan lilalamin*. Traditional understanding and fanaticism have been replaced with an actual understanding with a global perspective, of course, still adhering to the texts and postulates that have been developed by ulama and mujtahids both in the past and contemporary times.²⁰

Therefore, it can be emphasized that KHI is concrete evidence of the reform of Islamic law in Indonesia, as well as harmonization and accommodation between Islamic law, customary law and national law. KHI regulates inheritance law in accordance with the socio-cultural conditions of Indonesian society. KHI is based on the Koran, hadith and ijthad of ulama as *mashdir al-ahkam*. Meanwhile, the difference lies in the social reality and cultural structure of developing society which influences the two legal systems. In the history of Islamic law, Arab society adheres to a patrilineal kinship system, whereas in Indonesia it is more bilateral, as a result the distribution of inheritance tends to be different. Next, if we look at the existence of this law in Indonesia, *fiqh* inheritance law and inheritance law based on the KHI still exist. Islamic jurisprudence is recognized as an integral part and raw material for the formation of national law in Indonesia.²¹

This view is supported by Facruddin Kasim, Kerinci Regency Muhammadiyah Administrator. According to him, the reform of Islamic law as contained in the KHI, does not mean updating the law on existing issues but is an effort by legal experts to establish laws on new issues for which there are no laws yet. In the field of marriage, for example, regarding *takliq thalaq*, registration of marriages, marriage certificates, divorce certificates, reconciliation certificates, maturity at marriage. In the field of inheritance, for example, regarding replacement heirs, slander as an obstacle to inheritance, peace in the distribution of inheritance after each heir knows his share. In waqf, for example waqf with money, transferring waqf assets, making waqf deeds. This all aims to provide benefit and convenience to the Indonesian

²⁰Interview with Dr. Martunus Rahim, an academic from the Kerinci State Islamic Institute, April 30, 2024.

²¹Mursyid Djawas, et.al., The Construction of Islamic Inheritance Law: A Comparative Study of The Islamic Jurisprudence and The Compilation of Islamic Law,” *Juris: Jurnal Ilmiah Syariah* 21, No. 1 (2022). Abdurrohman Kasdi and Khoiril Anwar, “Inheritance Distribution of Adopted Children in The Perspective of Customary Law and Islamic Law Compilation: Case Study of the Application of Inheritance Law in Kudus,” *Ahkam* 29 No. 2 (2019).

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Islamic community in all their affairs and problems which continue to grow and develop following the growth and development of ever-changing situations and conditions. This needs to continue to be developed and preserved so that every new problem that arises can be immediately determined by law.²²

According to Halil Khusairi, an academic from the Kerinci State Islamic Institute, that in order to keep up with the development of Islamic law in Indonesia, it is very necessary to reform it so that it is easier to understand and apply in the midst of people's lives and is always transcendental to current problems that continue to grow and develop, apart from not abandoning the principles and values and spirit of Islamic teachings based on the Qur'an and Hadith. The need for reform of Islamic law continues to be pursued and further developed, because the reform of Islamic law as exemplified in the KHI has a very positive impact on the lives of the Indonesian Islamic community so that no new problems arise and develop in the midst of their lives. the law cannot be determined.²³

It is important to note that reform of Islamic law in Indonesia is a very important step. According to Asa'ari, an academic at IAIN Kerinci, emphasized that the Compilation of Islamic Law as part of legal reform in Indonesia is an important and positive method. Because this helps create harmony between Islamic law and national law, as well as providing clarity in the application of law in a multicultural society like Indonesia. However, it is also important to ensure that these reforms remain in line with fundamental Islamic values and principles. Renewing Islamic law is an effort to adapt and interpret Islamic law according to the context of the times and the needs of society which continue to develop. This could involve changes in understanding of Islamic legal texts, adaptation to social and cultural changes, and the formation of policies relevant to the challenges and aspirations of modern society.²⁴

Furthermore, according to the Chairman of Nahdlatul Ulama, Kerinci, reform of Islamic law can provide significant benefits for the lives of Islamic communities, both in the aspects of justice, social welfare, and a better understanding of religion. Of course, reform of Islamic law must take into

²² Interview with Facruddin Kasim, Regional Leadership of Muhammadiyah Kerinci Regency, May 1, 2024.

²³ Interview with Dr. Halil Khusairi, an academic from the Kerinci State Islamic Institute, April 29, 2024.

²⁴ Interview with Prof. Dr. Asa'ari, an Academic from the Kerinci State Islamic Institute and Chairman of Nahdlatul Ulama, Kerinci, April 29, 2024.

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account the changing context of the times and social developments. Thus, it is necessary to carry out in-depth studies of various contemporary problems faced by society, such as gender issues, human rights and social justice. This reform must be balanced between maintaining strong traditional Islamic values and responding to the demands of the developing times. However, it is important to remember that Islamic law reforms must not conflict with the basic principles of the Islamic religion itself. Therefore, a wise and careful approach is needed in formulating and implementing legal changes. This is to maintain blessings and justice in the Islamic legal system, as well as minimizing the potential for conflict or tension between religious norms and national legal norms. Furthermore, the involvement of Islamic scholars and legal experts in the reform process is also key to ensuring conformity and validity according to sharia. In this way, the reform of Islamic law in Indonesia can become a solid foundation for a better national and state life, in accordance with Islamic values and social justice.²⁵

From the explanation above, it can be understood that the renewal of Islamic law through accommodation and integration of Islamic law into national law is a reform that is an important part of *maqāṣid al-syarī'ah*. So that Islamic law in Indonesia is still able to provide answers to changing times and contemporary problems that occur in society. The compilation of Islamic law which includes marriage, endowments and grants is part of the answer to the reality of Islamic law in Indonesia. Therefore, according to Islamic intellectuals in Kerinci, in this way Islamic law can still realize *maqāṣid al-syarī'ah* or benefits and benefits for humans and in social life.

Conclusion

The urgency and relevance of *mashlahah* in Islamic law reform is still very necessary as a method of law enforcement against events that are not regulated in the text. In this context, it can be emphasized that the reform of Islamic law in Indonesia which was implemented through the compilation of Islamic law is a response to the legal realities that occur in society. Islamic law which is systematized through *maqāṣid al-syarī'ah* is of course not only seen from a technical perspective, but must also be seen as something that contains philosophical values, so that it is universal and universal. Therefore, according to Islamic intellectuals in Kerinci, the dynamic identity of Islamic law seen from this concept is very logical and relevant as contained in the KHI

²⁵ Interview with Prof. Dr. Asa'ari, an Academic from the Kerinci State Islamic Institute and Chairman of Nahdlatul Ulama, Kerinci, April 29, 2024.

and is also a form of *maqāṣid al-syarī'ah* which brings benefit and benefit to Indonesian society.

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