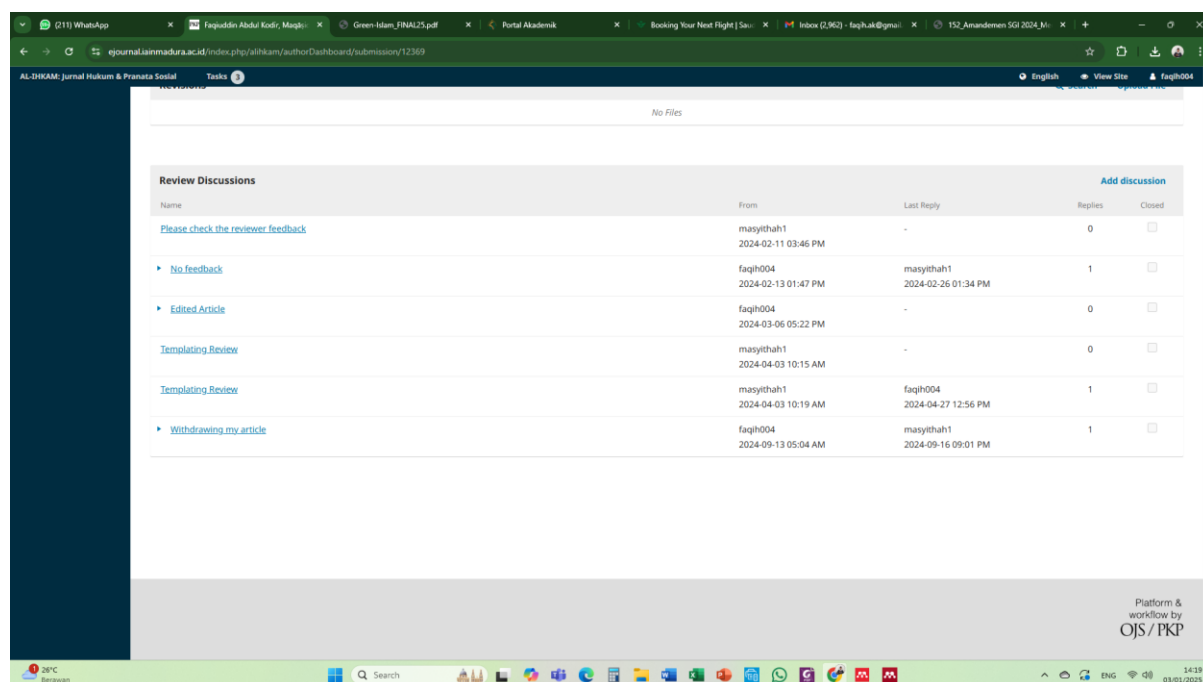
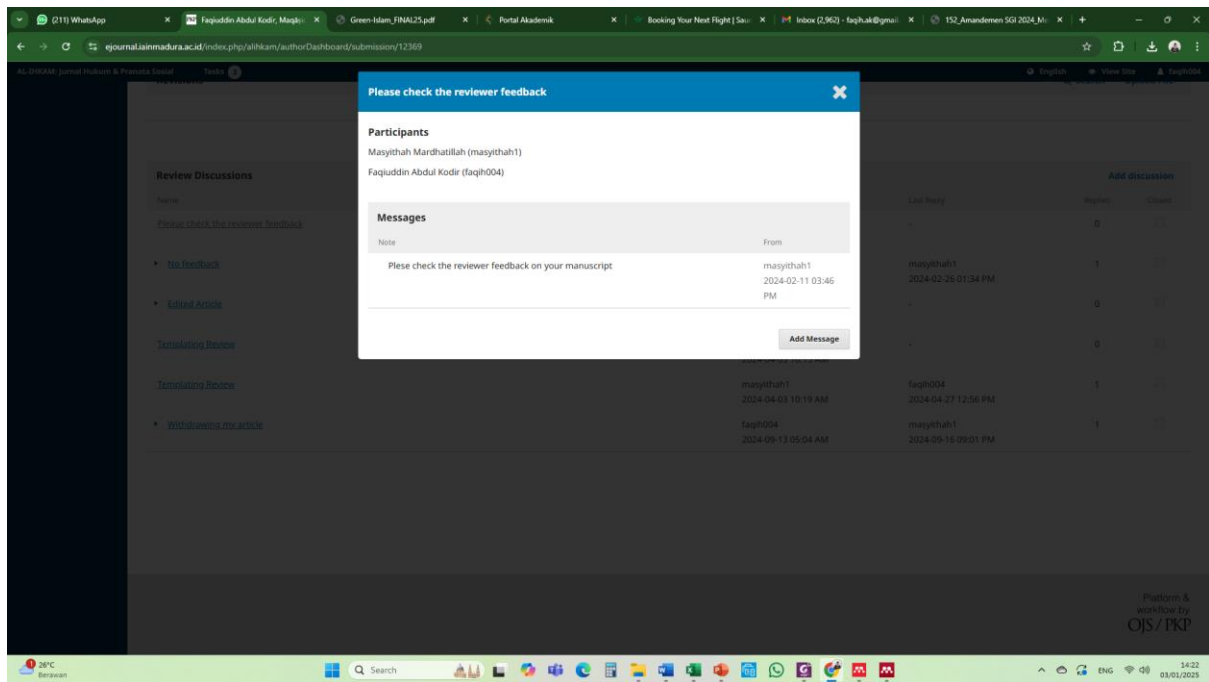


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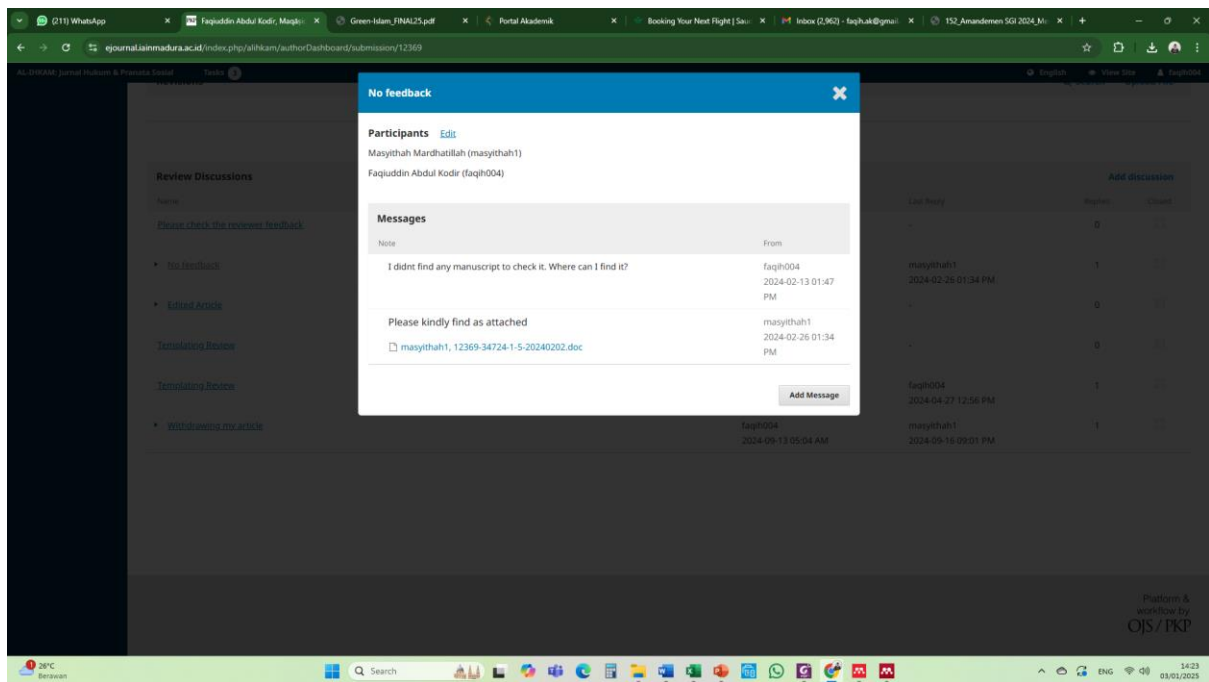
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1.	Pengiriman draft pertama dari penulis	22 Januari 2024	
2.	Jawaban perbaikan dari Editor	11 Februari 2024	
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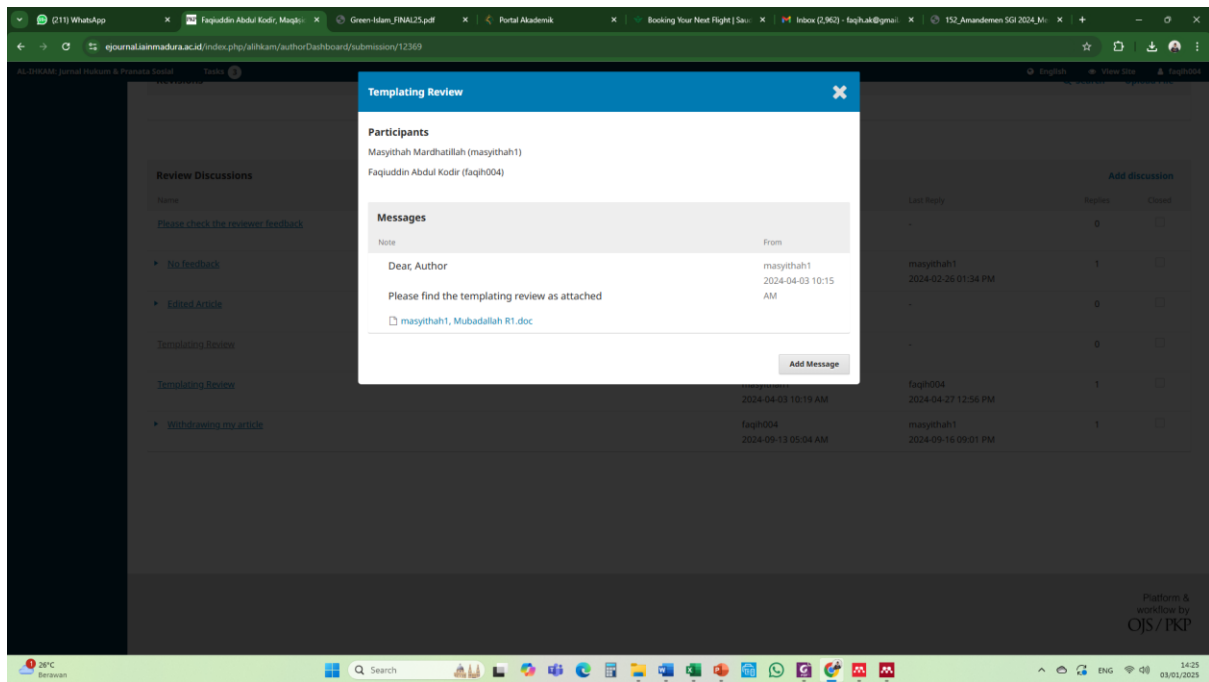
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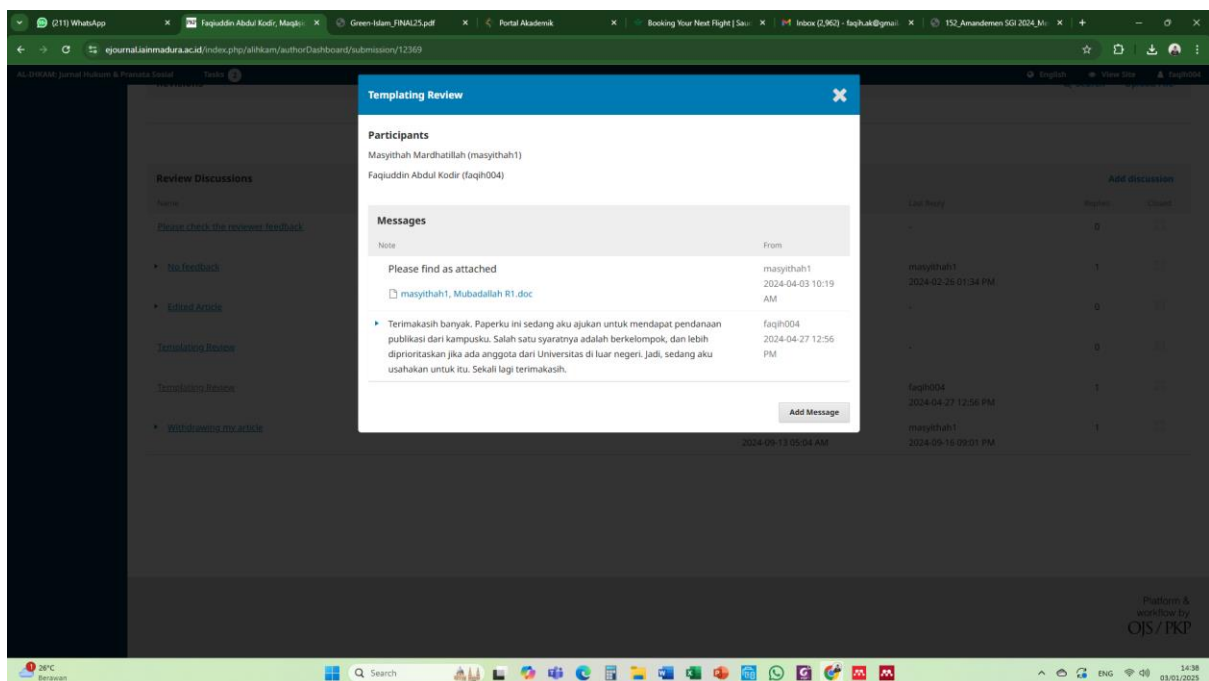
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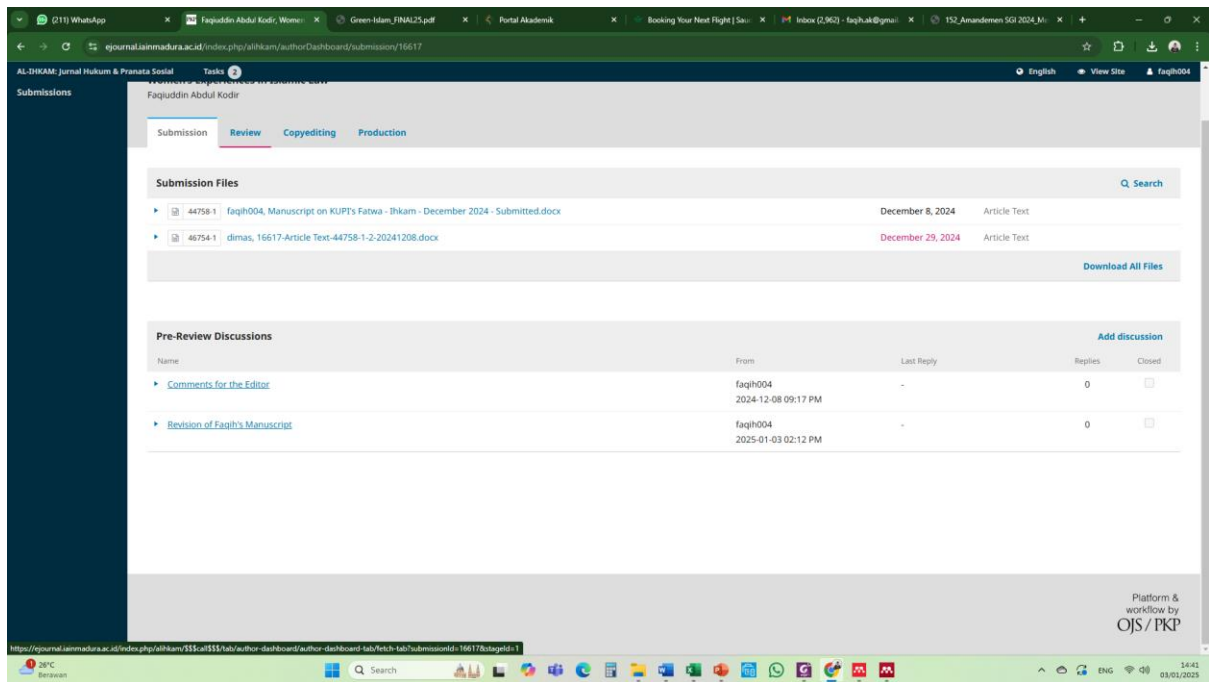
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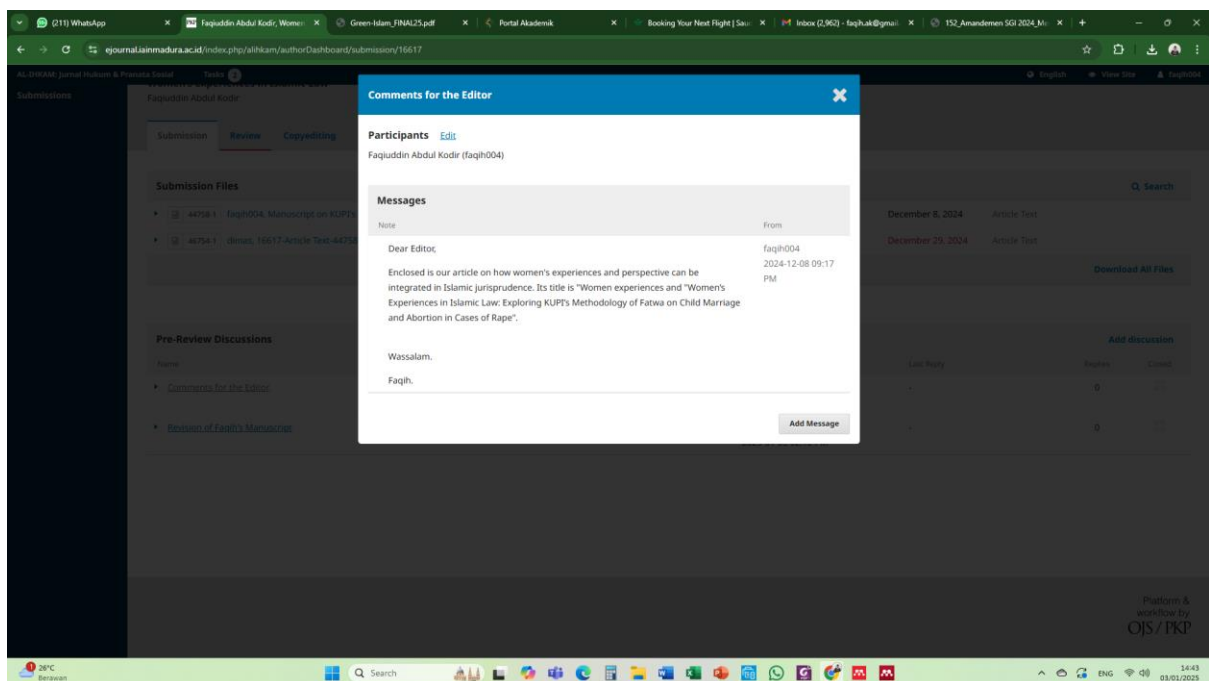
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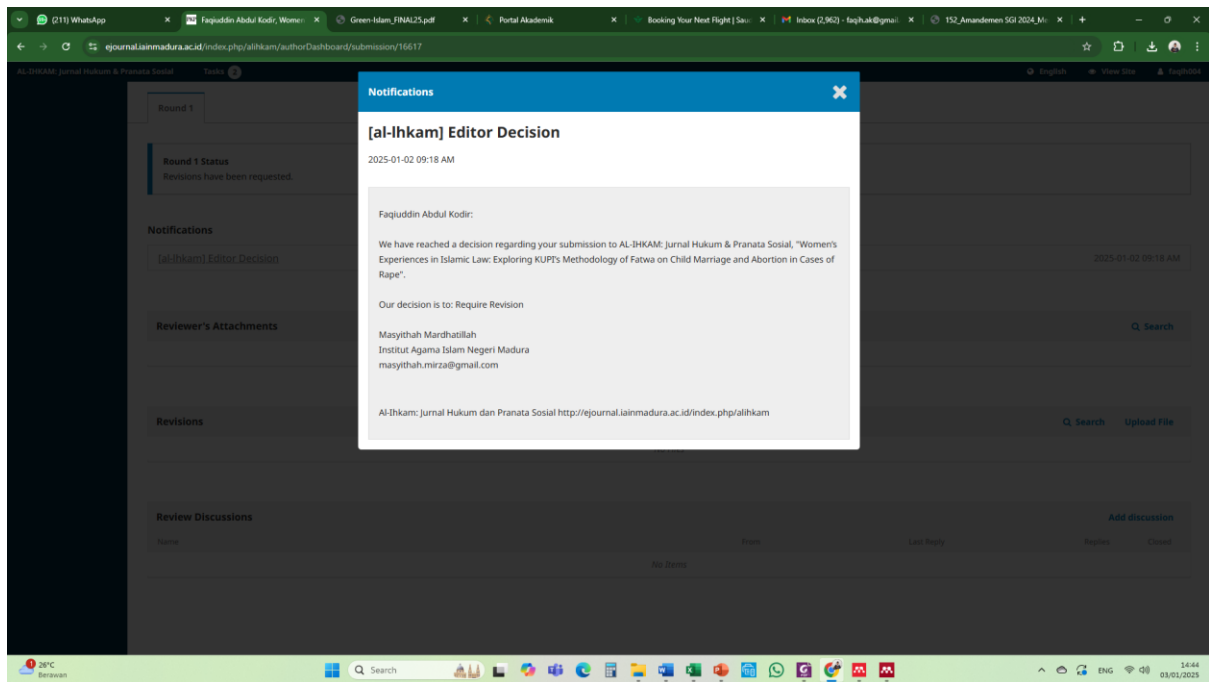
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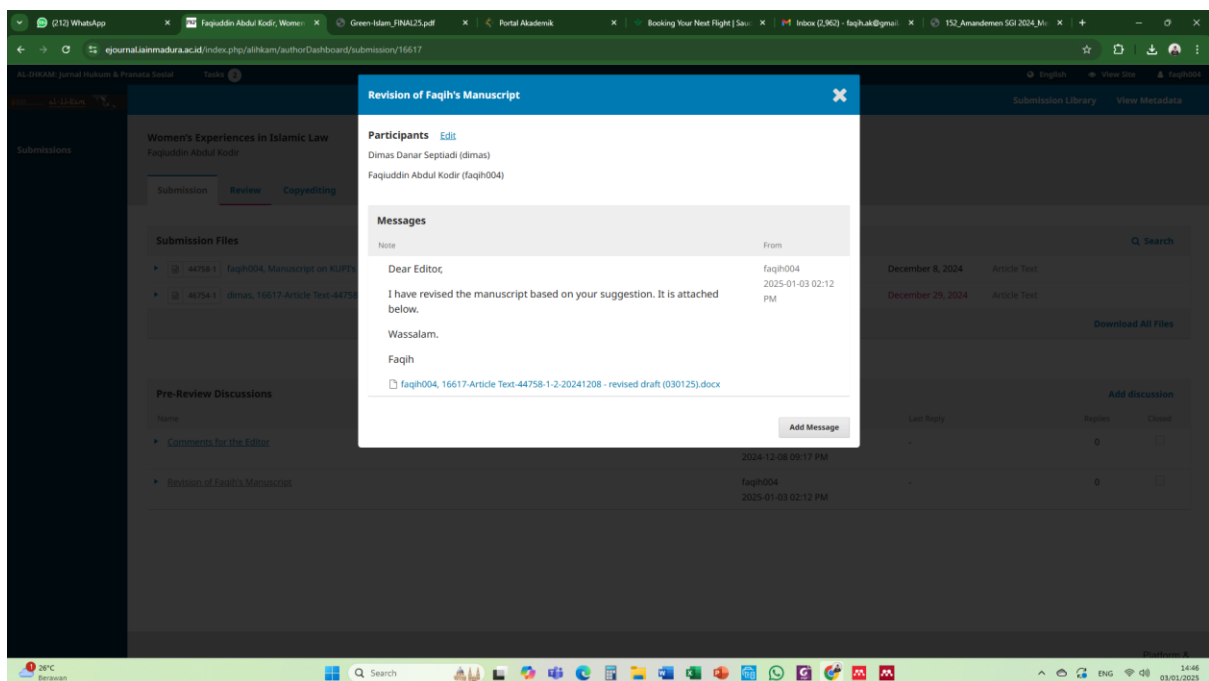
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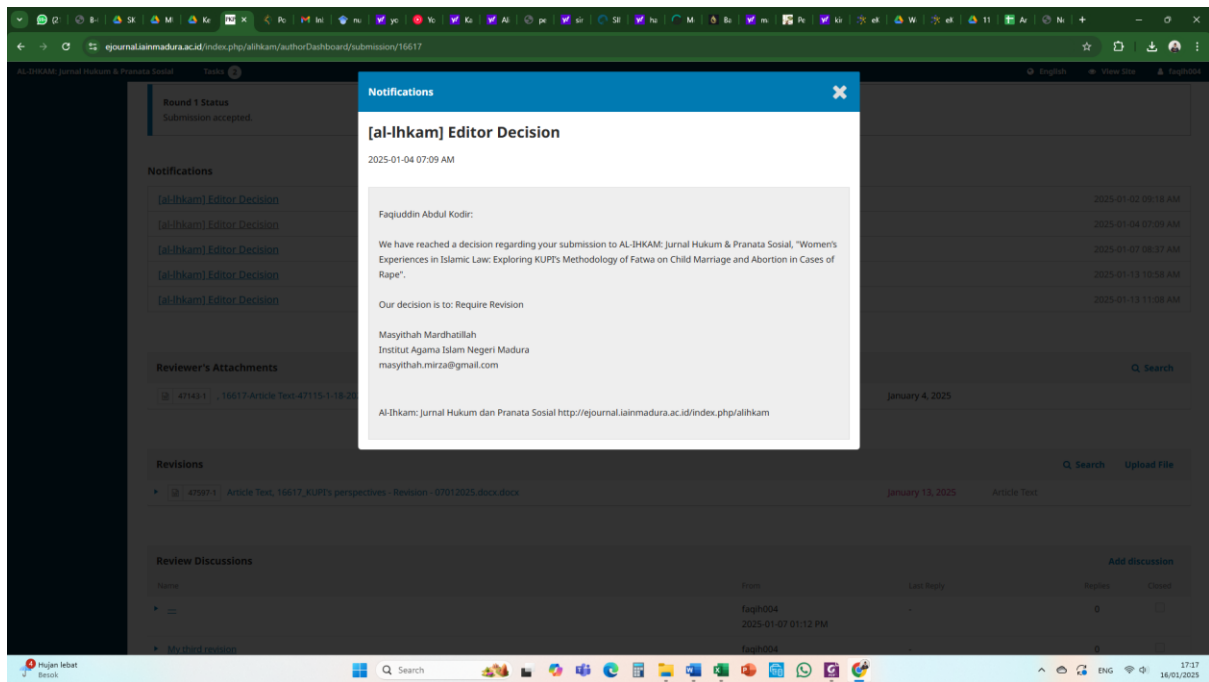
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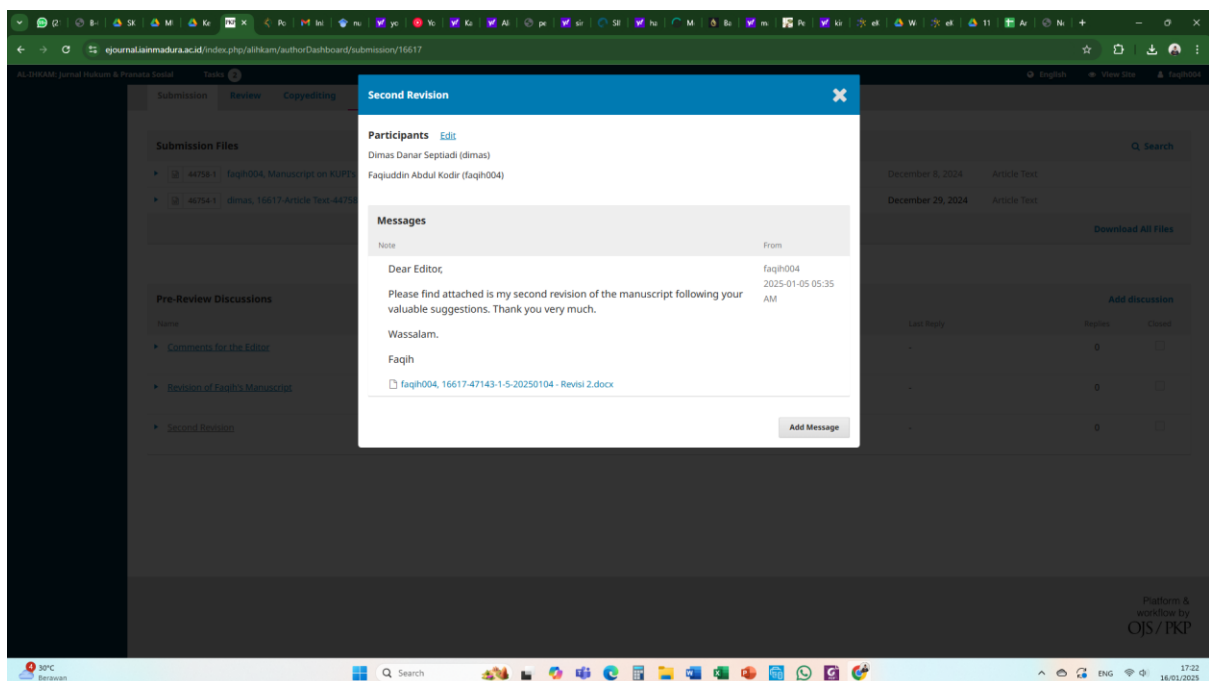
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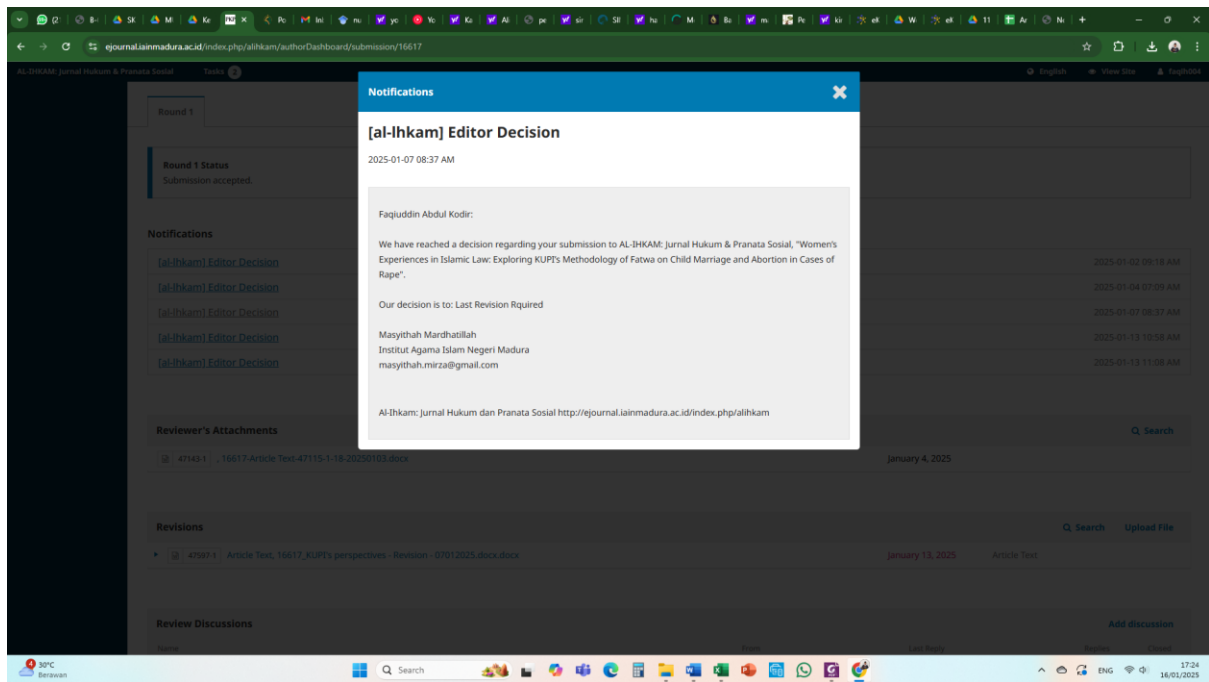
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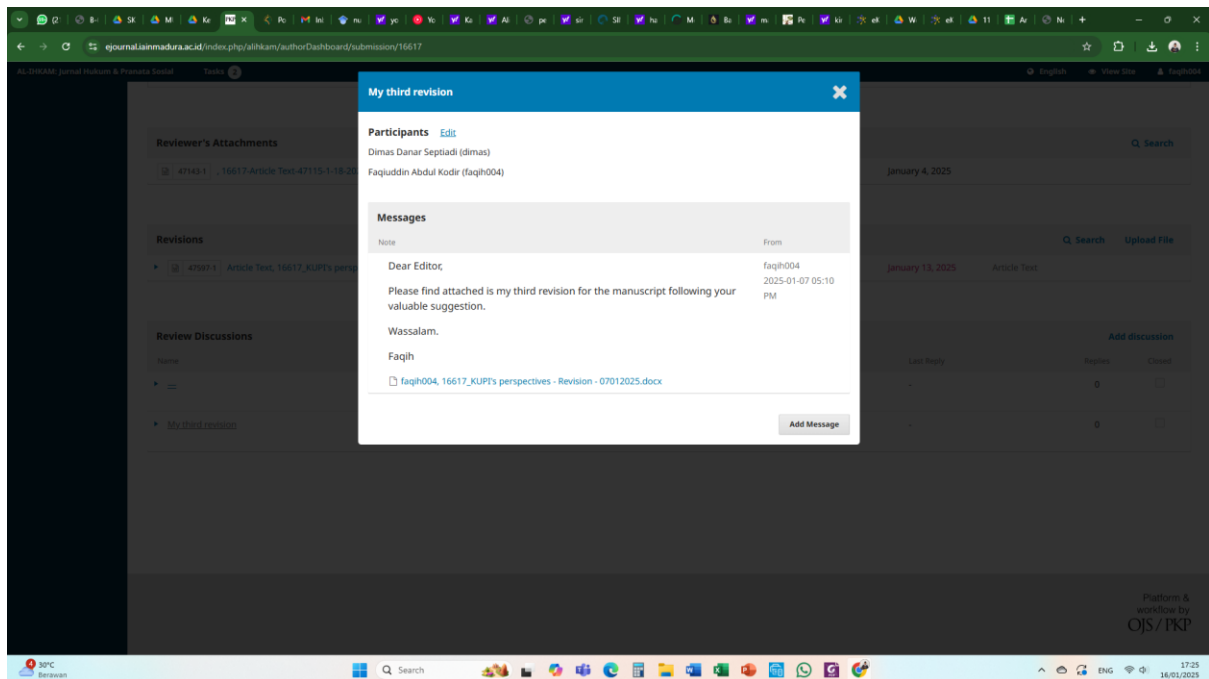
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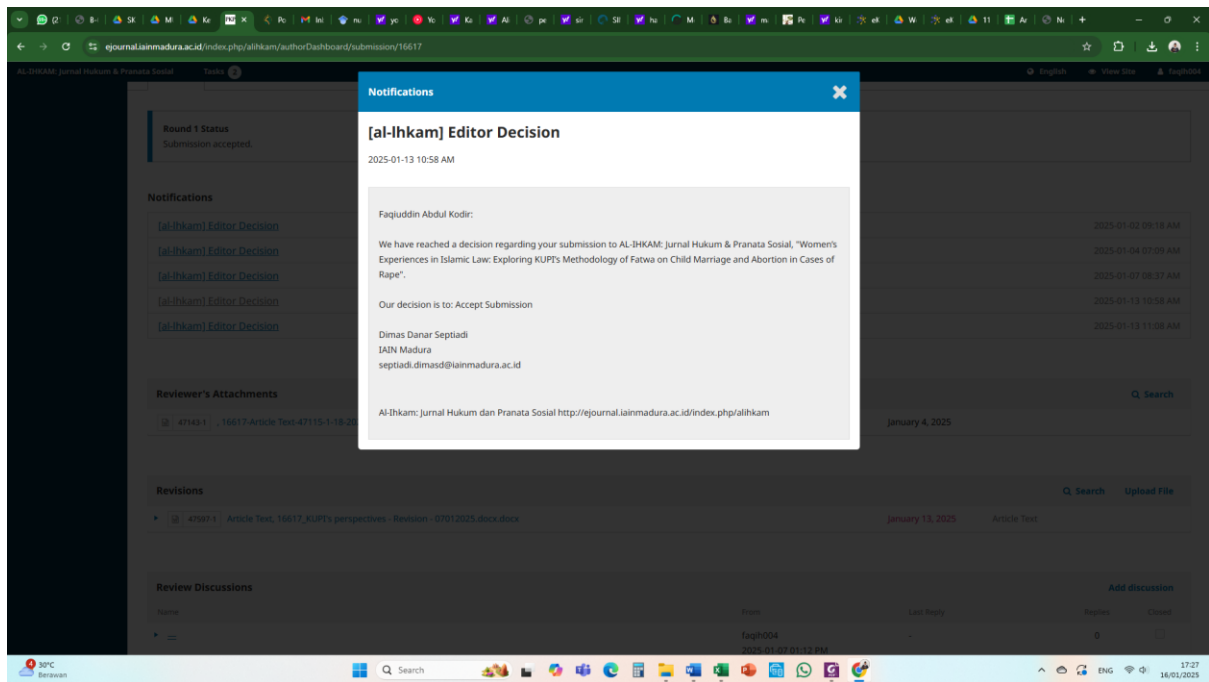
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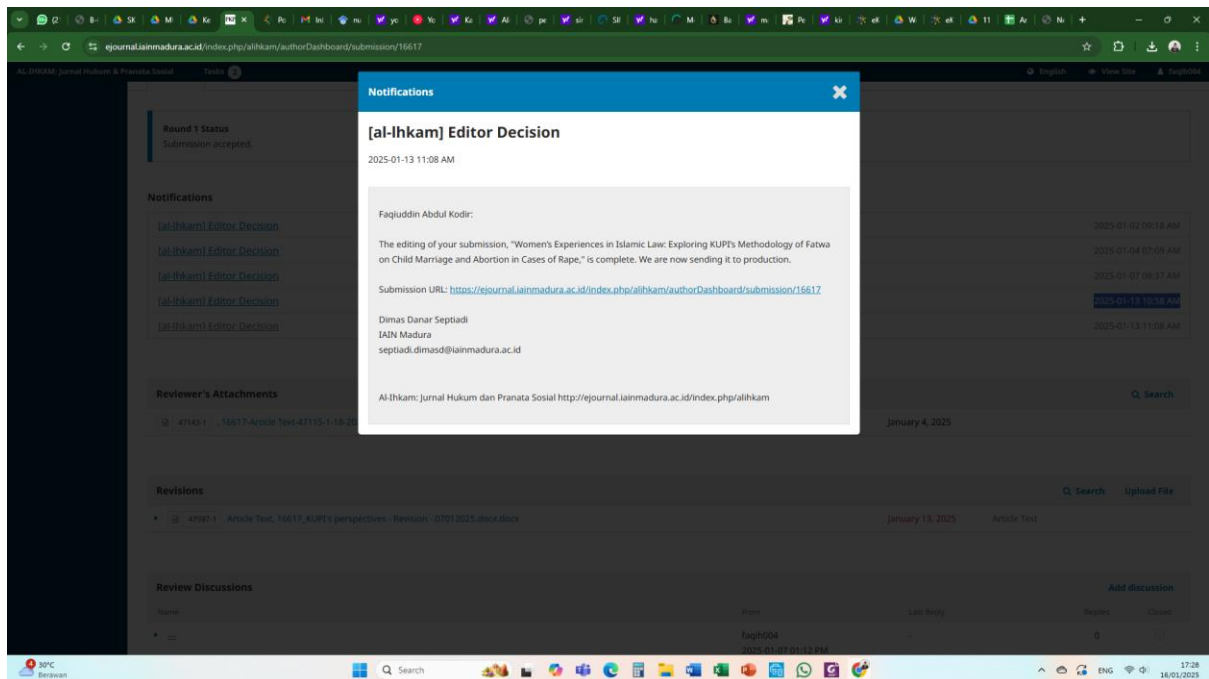
Gambar 11: Jawaban Editor atas Revisi Penulis (2025-01-07 08:37 AM)



Gambar 12: Jawaban Penulis atas Feedback Revisi (faqih004: 2025-01-07 05:10 PM)



Gambar 13: Jawaban Editor tentang penerimaan artikel untuk diterbitkan (2025-01-13 10:58 AM)



Gambar 14: Surat Editor tentang kondisi terakhir artikel (2025-01-13 11:08 AM)



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Maqāṣid ash-Sharī'ah Cum-Mubādalalah:
Methodology of Religious Deliberation by the Indonesian
Women's Ulama Congress (KUPI) in Formulating Gender-
Equitable Fiqh

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Abstract:

The fatwas, or religious opinions, issued through the Religious Deliberation (Musyawarah Keagamaan) conducted by the Indonesian Women's Ulama Congress (KUPI) stand out due to their unique engagement of women as active participants in both the methodology and the entire process. This paper explores the methodology employed by KUPI to develop gender-equitable fiqh. KUPI's approach integrates *Maqāṣid ash-Sharī'ah*, the objectives of Islamic law, with a perspective emphasizing the equality and cooperation between men and women. Referred to as *Maqāṣid ash-Syarī'ah cum-Mubādalalah*, this methodology positions men and women as complete subjects, mutually contributing to the formulation of Islamic legal principles. This paper delves into specific cases addressed by KUPI, focusing on issues unique to women, such as child marriage and the protection of women's lives from the risks of pregnancy due to rape. It evaluates how KUPI grounds its decisions not solely in the literal texts of Islamic law but within the logical framework of *Maqāṣid ash-Syarī'ah cum-Mubādalalah*. KUPI's *ijtihad* (intellectual exercise) employing the *Maqāṣid ash-Sharī'ah cum-Mubādalalah* methodology is notably relevant as an endeavor to foster gender-equitable contemporary fiqh—an objective championed by numerous global ulama and intellectuals, including those in Indonesia. The analysis reflects on the implications and limitations of KUPI's approach, providing insights into the evolving landscape of Islamic jurisprudence guided by gender-inclusive perspectives.

Keywords:

Maqāṣid ash-Sharī'ah, Mubādalalah, Fiqh, and KUPI.

Introduction

Fiqh, encompassing classical and contemporary Islamic laws and opinions, represents scholars' endeavor to address real-life issues by referring to foundational texts—the Qur'an and Hadith. While these source texts remain unchanged, the interpretation of their content undoubtedly evolves, resulting in the continuous development of *fiqh*. Consequently, the methodology for interpreting these texts must also evolve to authentically respond to the dynamic realities of life. As these evolving issues invariably involve women, the formulation of a *fiqh* methodology must ensure their active participation and guarantee that they genuinely benefit from its outcomes.¹

The neutral nature of *fiqh* methodology, spanning *Qiyās*, *Istiḥsān*, *Istiṣlāh*, and *Maqāṣid ash-Sharī'ah*, implies its foundation in exploring human benefits, encompassing both men and women, embedded in the texts shaping *fiqh* or Islamic laws and opinions. Nonetheless, this neutrality can inadvertently result in outcomes that disregard the benefits of women or prioritize those of men. Fatwas regarding women and life issues often hinge on logic that prioritizes men's convenience over women's needs. For instance, a fatwa on women working may be deemed *ḥarām* if it is assumed to lead to slander, *makrūh* if it might cause slander, and *mubāḥ* if it is perceived as unlikely to cause slander. This logic primarily gauges the impact on men without adequately considering women's necessity for such work.²

In classical *fiqh* for instance, the definition of marriage primarily addresses men's needs, neglecting to define women's needs. The book *Al-Fiqh 'alā Madhāhib al-Arba'ah* by Abdurrahman al-Jaziri, a representative of the majority of *fiqh* scholars, defines marriage as "established by the Shari'a so that men can benefit by

¹ For the development of *fiqh* on women's issues may refer to: Syafiqh Hasyim, *Understanding Women in Islam: An Indonesian Perspective*, (Jakarta: ICIP, 2006). There are chapters on historical development of *fiqh*, patriarchal tendencies of *fiqh*, and alternative opinions on *fiqh* regarding women's issues.

² Nur Rofiah, "Reading the Qur'an Through Women's Experience", in: Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rumminger and Sarah Marso (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, (London: Oneworld Academic, 2022), 82; and Khalid Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, (Oxford: Oneworld Publications, 2003).

lawfully enjoying the woman's genitals and her entire body."³ However, contemporary scholars have refined this definition to position men and women more equally as subjects with needs in marriage, emphasizing that both parties should derive benefits from the union.⁴

This redefinition of marriage serves as a cornerstone in family law reform projects across the Islamic world, aiming to prevent injustice towards women and children and ensure they obtain benefits—a fundamental objective of Islamic law. Reforms include setting a minimum age limit for marriage, enhancing women's access to legal divorce, restricting men's polygamous rights, mandating the registration of marriages and divorces, and establishing specialized courts for handling marriage disputes. Various Islamic countries, including Indonesia, have undertaken theological arguments by ulama and intellectuals to ensure women are the primary beneficiaries of family law.⁵

Continuing these efforts, it is crucial to highlight the contributions of the Indonesian Women's Ulama Congress (KUPI). KUPI, as a congress activity, has been convened twice, first in 2017 at Pesantren Kebon Jambu al-Islami Babakan Ciwaringin Cirebon and second in 2022 at Pesantren Hasyim Asy'ari Bangsri Jepara. Each congress features a core activity known as the religious reliberation (*Musyawarah Keagamaan*) to discuss and decide KUPI's religious opinions. The first congress in 2017 resulted in decisions on three critical issues: the prohibition of sexual violence both inside and outside marriage, the protection of children from underage marriage, and the prohibition of environmental destruction. Meanwhile, the second Congress in 2022 addressed five issues: the marginalization of women in protecting the Republic of Indonesia from violence in the name of religion, waste management for environmental sustainability and women's safety, protection of women from forced marriage, protection of women's lives from pregnancy dangers due to rape, and

³ 'Abd ar-Raḥmān Al-Jazīrī, *Al-Fiqh 'alā Madzāhib al-Arba'ah*, (Beirut: Dar al-Kutub al-'Ilmiyah, 2004), vol. 4, 8–9.

⁴ For example, Sheikh Abu Zahrah includes sexual benefits in the definition of marriage for both parties, the man and the woman. Abū Zahrah, *al-Aḥwāl ash-Shakhṣiyyah*, (Cairo: Dar al-Fikr al-'Arabi, . 1957), 17-18.

⁵ Khoiruddin Nasution, "Women's Rights in the Islamic Family Law of Indonesia", *Jurnal Hukum*, No. 28, vol. 12, Januari 2005, 147-159.

protection of women from cutting and harming female genitalia without medical reasons.⁶

Given that current endeavors to reform Islamic law for the advancement of women's rights are still partial, atomistic, eclectic, and lack a focus on the fundamental issues, it is imperative to persist in these efforts. This persistence is especially crucial at a more comprehensive methodological level.⁷ In this context, the KUPI fatwa process through *Musyawah Keagamaan* (MK) stands out for its uniqueness. The MK KUPI involves community-level stages, is collective, integrates women's experiences, and catalyzes social, cultural, and spiritual movements.⁸ Nor Isma highlights three peculiarities of KUPI in formulating its fatwas. First, KUPI's collective *ijtihad* breaks the historical absence of female ulama. Second, KUPI's *ijtihad* involves the knowledge and experience of women from both Islamic and secular educational backgrounds, rooted in community-based authority. Third, KUPI's *ijtihad* approach ensures gender-sensitive fiqh results through *Mubadalah* and Substantive Justice.⁹

Method

This paper employs library research and adopts descriptive and qualitative methods to unveil and elucidate the steps undertaken by the *Musyawah Keagamaan* (MK) KUPI in integrating women's perspectives into the methodology, process, and outcomes of its fatwas. The primary data comprises the fatwa results from KUPI's two congresses, namely Cirebon in 2017 and Jepara in 2022. In Cirebon, it yielded three fatwas, while in Jepara, it produced five fatwas. This dataset underwent thorough reading and analysis to

⁶ Umma Farida and Abdurrahman Kasdi. "The 2017 KUPI congress and Indonesian female ulama." *Journal of Indonesian Islam*, 12(2), 2018, 135-158.

⁷ Khoirudin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer". dalam: *UNISIA*. vol. xxx. no. 66, December 2007, 329-341.

⁸ David Kloos and Nor Ismah. "Siting Islamic feminism: The Indonesian Congress of Women Islamic Scholars and the challenge of challenging patriarchal authority", *History and Anthropology*, 34:5, (2023), 1-26; and Inayah Rohmaniyah, Samia Kotele, and Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia", *Academic Journal of Interdisciplinary Studies*, vo. 11, no. 2, May 2022, 60-70.

⁹ Nor Isma, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia*, (Doctoral Dissertation in Leiden University, 2023), especially on pages: 140-142.

discern how the concept of *Maqāṣid ash-Sharī'ah*, established and evolved by classical and contemporary scholars, is applied by KUPI, which adheres to a gender-just paradigm.

The central question guiding this research is how KUPI ulama conceptualize and implement the *Maqāṣid ash-Sharī'ah* concept, given their distinctive paradigm that positions women and men as equal subjects in life. This question comprises three discussions. Initially, the position of MK KUPI methodology within the broader framework of *Maqāṣid ash-Sharī'ah*. Secondly, implementation of *Maqāṣid ash-Sharī'ah cum-Mubādalāh* in the 2017 MK KUPI fatwa regarding child marriage. Lastly, application of this methodology into the 2022 MK KUPI fatwa concerning the safeguarding of women from the perils of pregnancy resulting from rape.

Result and Discussion

Methodology and Approach

Fiqh is an understanding of ulama by referring to source texts—the Qur'an and Hadith, to address various life challenges, thereby becoming a source of benefit for humanity, both in this world and the hereafter. In contemporary times, scholars, starting with Ibn Asyur (d. 1973), have considered the use of *Maqāṣid ash-Sharī'ah* as imperative when other methods in *Uṣūl al-Fiqh* (methodology of Islamic Jurisprudence) prove insufficient to respond to the diverse challenges of modern life.¹⁰ According to Tazul Islam, *Maqāṣid ash-Sharī'ah* has developed “from secondary methodology to a basic methodology and finally to a multidisciplinary science” in order “to embrace wider area of ijtihad” in all aspects of modern life.¹¹

The definition of *Maqāṣid ash-Sharī'ah* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Al-Khadimi encapsulates these various definitions by asserting that *Maqāṣid ash-Sharī'ah* encompasses “the main aims and objectives contained in Islamic law, both general and specific objectives, all of which lead to obedience

¹⁰ Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, (Mizan: Bandung, 2013), p. 164-168; and Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda*. (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), 32-41.

¹¹ Tazul Islam, “Expansion of Maqosid Thought Beyon Maqosid al-Shari'ah: Maqosid al-Qur'an as a New Paradigm”, *Hamdard Islamicus*, Vol. 45, No. (4, 2022), 84.

and worship to Allah SWT, as well as to obtain (human) goodness in this world and the hereafter."¹²

Among the most prominent conceptualizations is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 505 H/1111 AD), who identified five objectives of Islamic law. These include protecting religion (*ḥifẓ ad-dīn*), soul (*an-nafs*), reason (*al-'aql*), property (*al-māl*), and family/offspring (*an-nasl*). Contrary to this closed classification, some scholars, led by Ibn Taymiyah (d. 1328 AD), have proposed a more expansive understanding of *Maqāṣid ash-Sharī'ah*. Contemporary scholars such as Rasyid Rida, Ibn Assyur, Yusuf al-Qaradawi, KH. Ali Yafie, Zaynab al-'Ulwanī, and Hasyim Kamali have extended the scope of *Maqāṣid ash-Sharī'ah* to address themes on socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, protection of nature, and more.¹³

Rasyid Rida (d. 1345 H/1935 AD) proposes socio-political reform and championed the fulfillment of women's rights as themes of *Maqāṣid ash-Sharī'ah*.¹⁴ Ibn Assyur (d. 1393 H/1973 AD) expanded the themes of *Maqāṣid ash-Sharī'ah* by incorporating principles of freedom, equality, and tolerance.¹⁵ Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.¹⁶ Similarly, KH. Ali Yafie proposed the inclusion of *ḥifẓ al-bī'ah* (protection of nature and the environment) as the sixth principle, emphasizing the ecological dimension within the broader objectives of Islamic law.¹⁷ Zaynab al-'Ulwanī took a specific focus, including *sakīnah* (tranquility

¹² Nur ad-dīn Al-Khādimī, *al-Maqāṣid ash-Sharī'ah: Ta'rīfuhā, Amthilatuhā, Hujjiyyatuhā*, (Riyad: Eshbelia, 2003), vo. 1, 26.

¹³ Kamali, *Membumikan Syariah*, 167-168.

¹⁴ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣid asy-Syarī'ah: Kajian Kritis dan Komprehensif*, (Yogyakarta: IRCISOD, 2020), 174-196.

¹⁵ Muḥammad aṭ-Ṭāhir Ibn 'Ashūr, *Maqāṣid ash-Sharī'ah al-Islāmiyyah*, (Cairo: Dar as-Salam, 2006), specifically, regarding the four values above, you can see them on the pages: 449-63.

¹⁶ Yusuf Al-Qaradāwī, *Madkhal li-Dirasāt ash-Sharī'ah al-Islāmiyyah*, (Cairo: Maktabah Wahbah, 1997), 75.

¹⁷ Alie Yafie, *Merintis Fiqh Lingkungan Hidup*, (Jakarta: Yayasan Amanah, 2006), 223-234.

and happiness), as a goal within Islamic family law (*maqāṣid ash-sharī'ah fi al-usrah*).¹⁸

This diversity of perspectives highlights the ongoing relevance of *Maqāṣid ash-Sharī'ah* in addressing the evolving needs of societies and individuals, including gender issues.¹⁹ Many scholars have employed the *Maqāṣid ash-Sharī'ah* methodology to explore women's rights in Islam. However, there has been a gap in these discussions, lacking a paradigmatic conceptualization of *Maqāṣid ash-Sharī'ah* that inherently incorporates gender justice.²⁰ This is where the KUPI approach to the *Maqāṣid ash-Sharī'ah* methodology becomes crucial.

The "Musyawarah Keagamaan" (MK) KUPI, held in Cirebon and Jepara, adopts an open and expansive conception of *Maqāṣid ash-Sharī'ah*. However, the distinctive feature of MK KUPI lies in its integration of *Maqāṣid ash-Sharī'ah* with women's perspectives, recognizing the authority of their experiences and knowledge. Both men and women are regarded as complete human beings and full subjects of life, acknowledging the paradigmatic importance of their experiences as authoritative knowledge. In practice, women actively contribute to the entire process of formulating religious fatwas of KUPI, ensuring that their experiences are not overlooked and their interests are duly safeguarded.

This unique approach is presented as *Maqāṣid ash-Sharī'ah cum-Mubādalāh*, where *Mubādalāh* signifies exchange, mutuality, and cooperation. In this context, it denotes a perspective that positions men and women as equal subjects of life and complete human beings, both actively contributing to and benefiting from the goodness of life. This inclusive approach ensures that the experiences of women and men are equally considered, preventing their marginalization as either perpetrators or victims of life's challenges. Viewing women and men as complete human beings entails recognizing their

¹⁸ Zaynab Ṭahā Al-'Ulwanī, *al-Usrah fi Maqāṣid ash-Sharī'ah: Qirā'ah fi Qadāyā az-Zawāj wa aṭ-Ṭalāq fi Amirikā*. (Herndon: IIIT, 2012), 90-97.

¹⁹ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System of Approach*, London: IIIT, 2007, 1-25; and Wael B. Hallaq, "Maqāṣid and the Challenges of Modernity", *al-Jami'ah: Journal of Islamic Studies*, vol. 49, no. 1 (2011), 1-32.

²⁰ Basma I. Abdelgafar, "Re-envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam" in: R. Naguib (ed.), *Women's Empowerment and Public Policy in the Arab Gulf States*, December 2023, 55-73.

multifaceted nature, encompassing physical, psychological, social, and spiritual dimensions. This perspective goes beyond reducing women to mere fulfillers of domestic and sexual roles, acknowledging their inherent needs and roles in both private and public spheres across various dimensions.²¹

The integration of *Mubādalah* in *Maqāṣid ash-Sharī'ah*, emphasizing the partnership between men and women, employs a dual strategy. First, it emphasizes the equality of men and women as complete human beings, servants of Allah SWT, caliphs of the earth (*khalīfah fi al-arḍ*), and full subjects of life. This approach aligns with contemporary scholars' interpretations of *Maqāṣid ash-Sharī'ah*, addressing principles like *tawḥīd*, *istikhlāf*, *qiwāmah*, and *zawjiyyah* in Islamic family law.²²

The second strategy focuses on acknowledging the unique experiences of women, both biologically and socially, that differentiate them from men. This includes biological aspects such as menstruation, pregnancy, childbirth, postpartum, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. A gender-sensitive approach considers and respects these differences in shaping Islamic methodologies and addressing life issues.²³

Both strategies are indispensable components of the conception and validation of the *Maqāṣid ash-Sharī'ah* cum-*Mubādalah* approach. Through the first strategy, all forms of *Maqāṣid ash-Sharī'ah*, whether closed (*al-kullīyyāt al-khams*) or open form (other general principles), encompass both men and women as equal human beings, servants of Allah, His representatives on earth, and complete subjects of life. Simultaneously, the second strategy regards the distinctive biological and social experiences of women as human experiences integral to all forms of *Maqāṣid ash-Sharī'ah*. Thus, these unique female experiences are deemed a shared responsibility of both men and women, not exclusive to women alone.

²¹ Faqihuddin Abdul Kodir, "Qirā'a Mubadala: Reciprocal Reading of Hadith on Marital Relationship", in: Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rummingier and Sarah Marso (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, (London: Oneworld Academic, 2022), 181-209.

²² al-'Ulwanī, *al-Ushrah fi Maqashid asy-Syari'ah*, 74-82.

²³ Nur Rofiah, "Reading the Qur'an Through Women's Experience", 71-72.

The realization of Islamic benefits through *al-kulliyāt al-khams*, for instance, encompasses the well-being of both men and women as fellow human beings (first strategy). Key indicators include acknowledging the unique biological and social experiences of women that are also incorporated into the understanding of benefit (second strategy). Protecting the human soul (*ḥifẓ an-nafs*), for instance, involves safeguarding all individuals, men and women, from death. This is achieved by providing the essential nutrition needed by both genders (first strategy) and ensuring the specific nutritional requirements of pregnant and breastfeeding women (second strategy). Moreover, it involves providing adequate facilities to safeguard women giving birth from unnecessary maternal mortality (second strategy).

Similarly, in various facets of *Maqāṣid ash-Sharī'ah*, the *cum-Mubādalāh* approach is realized by integrating these two strategies. Ensuring and preserving religion (*ḥifẓ ad-dīn*), for instance, involves guaranteeing that both men and women can freely practice worship as servants of Allah SWT. Thus, if men require freedom from certain activities for worship, women have an equal right to the same (first strategy). Within this *ḥifẓ ad-dīn*, there is an emphasis on ensuring that women's religious qualities are not diminished due to their unique reproductive experiences (second strategy). This approach is mirrored in formulating and validating concepts such as protection of reason (*ḥifẓ al-'aql*), family/descendants (*ḥifẓ an-nasl*), honor (*ḥifẓ al-'ird*), assets (*ḥifẓ al-māl*), and environmental conservation (*ḥifẓ al-bī'ah*). The *Maqāṣid ash-Sharī'ah cum-Mubādalāh* framework has been established by KUPI as a methodological approach for deliberating religious perspectives on various life issues.

Fatwa on Child Marriage

Traditional fiqh commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.²⁴ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for

²⁴ Wahbah az-Zuhailī, *al-Fiqh al-Islāmī wa Adillatuhū*, Damaskus: Dar al-Fikr, vol. 7, 179.

children.²⁵ *Maqasid ash-Shari'ah* is also invoked in these discussions, particularly in consideration of women's rights.²⁶ However, KUPI's distinctive approach in formulating *Maqasid ash-Shari'ah* adds an intriguing dimension to this discourse.

The Musyawarah Keagamaan (MK) KUPI did not make a conclusive decision on the legality of child marriage but focused on the imperative to safeguard children from such unions. In formulating its stance on child marriage, the MK KUPI employed the *Maqāsid ash-Sharī'ah* approach. This involved outlining the problem (*taṣawwur*), presenting textual evidence (*Adillah*) from the Qur'an, Hadith, and the opinions of scholars (*Aqwāl al-'Ulamā'*), and conducting an analysis (*Istidlāl*) to construct an argument on necessary protection of children from marriage.

Concerning the issue of child marriage, the *taṣawwur* of MK KUPI incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *taṣawwur*, numerous expressions derived from this data are correlated with the themes of *Maqasid ash-Syari'ah*, particularly emphasizing open (general principles) rather than closed ones (*al-kulliyāt al-khams*). Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' frequently emerge as conclusions drawn from qualitative data on child marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqasid ash-Syari'ah* analysis (the close form: *al-kulliyāt al-khams*).

Certain data also includes expressions that can represent the concept of *Mubādalāh* in both *taṣawwur* and *istidlāl*. This is evident in various health, educational, and social issues. The first strategy of *Mubādalāh*, which centers on shared needs between men and women, such as the need for education and health, has been thoroughly

²⁵ Fatum Abu Bakr, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)", *Jurnal Ilmu Syari'ah dan Hukum*, Vol. 4, Nomor 2, 2019, 97-118; and Husain Al-Hakami & Kenneth McLaughlin, "Debatable Marriages: Marriage and Child Marriage in Saudi Arabia", *Marriage and Family Review*, 30 May 2016, 1-11.

²⁶ Muhammad Shofwan Taufiq and M. Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage", *Muhammadiyah Law Review*, Vol 7, No 2 (2023), 1-23; and Edi Kurniawan, Handesman, Rahmadi & Khairun Najib, "Early Marriage, Human Rights, and the Living Fiqh: a Maqasid Al-Shari'a Review", *Al-Risalah*, Vol. 20, No. 1, June 2020, 1-15.

elaborated. Similarly, the second strategy of *Mubādalah* addresses reproductive problems experienced by married girls, their educational challenges, and many other social issues faced by them. Many of these issues are not encountered by young men who are married.

The textual references (*Adillah*) employed by the MK KUPI also encompass themes that are congruent with the structure of *Maqāṣid ash-Syarī'ah*, as elucidated by contemporary scholars, particularly in the form of general principles of Islamic law (open form). Specifically, the *Adillah* of MK KUPI concerning child marriage comprise 7 Quranic verses, 5 Hadith texts, and 6 statements from scholars (*Aqwal al-Ulama*). These textual references are aligned with themes correlating with the *Maqāṣid ash-Syarī'ah*. These themes encompass the objective of marriage as attaining peace of mind, the prohibition of begetting a weak generation, the directive to become the best people, the proscription against self-condemnation to destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the recommendation to seek knowledge. The Hadith-derived *Adillah* also exhibit themes consistent with *Maqāṣid ash-Syarī'ah*. These include the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Meanwhile, the *Adillah* derived from the perspectives of scholars (*aqwal al-ulama*) encompass the principle of forbidding harm and evil, as well as the five principles of protection (*al-kulliyāt al-khams*).

In the analysis (*Istidlāl*) section, all these themes serve as pivotal concepts for MK KUPI to argue that the practice of child marriage contradicts *Maqāṣid ash-Syarī'ah* and protection of children from early marriage is necessary in the goals of Islamic law. The focus of *istidlāl* lies more on expounding the key concepts derived from *Adillah* themes, which constitute the objectives of Islamic law (*Maqāṣid ash-Syarī'ah*). These objectives are subsequently presented as robust, unequivocal, and compelling arguments affirming Islam's obligation to safeguard children from early marriage.

One of the elucidations provided by MK KUPI regarding *al-kulliyāt al-khamsah* pertains to child marriage is as below:

"The preservation of religion (*ḥifẓ ad-dīn*) entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their understanding of religion in general and to fulfill the specific marriage goals outlined by religion. Safeguarding the soul (*ḥifẓ an-nafs*) involves shielding children from potential harm or premature death due to their immature reproductive activities associated with early marriage. The protection of reason (*ḥifẓ al-'aql*) encompasses shielding children from the possibility of hindering intellectual development resulting from the interruption of their education. Preserving offspring (*ḥifẓ an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*ḥifẓ al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they must work prematurely to support the family due to their early marriage. Preserving wealth (*ḥifẓ al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage."²⁷

The quote above illustrates how the five principles (*al-kulliyat al-khams*) are explained using an approach of *Maqāṣid ash-Sharī'ah cum-Mubādalāh*. Thus, instead of relying solely on literal texts of Islamic law, MK KUPI grounds its fatwa in the logical framework of *Maqāṣid ash-Syarī'ah* integrated with the perspective of *Mubādalāh*. Within this conceptual framework, the primary contention put forth by MK KUPI is that Islam encourages the protection of children, particularly girls, from the detrimental consequences arising from early marriages.

Fatwa on Protection of Female Rape Victim

The second MK KUPI session in Jepara in 2022 addressed five key issues, with one focusing on "Protection of Women's Lives from the Dangers of Pregnancy Due to Rape." Hence, this specific MK KUPI fatwa can be succinctly referred to as "MK KUPI on Protection." Until now, discussions on Islamic law have predominantly centered

²⁷ Tim KUPI, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia*, (Jakarta and Cirebon: KUPI), 2017), p. 115.

around the legal aspects of abortion for women impregnated through rape, with consideration given to the age of the fetus. This discourse frequently highlights variations among classical schools of *fiqh*.²⁸ Concerning the rights of female victims of rape in Islamic law, the discussions have primarily focused on the exemption from punishment, given that the victim is considered innocent of unlawful adultery, and financial compensation (*diyyah*) for the victim.²⁹ Notably, *Maqāṣid ash-Sharī'ah* has not been extensively employed to explore the protection of pregnant women resulting from rape in the discussions of contemporary *fiqh*.

Differing from conventional discussions on this subject, MK KUPI avoids delving into the legal intricacies of abortion, a common focal point in existing *fiqh* discussions, often involving the determination of the permissible age for abortion. Instead, MK KUPI places a significant emphasis on safeguarding the well-being of pregnant women who have fallen victim to rape. According to MK KUPI, the permissibility of abortion is contingent upon its role in preserving a woman's life, irrespective of the age of her fetus, with the primary objective of genuinely protecting her life. Conversely, if the decision is made to continue the pregnancy for the woman's life, comprehensive support from all stakeholders is deemed imperative. This distinctive fatwa argument is groundbreaking and achieves legitimacy only when firmly rooted in the principles of *Maqāṣid ash-Syarī'ah*.

The title of fatwa, i.e. "Protection of Women's Lives from the Dangers of Pregnancy Due to Rape", inherently encapsulates the nuances of *Maqāṣid ash-Syarī'ah* while incorporating the perspective of *Mubādalah*. The phrase "protection of the life" is integral to *Maqāṣid ash-Sharī'ah*, specifically one of the five principles (*al-kulliyāt al-khams*), known as *ḥifẓ an-nafs*. Simultaneously, the expression "women exposed to the dangers of pregnancy due to rape" explicitly addresses

²⁸ Moh. Manaf Badri and Muhibbin Muhibbin, "Legality of Abortion by Rapes Perspective of Islamic Law, Indonesian Positive Law and Human Rights", *Budapest International Research and Critics Institute-Journal*, Vol 5, No 3 (2022), 23506-23513; and Firdaus, Firdaus, et al. "Abortion Due to Unwanted Pregnancy: Perspective of Islamic Law and Positive Law." *Al-Qisthu*, vol. 19, no. 2, 2021, 188-201.

²⁹ Azman bin Mohd Noor and Ahmad Basri bin Ibrahim, "The Rights of a Rape Victim in Islamic Law", *IIUM Law Journal*, vol. 16, no. 1 (2008), 65-83.

the distinct experiences of women, a pivotal concept within the perspective of *Mubādalāh*.

In the explanatory section (*taṣawwur*), "MK KUPI on protection" conveys three key aspects aligned with *Maqāṣid ash-Syarī'ah*. These include the adverse effects of rape that everyone should avoid, the imperative to shield humans—especially women—from these negative impacts, and, notably, the protection of the lives of women impregnated as a result of rape. The data presented in the MK KUPI *taṣawwur* also correlates with the fundamental concepts of *Maqāṣid ash-Syarī'ah*. Similar to MK KUPI's stance on child marriage, this "MK KUPI on protection" unequivocally underscores *Maqāṣid ash-Syarī'ah* as a pivotal concept in elucidating the challenges faced by women who are victims of rape.

In the *Adillah* section, "MK KUPI on protection" enumerates themes pertinent to *Maqāṣid ash-Syarī'ah*, drawn from the texts of the Qur'an, Hadith, and *Aqwāl al-'Ulamā'*. The Qur'anic verses cover themes such as human dignity, the mission of Islamic mercy, prohibitions against harming individuals, insulting, condemning oneself to destruction, safeguarding the weak, refraining from blaming those coerced, and offering forgiveness for victims of sexual coercion. Hadith texts highlight themes like the prohibition of tyranny, avoidance of harm to others, assistance to the weak, refraining from causing harm to oneself and others, alleviating others' difficulties, refraining from blaming coerced individuals, consistently treating women with kindness, aiding those wronged, and requesting leaders to facilitate matters for the people.

Two of the themes in *Adillah* section explicitly center on women as victims deserving protection, forgiveness, and support. In the analysis (*Istidlāl*) section, these themes are systematically restructured into a comprehensive framework, fortifying several arguments: the inherent injustice of rape, attributing wrongdoing to the perpetrator, and emphasizing that women who have experienced rape are not only innocent but also individuals requiring assistance, support, and companionship. These arguments serve as the groundwork for fostering awareness regarding the crucial importance of attending to women who are victims of rape, specifically addressing their need for protection, particularly in the context of their lives post-rape and the ramifications of pregnancy resulting from such incidents.

"Rape victims facing pregnancy may encounter challenges in practicing *ḥifẓ ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to question Islam's stance. The lives of women who are victims of rape and experience pregnancy are highly susceptible to ongoing stigmatization, discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *ḥifẓ an-nafs*, which emphasizes the protection of human lives in Islamic law.

Moreover, women who are victims of rape and become pregnant often endure prolonged mental and intellectual disorders, face barriers to education, struggle to think clearly and logically for their own well-being, and may harbor thoughts of self-degradation and endangerment. Allowing women who are victims of rape to remain exposed to the dangers of pregnancy thus violates the principle of *ḥifẓ al-'aql*, which underscores the protection of the mind in Islamic law.

Furthermore, women who, due to rape, become pregnant and suffer from impaired thinking are likely to face challenges managing their assets, may experience job loss or termination, and encounter difficulties accessing the societal economy. The recovery costs, both physically and psychologically, from the trauma of rape, as well as the expenses associated with maintaining a healthy pregnancy and caring for the child throughout their life, are not inconsequential. Leaving women who are victims of rape exposed to the dangers of pregnancy in such conditions also contradicts the principle of *ḥifẓ al-māl*, or property protection in Islamic law.

Worse still are the implications for reproductive organs and family dynamics. Women impregnated through rape may harbor resentment towards themselves and the fetus, entertain thoughts of self-endangerment and neglect their well-being and that of the fetus with insufficient nutrition. This may result in the birth of a vulnerable generation, as cautioned in the Quran (QS. An-Nisa, 4:9), potentially detached from family ties, lacking support, and facing challenges in life. Exposing women to pregnancy dangers in such circumstances also infringes upon the principle of *ḥifẓ an-nasl*, which pertains to reproductive and family protection in Islamic law."³⁰

³⁰ Tim Perumus MK KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) ke-2*. (Jakarta: KUPI, 2023), pp. 188-189.

The comprehensive excerpt above illustrates how MK KUPI meticulously elaborated on the concept of *Maqāṣid ash-Syari'ah*, employing the framework of the five principles (*al-kulliyāt al-khams*) integrated with the perspective of *Mubādalāh*. This approach renders the concept particularly relevant to the protection of women's lives in the specific context of pregnancies resulting from rape.

Conclusions

In conclusion, MK KUPI asserts that *Maqāṣid ash-Syari'ah* should be conceptualized and practiced within the framework that views men and women as complete human beings and full subjects of life. This perspective is termed "*Maqāṣid ash-Syari'ah cum-Mubādalāh*." This methodology employs two strategies: first, recognizing the commonalities in the needs and benefits of both men and women, and second, acknowledging the differences between them. This ensures that the unique biological and social needs of women are considered essential humanitarian needs within the conception of *Maqāṣid ash-Syari'ah*. Themes of *Maqāṣid ash-Syari'ah cum-Mubādalāh* are evident from the problem description section (*taṣawwur*) of MK KUPI on child marriage and pregnancy due to rape. These themes continue to emerge from the textual references (*adillah*), especially during the analysis and synthesis phase (*istidlāl*). All these themes are intricately combined to construct main arguments. However, this paper discussed only two out of the eight MK KUPI. Exploring the remaining six could potentially yield different nuances in relation to *Maqāṣid ash-Shari'ah*. Additionally, it is noteworthy that within the scope of MK KUPI's discussions, there hasn't been a singular issue exclusive to men. Given the *Mubādalāh* principle's acknowledgment of both men and women as comprehensive and interdependent subjects, exploring its methodology in addressing issues specific to men could lead to distinctive insights and conclusions, warranting further study and discussion.

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Comments:

Introductory Part Suggestions:

It is imperative to delve into the contextual landscape of fatwa methodology in Indonesia, specifically examining how other fatwa institutions within the country position maqashid sharia in their fatwa production. This contextual analysis is crucial for discerning similarities and differences in the application of maqashid sharia in the formulation of fatwas.

Inclusion of an Additional Question:

To enhance the depth of the exploration, it is essential to introduce another question: What are the implications of the concept and its implementation for the practice of issuing fatwas within the context of the fatwa discourse in Indonesia and, more broadly, in Muslim society? This additional query will shed light on the significance of employing the mubadalah method in the production of fatwas related to issues such as child marriage and the protection of female rape victims.

Discussion on the Validity of Women's Perspective in Fatwa Production:

A critical examination is warranted concerning the validity of women's perspectives within the fatwa production process. How can the theoretical validity of women's viewpoints be established in the realm of knowledge production?

Discussion:

Following the conclusion of the methodology and approach section, a transitional paragraph is necessary to pave the way for the upcoming discussion. This bridging paragraph will provide insight into the next section, which will focus on the application of the mubadalah perspective. This analytical lens will be specifically applied to two critical issues: child marriage and the protection of female rape victims. Within this section, it is also pertinent to articulate specific questions and outline the contents of the fatwas to provide a comprehensive understanding.

***Maqāṣid ash-Sharī'ah Cum-Mubādalāh:* Methodology of Religious Deliberation by the Indonesian Women's Ulama Congress (KUPI) in Formulating Gender- Equitable Fiqh**

Article history: Received:

Abstract:

The fatwas, or religious opinions, issued through the Religious Deliberation (Musyawarah Keagamaan) conducted by the Indonesian Women's Ulama Congress (KUPI) stand out due to their unique engagement of women as active participants in both the methodology and the entire process. This paper explores the methodology employed by KUPI to develop gender-equitable fiqh. KUPI's approach integrates *Maqāṣid ash-Sharī'ah*, the objectives of Islamic law, with a perspective emphasizing the equality and cooperation between men and women. Referred to as *Maqāṣid ash-Syarī'ah cum-Mubādalāh*, this methodology positions men and women as complete subjects, mutually contributing to the formulation of Islamic legal principles. This paper delves into specific cases addressed by KUPI, focusing on issues unique to women, such as child marriage and the protection of women's lives from the risks of pregnancy due to rape. It evaluates how KUPI grounds its decisions not solely in the literal texts of Islamic law but within the logical framework of *Maqāṣid ash-Syarī'ah cum-Mubādalāh*. KUPI's *ijtihād* (intellectual exercise) employing the *Maqāṣid ash-Sharī'ah cum-Mubādalāh* methodology is notably relevant as an endeavor to foster gender-equitable contemporary fiqh—an objective championed by numerous global ulama and intellectuals, including those in Indonesia. The analysis reflects on the implications and limitations of KUPI's approach, providing insights into the evolving landscape of Islamic jurisprudence guided by gender-inclusive perspectives.

Keywords:

Maqāṣid ash-Sharī'ah, Mubādalāh, Fiqh, and KUPI.

Introduction

Fiqh, encompassing classical and contemporary Islamic laws and opinions, represents scholars' endeavor to address real-life issues

by referring to foundational texts—the Qur'an and Hadith. While these source texts remain unchanged, the interpretation of their content undoubtedly evolves, resulting in the continuous development of *fiqh*. Consequently, the methodology for interpreting these texts must also evolve to authentically respond to the dynamic realities of life. As these evolving issues invariably involve women, the formulation of a *fiqh* methodology must ensure their active participation and guarantee that they genuinely benefit from its outcomes.¹

The neutral nature of *fiqh* methodology, spanning *Qiyās*, *Istiḥsān*, *Istiṣlāh*, and *Maqāṣid ash-Sharī'ah*, implies its foundation in exploring human benefits, encompassing both men and women, embedded in the texts shaping *fiqh* or Islamic laws and opinions. Nonetheless, this neutrality can inadvertently result in outcomes that disregard the benefits of women or prioritize those of men. Fatwas regarding women and life issues often hinge on logic that prioritizes men's convenience over women's needs. For instance, a fatwa on women working may be deemed *ḥarām* if it is assumed to lead to slander, *makrūh* if it might cause slander, and *mubāḥ* if it is perceived as unlikely to cause slander. This logic primarily gauges the impact on men without adequately considering women's necessity for such work.²

In classical *fiqh* for instance, the definition of marriage primarily addresses men's needs, neglecting to define women's needs. The book *Al-Fiqh 'alā Madhāhib al-Arba'ah* by Abdurrahman al-Jaziri, a representative of the majority of *fiqh* scholars, defines marriage as "established by the Shari'a so that men can benefit by lawfully enjoying the woman's genitals and her entire body."³ However, contemporary scholars have refined this definition to

¹ For the development of *fiqh* on women's issues may refer to: Syafiqh Hasyim, *Understanding Women in Islam: An Indonesian Perspective*, (Jakarta: ICIP, 2006). There are chapters on historical development of *fiqh*, patriarchal tendencies of *fiqh*, and alternative opinions on *fiqh* regarding women's issues.

² Nur Rofiah, "Reading the Qur'an Through Women's Experience", in: Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rumminger and Sarah Marso (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, (London: Oneworld Academic, 2022), 82; and Khalid Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, (Oxford: Oneworld Publications, 2003).

³ 'Abd ar-Raḥmān Al-Jazirī, *Al-Fiqh 'alā Madzāhib al-Arba'ah*, (Beirut: Dar al-Kutub al-'Ilmiyah, 2004), vol. 4, 8–9.

position men and women more equally as subjects with needs in marriage, emphasizing that both parties should derive benefits from the union.⁴

This redefinition of marriage serves as a cornerstone in family law reform projects across the Islamic world, aiming to prevent injustice towards women and children and ensure they obtain benefits—a fundamental objective of Islamic law. Reforms include setting a minimum age limit for marriage, enhancing women's access to legal divorce, restricting men's polygamous rights, mandating the registration of marriages and divorces, and establishing specialized courts for handling marriage disputes. Various Islamic countries, including Indonesia, have undertaken theological arguments by ulama and intellectuals to ensure women are the primary beneficiaries of family law.⁵

Continuing these efforts, it is crucial to highlight the contributions of the Indonesian Women's Ulama Congress (KUPI). KUPI, as a congress activity, has been convened twice, first in 2017 at Pesantren Kebon Jambu al-Islami Babakan Ciwaringin Cirebon and second in 2022 at Pesantren Hasyim Asy'ari Bangsri Jepara. Each congress features a core activity known as the religious reliberation (*Musyawarah Keagamaan*) to discuss and decide KUPI's religious opinions. The first congress in 2017 resulted in decisions on three critical issues: the prohibition of sexual violence both inside and outside marriage, the protection of children from underage marriage, and the prohibition of environmental destruction. Meanwhile, the second Congress in 2022 addressed five issues: the marginalization of women in protecting the Republic of Indonesia from violence in the name of religion, waste management for environmental sustainability and women's safety, protection of women from forced marriage, protection of women's lives from pregnancy dangers due to rape, and protection of women from cutting and harming female genitalia without medical reasons.⁶

⁴ For example, Sheikh Abu Zahrah includes sexual benefits in the definition of marriage for both parties, the man and the woman. Abū Zahrah, *al-Aḥwāl ash-Shakhsīyyah*, (Cairo: Dar al-Fikr al-'Arabi, . 1957), 17-18.

⁵ Khoiruddin Nasution, "Women's Rights in the Islamic Family Law of Indonesia", *Jurnal Hukum*, No. 28, vol. 12, Januari 2005, 147-159.

⁶ Umma Farida and Abdurrahman Kasdi. "The 2017 KUPI congress and Indonesian female ulama." *Journal of Indonesian Islam*, 12(2), 2018, 135-158.

Given that current endeavors to reform Islamic law for the advancement of women's rights are still partial, atomistic, eclectic, and lack a focus on the fundamental issues, it is imperative to persist in these efforts. This persistence is especially crucial at a more comprehensive methodological level.⁷ In this context, the KUPI fatwa process through *Musyawah Keagamaan* (MK) stands out for its uniqueness. The MK KUPI involves community-level stages, is collective, integrates women's experiences, and catalyzes social, cultural, and spiritual movements.⁸ Nor Ismah⁹ highlights three peculiarities of KUPI in formulating its fatwas. First, KUPI's collective *ijtihad* breaks the historical absence of female ulama. Second, KUPI's *ijtihad* involves the knowledge and experience of women from both Islamic and secular educational backgrounds, rooted in community-based authority. Third, KUPI's *ijtihad* approach ensures gender-sensitive fiqh results through *Mubādalah* and Substantive Justice.⁹

Method

This paper employs library research and adopts descriptive and qualitative methods to unveil and elucidate the steps undertaken by the *Musyawah Keagamaan* (MK) KUPI in integrating women's perspectives into the methodology, process, and outcomes of its fatwas. The primary data comprises the fatwa results from KUPI's two congresses, namely Cirebon in 2017 and Jepara in 2022. In Cirebon, it yielded three fatwas, while in Jepara, it produced five fatwas. This dataset underwent thorough reading and analysis to discern how the concept of *Maqāṣid ash-Sharī'ah*, established and evolved by classical and contemporary scholars, is applied by KUPI, which adheres to a gender-just paradigm.

⁷ Khoirudin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer". dalam: *UNISIA*. vol. xxx. no. 66, December 2007, 329-341.

⁸ David Kloos and Nor Ismah. "Siting Islamic feminism: The Indonesian Congress of Women Islamic Scholars and the challenge of challenging patriarchal authority", *History and Anthropology*, 34:5, (2023), 1-26; and Inayah Rohmaniyah, Samia Kotele, and Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia", *Academic Journal of Interdisciplinary Studies*, vo. 11, no. 2, May 2022, 60-70.

⁹ Nor Ismah⁹, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia*, (Doctoral Dissertation in Leiden University, 2023), especially on pages: 140-142.

The central question guiding this research is how KUPI ulama conceptualize and implement the *Maqāṣid ash-Sharī'ah* concept, given their distinctive paradigm that positions women and men as equal subjects in life. This question comprises three discussions. Initially, the position of MK KUPI methodology within the broader framework of *Maqāṣid ash-Sharī'ah*. Secondly, implementation of *Maqāṣid ash-Sharī'ah* cum-*Mubādalāh* in the 2017 MK KUPI fatwa regarding child marriage. Lastly, application of this methodology into the 2022 MK KUPI fatwa concerning the safeguarding of women from the perils of pregnancy resulting from rape.

Result and Discussion

Methodology and Approach

Fiqh is an understanding of ulama by referring to source texts—the Qur'an and Hadith, to address various life challenges, thereby becoming a source of benefit for humanity, both in this world and the hereafter. In contemporary times, scholars, starting with Ibn Asyur (d. 1973), have considered the use of *Maqāṣid ash-Sharī'ah* as imperative when other methods in *Uṣūl al-Fiqh* (methodology of Islamic Jurisprudence) prove insufficient to respond to the diverse challenges of modern life.¹⁰ According to Tazul Islam, *Maqāṣid ash-Sharī'ah* has developed “from secondary methodology to a basic methodology and finally to a multidisciplinary science” in order “to embrace wider area of ijtihad” in all aspects of modern life.¹¹

The definition of *Maqāṣid ash-Sharī'ah* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Al-Khadimi encapsulates these various definitions by asserting that *Maqāṣid ash-Sharī'ah* encompasses “the main aims and objectives contained in Islamic law, both general and specific objectives, all of which lead to obedience and worship to Allah SWT, as well as to obtain (human) goodness in this world and the hereafter.”¹²

¹⁰ Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, (Mizan: Bandung, 2013), p. 164-168; and Hengki Ferdiansyah, *Pemikirain Hukum Islam Jasser Auda*. (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), 32-41.

¹¹ Tazul Islam, “Expansion of Maqosid Thought Beyon Maqosid al-Shari’ah: Maqosid al-Qur’an as a New Paradigm”, *Hamdard Islamicus*, Vol. 45, No. (4, 2022), 84.

¹² Nur ad-dīn Al-Khādimī, *al-Maqāṣid ash-Sharī'ah: Ta'rīfuhā, Amthilatuhā, Hujjiyyatuhā*, (Riyad: Eshbelia, 2003), vo. 1, 26.

Among the most prominent conceptualizations is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 505 H/1111 AD), who identified five objectives of Islamic law. These include protecting religion (*ḥifẓ ad-dīn*), soul (*an-nafs*), reason (*al-'aql*), property (*al-māl*), and family/offspring (*an-nasl*). Contrary to this closed classification, some scholars, led by Ibn Taymiyah (d. 1328 AD), have proposed a more expansive understanding of *Maqāṣid ash-Sharī'ah*. Contemporary scholars such as Rasyid Rida, Ibn Assyur, Yusuf al-Qaradawi, KH. Ali Yafie, Zaynab al-'Ulwanī, and Hasyim Kamali have extended the scope of *Maqāṣid ash-Sharī'ah* to address themes on socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, protection of nature, and more.¹³

Rasyid Rida (d. 1345 H/1935 AD) proposes socio-political reform and championed the fulfillment of women's rights as themes of *Maqāṣid ash-Sharī'ah*.¹⁴ Ibn Assyur (d. 1393 H/1973 AD) expanded the themes of *Maqāṣid ash-Sharī'ah* by incorporating principles of freedom, equality, and tolerance.¹⁵ Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.¹⁶ Similarly, KH. Ali Yafie proposed the inclusion of *ḥifẓ al-bī'ah* (protection of nature and the environment) as the sixth principle, emphasizing the ecological dimension within the broader objectives of Islamic law.¹⁷ Zaynab al-'Ulwanī took a specific focus, including *sakīnah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid ash-sharī'ah fī al-usrah*).¹⁸

¹³ Kamali, *Membumikan Syariah*, 167-168.

¹⁴ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣid asy-Syarī'ah: Kajian Kritis dan Komprehensif*, (Yogyakarta: IRCISOD, 2020), 174-196.

¹⁵ Muḥammad aṭ-Ṭāhir Ibn 'Ashūr, *Maqāṣid ash-Sharī'ah al-Islāmiyyah*, (Cairo: Dar as-Salam, 2006), specifically, regarding the four values above, you can see them on the pages: 449-63.

¹⁶ Yusuf Al-Qaradāwī, *Madkhal li-Dirasāt ash-Sharī'ah al-Islāmiyyah*, (Cairo: Maktabah Wahbah, 1997), 75.

¹⁷ Alie Yafie, *Merintis Fiqh Lingkungan Hidup*, (Jakarta: Yayasan Amanah, 2006), 223-234.

¹⁸ Zaynab Ṭahā Al-'Ulwanī, *al-Ussrah fī Maqāṣid ash-Sharī'ah: Qirā'ah fī Qaḍāyā az-Zawāj wa aṭ-Ṭalāq fī Amirikā*. (Herndon: IIIT, 2012), 90-97.

This diversity of perspectives highlights the ongoing relevance of *Maqāṣid ash-Sharī'ah* in addressing the evolving needs of societies and individuals, including gender issues.¹⁹ Many scholars have employed the *Maqāṣid ash-Sharī'ah* methodology to explore women's rights in Islam. However, there has been a gap in these discussions, lacking a paradigmatic conceptualization of *Maqāṣid ash-Sharī'ah* that inherently incorporates gender justice.²⁰ This is where the KUPI approach to the *Maqāṣid ash-Sharī'ah* methodology becomes crucial.

The "Musyawarah Keagamaan" (MK) KUPI, held in Cirebon and Jepara, adopts an open and expansive conception of *Maqāṣid ash-Sharī'ah*. However, the distinctive feature of MK KUPI lies in its integration of *Maqāṣid ash-Sharī'ah* with **women's perspectives**, recognizing the authority of their experiences and knowledge. Both men and women are regarded as complete human beings and full subjects of life, acknowledging the paradigmatic importance of their experiences as authoritative knowledge. In practice, women actively contribute to the entire process of formulating religious fatwas of KUPI, ensuring that their experiences are not overlooked and their interests are duly safeguarded.

This unique approach is presented as *Maqāṣid ash-Sharī'ah cum-Mubādalāh*, where *Mubādalāh* signifies exchange, mutuality, and cooperation. In this context, it denotes a perspective that positions men and women as equal subjects of life and complete human beings, both actively contributing to and benefiting from the goodness of life. This inclusive approach ensures that the experiences of women and men are equally considered, preventing their marginalization as either perpetrators or victims of life's challenges. Viewing women and men as complete human beings entails recognizing their multifaceted nature, encompassing physical, psychological, social, and spiritual dimensions. This perspective goes beyond reducing women to mere fulfillers of domestic and sexual roles,

¹⁹ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System of Approach*, London: IIIT, 2007, 1-25; and Wael B. Hallaq, "Maqāṣid and the Challenges of Modernity", *al-Jami'ah: Journal of Islamic Studies*, vol. 49, no. 1 (2011), 1-32.

²⁰ Basma I. Abdelgafar, "Re-envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam" in: R. Naguib (ed.), *Women's Empowerment and Public Policy in the Arab Gulf States*, December 2023, 55-73.

acknowledging their inherent needs and roles in both private and public spheres across various dimensions.²¹

The integration of *Mubādalah* in *Maqāṣid ash-Sharī'ah*, emphasizing the partnership between men and women, employs a dual strategy. First, it emphasizes the equality of men and women as complete human beings, servants of Allah SWT, caliphs of the earth (*khalīfah fi al-arḍ*), and full subjects of life. This approach aligns with contemporary scholars' interpretations of *Maqāṣid ash-Sharī'ah*, addressing principles like *tawhīd*, *istikhlāf*, *qiwāmah*, and *zawjiyyah* in Islamic family law.²²

The second strategy focuses on acknowledging the unique experiences of women, both biologically and socially, that differentiate them from men. This includes biological aspects such as menstruation, pregnancy, childbirth, postpartum, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. A gender-sensitive approach considers and respects these differences in shaping Islamic methodologies and addressing life issues.²³

Both strategies are indispensable components of the conception and validation of the *Maqāṣid ash-Sharī'ah cum-Mubādalah* approach. Through the first strategy, all forms of *Maqāṣid ash-Sharī'ah*, whether closed (*al-kullīyyāt al-khams*) or open form (other general principles), encompass both men and women as equal human beings, servants of Allah, His representatives on earth, and complete subjects of life. Simultaneously, the second strategy regards the distinctive biological and social experiences of women as human experiences integral to all forms of *Maqāṣid ash-Sharī'ah*. Thus, these unique female experiences are deemed a shared responsibility of both men and women, not exclusive to women alone.

The realization of Islamic benefits through *al-kullīyyāt al-khams*, for instance, encompasses the well-being of both men and women as fellow human beings (first strategy). Key indicators include

²¹ Faqihuddin Abdul Kodir, "Qirā'a Mubadala: Reciprocal Reading of Hadith on Marital Relationship", in: Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rumminger and Sarah Marso (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, (London: Oneworld Academic, 2022), 181-209.

²² al-'Ulwanī, *al-Ushrah fi Maqashid asy-Syari'ah*, 74-82.

²³ Nur Rofiah, "Reading the Qur'an Through Women's Experience", 71-72.

acknowledging the unique biological and social experiences of women that are also incorporated into the understanding of benefit (second strategy). Protecting the human soul (*ḥifẓ an-nafs*), for instance, involves safeguarding all individuals, men and women, from death. This is achieved by providing the essential nutrition needed by both genders (first strategy) and ensuring the specific nutritional requirements of pregnant and breastfeeding women (second strategy). Moreover, it involves providing adequate facilities to safeguard women giving birth from unnecessary maternal mortality (second strategy).

Similarly, in various facets of *Maqāṣid ash-Sharī'ah*, the cum-*Mubādalāh* approach is realized by integrating these two strategies. Ensuring and preserving religion (*ḥifẓ ad-dīn*), for instance, involves guaranteeing that both men and women can freely practice worship as servants of Allah SWT. Thus, if men require freedom from certain activities for worship, women have an equal right to the same (first strategy). Within this *ḥifẓ ad-dīn*, there is an emphasis on ensuring that women's religious qualities are not diminished due to their unique reproductive experiences (second strategy). This approach is mirrored in formulating and validating concepts such as protection of reason (*ḥifẓ al-'aql*), family/descendants (*ḥifẓ an-nasl*), honor (*ḥifẓ al-'ird*), assets (*ḥifẓ al-māl*), and environmental conservation (*ḥifẓ al-bī'ah*). The *Maqāṣid ash-Sharī'ah* cum-*Mubādalāh* framework has been established by KUPI as a methodological approach for deliberating religious perspectives on various life issues.

Fatwa on Child Marriage

Traditional fiqh commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.²⁴ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for children.²⁵ *Maqasid ash-Sharī'ah* is also invoked in these discussions,

²⁴ Wahbah az-Zuhailī, *al-Fiqh al-Islāmī wa Adillatuhū*, Damaskus: Dar al-Fikr, vol. 7, 179.

²⁵ Fatum Abu Bakr, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)", *Jurnal Ilmu Syari'ah dan Hukum*, Vol. 4, Nomor 2, 2019, 97-118; and Husain Al-

particularly in consideration of women's rights.²⁶ However, KUPI's distinctive approach in formulating *Maqāṣid ash-Sharī'ah* adds an intriguing dimension to this discourse.

The Musyawarah Keagamaan (MK) KUPI did not make a conclusive decision on the legality of child marriage but focused on the imperative to safeguard children from such unions. In formulating its stance on child marriage, the MK KUPI employed the *Maqāṣid ash-Sharī'ah* approach. This involved outlining the problem (*taṣawwur*), presenting textual evidence (*Adillah*) from the Qur'an, Hadith, and the opinions of scholars (*Aqwāl al-'Ulamā'*), and conducting an analysis (*Istidlāl*) to construct an argument on necessary protection of children from marriage.

Concerning the issue of child marriage, the *taṣawwur* of MK KUPI incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *taṣawwur*, numerous expressions derived from this data are correlated with the themes of *Maqāṣid ash-Syarī'ah*, particularly emphasizing open (general principles) rather than closed ones (*al-kulliyāt al-khams*). Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' frequently emerge as conclusions drawn from qualitative data on child marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqāṣid ash-Syarī'ah* analysis (the close form: *al-kulliyāt al-khams*).

Certain data also includes expressions that can represent the concept of *Mubādalah* in both *taṣawwur* and *istidlāl*. This is evident in various health, educational, and social issues. The first strategy of *Mubādalah*, which centers on shared needs between men and women, such as the need for education and health, has been thoroughly elaborated. Similarly, the second strategy of *Mubādalah* addresses reproductive problems experienced by married girls, their educational challenges, and many other social issues faced by them.

Hakami & Kenneth McLaughlin, "Debatable Marriages: Marriage and Child Marriage in Saudi Arabia", *Marriage and Family Review*, 30 May 2016, 1-11.

²⁶ Muhammad Shofwan Taufiq and M. Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage", *Muhammadiyah Law Review*, Vol 7, No 2 (2023), 1-23; and Edi Kurniawan, Handesman, Rahmadi & Khairun Najib, "Early Marriage, Human Rights, and the Living Fiqh: a Maqasid Al-Shari'a Review", *Al-Risalah*, Vol. 20, No. 1, June 2020, 1-15.

Many of these issues are not encountered by young men who are married.

The textual references (*Adillah*) employed by the MK KUPI also encompass themes that are congruent with the structure of *Maqāṣid ash-Syarī'ah*, as elucidated by contemporary scholars, particularly in the form of general principles of Islamic law (open form). Specifically, the *Adillah* of MK KUPI concerning child marriage comprise 7 Quranic verses, 5 Hadith texts, and 6 statements from scholars (*Aqwal al-Ulama*). These textual references are aligned with themes correlating with the *Maqāṣid ash-Syarī'ah*. These themes encompass the objective of marriage as attaining peace of mind, the prohibition of begetting a weak generation, the directive to become the best people, the proscription against self-condemnation to destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the recommendation to seek knowledge. The Hadith-derived *Adillah* also exhibit themes consistent with *Maqāṣid ash-Syarī'ah*. These include the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Meanwhile, the *Adillah* derived from the perspectives of scholars (*aqwal al-ulama*) encompass the principle of forbidding harm and evil, as well as the five principles of protection (*al-kulliyāt al-khams*).

In the analysis (*Istidlāl*) section, all these themes serve as pivotal concepts for MK KUPI to argue that the practice of child marriage contradicts *Maqāṣid ash-Syarī'ah* and protection of children from early marriage is necessary in the goals of Islamic law. The focus of *istidlāl* lies more on expounding the key concepts derived from *Adillah* themes, which constitute the objectives of Islamic law (*Maqāṣid ash-Syarī'ah*). These objectives are subsequently presented as robust, unequivocal, and compelling arguments affirming Islam's obligation to safeguard children from early marriage.

One of the elucidations provided by MK KUPI regarding *al-kulliyāt al-khamsah* pertains to child marriage is as below:

“The preservation of religion (*ḥifẓ ad-dīn*) entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their

understanding of religion in general and to fulfill the specific marriage goals outlined by religion. Safeguarding the soul (*ḥifẓ an-nafs*) involves shielding children from potential harm or premature death due to their immature reproductive activities associated with early marriage. The protection of reason (*ḥifẓ al-'aql*) encompasses shielding children from the possibility of hindering intellectual development resulting from the interruption of their education. Preserving offspring (*ḥifẓ an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*ḥifẓ al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they must work prematurely to support the family due to their early marriage. Preserving wealth (*ḥifẓ al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage."²⁷

The quote above illustrates how the five principles (*al-kulliyat al-khams*) are explained using an approach of *Maqāṣid ash-Sharī'ah cum-Mubādalāh*. Thus, instead of relying solely on literal texts of Islamic law, MK KUPI grounds its fatwa in the logical framework of *Maqāṣid ash-Syarī'ah* integrated with the perspective of *Mubādalāh*. Within this conceptual framework, the primary contention put forth by MK KUPI is that Islam encourages the protection of children, particularly girls, from the detrimental consequences arising from early marriages.

Fatwa on Protection of Female Rape Victim

The second MK KUPI session in Jepara in 2022 addressed five key issues, with one focusing on "Protection of Women's Lives from the Dangers of Pregnancy Due to Rape." Hence, this specific MK KUPI fatwa can be succinctly referred to as "MK KUPI on Protection." Until now, discussions on Islamic law have predominantly centered around the legal aspects of abortion for women impregnated through rape, with consideration given to the age of the fetus. This discourse frequently highlights variations among classical schools of *fiqh*.²⁸

²⁷ Tim KUPI, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia*, (Jakarta and Cirebon: KUPI), 2017), p. 115.

²⁸ Moh. Manaf Badri and Muhibbin Muhibbin, "Legality of Abortion by Rapes Perspective of Islamic Law, Indonesian Positive Law and Human Rights", *Budapest*

Concerning the rights of female victims of rape in Islamic law, the discussions have primarily focused on the exemption from punishment, given that the victim is considered innocent of unlawful adultery, and financial compensation (*diyah*) for the victim.²⁹ Notably, *Maqāṣid ash-Sharī'ah* has not been extensively employed to explore the protection of pregnant women resulting from rape in the discussions of contemporary *fiqh*.

Differing from conventional discussions on this subject, MK KUPI avoids delving into the legal intricacies of abortion, a common focal point in existing *fiqh* discussions, often involving the determination of the permissible age for abortion. Instead, MK KUPI places a significant emphasis on safeguarding the well-being of pregnant women who have fallen victim to rape. According to MK KUPI, the permissibility of abortion is contingent upon its role in preserving a woman's life, irrespective of the age of her fetus, with the primary objective of genuinely protecting her life. Conversely, if the decision is made to continue the pregnancy for the woman's life, comprehensive support from all stakeholders is deemed imperative. This distinctive fatwa argument is groundbreaking and achieves legitimacy only when firmly rooted in the principles of *Maqāṣid ash-Syarī'ah*.

The title of fatwa, i.e. "Protection of Women's Lives from the Dangers of Pregnancy Due to Rape", inherently encapsulates the nuances of *Maqāṣid ash-Syarī'ah* while incorporating the perspective of *Mubādalāh*. The phrase "protection of the life" is integral to *Maqāṣid ash-Sharī'ah*, specifically one of the five principles (*al-kulliyāt al-khams*), known as *ḥifẓ an-nafs*. Simultaneously, the expression "women exposed to the dangers of pregnancy due to rape" explicitly addresses the distinct experiences of women, a pivotal concept within the perspective of *Mubādalāh*.

In the explanatory section (*taṣawwur*), "MK KUPI on protection" conveys three key aspects aligned with *Maqāṣid ash-Syarī'ah*. These include the adverse effects of rape that everyone should avoid, the imperative to shield humans—especially women—from these

International Research and Critics Institute-Journal, Vol 5, No 3 (2022), 23506-23513; and Firdaus, Firdaus, et al. "Abortion Due to Unwanted Pregnancy: Perspective of Islamic Law and Positive Law." *Al-Qisthu*, vol. 19, no. 2, 2021, 188-201.

²⁹ Azman bin Mohd Noor and Ahmad Basri bin Ibrahim, "The Rights of a Rape Victim in Islamic Law", *IIUM Law Journal*, vol. 16, no. 1 (2008), 65-83.

negative impacts, and, notably, the protection of the lives of women impregnated as a result of rape. The data presented in the MK KUPI *taṣawwur* also correlates with the fundamental concepts of *Maqāṣid ash-Syari'ah*. Similar to MK KUPI's stance on child marriage, this "MK KUPI on protection" unequivocally underscores *Maqāṣid ash-Syari'ah* as a pivotal concept in elucidating the challenges faced by women who are victims of rape.

In the *Adillah* section, "MK KUPI on protection" enumerates themes pertinent to *Maqāṣid ash-Syari'ah*, drawn from the texts of the Qur'an, Hadith, and *Aqwāl al-'Ulamā'*. The Qur'anic verses cover themes such as human dignity, the mission of Islamic mercy, prohibitions against harming individuals, insulting, condemning oneself to destruction, safeguarding the weak, refraining from blaming those coerced, and offering forgiveness for victims of sexual coercion. Hadith texts highlight themes like the prohibition of tyranny, avoidance of harm to others, assistance to the weak, refraining from causing harm to oneself and others, alleviating others' difficulties, refraining from blaming coerced individuals, consistently treating women with kindness, aiding those wronged, and requesting leaders to facilitate matters for the people.

Two of the themes in *Adillah* section explicitly center on women as victims deserving protection, forgiveness, and support. In the analysis (*Istidlāl*) section, these themes are systematically restructured into a comprehensive framework, fortifying several arguments: the inherent injustice of rape, attributing wrongdoing to the perpetrator, and emphasizing that women who have experienced rape are not only innocent but also individuals requiring assistance, support, and companionship. These arguments serve as the groundwork for fostering awareness regarding the crucial importance of attending to women who are victims of rape, specifically addressing their need for protection, particularly in the context of their lives post-rape and the ramifications of pregnancy resulting from such incidents.

"Rape victims facing pregnancy may encounter challenges in practicing *ḥifẓ ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to question Islam's stance. The lives of women who are victims of rape and experience pregnancy are highly susceptible to ongoing stigmatization,

discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *hifz an-nafs*, which emphasizes the protection of human lives in Islamic law.

Moreover, women who are victims of rape and become pregnant often endure prolonged mental and intellectual disorders, face barriers to education, struggle to think clearly and logically for their own well-being, and may harbor thoughts of self-degradation and endangerment. Allowing women who are victims of rape to remain exposed to the dangers of pregnancy thus violates the principle of *hifz al-'aql*, which underscores the protection of the mind in Islamic law.

Furthermore, women who, due to rape, become pregnant and suffer from impaired thinking are likely to face challenges managing their assets, may experience job loss or termination, and encounter difficulties accessing the societal economy. The recovery costs, both physically and psychologically, from the trauma of rape, as well as the expenses associated with maintaining a healthy pregnancy and caring for the child throughout their life, are not inconsequential. Leaving women who are victims of rape exposed to the dangers of pregnancy in such conditions also contradicts the principle of *hifz al-māl*, or property protection in Islamic law.

Worse still are the implications for reproductive organs and family dynamics. Women impregnated through rape may harbor resentment towards themselves and the fetus, entertain thoughts of self-endangerment and neglect their well-being and that of the fetus with insufficient nutrition. This may result in the birth of a vulnerable generation, as cautioned in the Quran (QS. An-Nisa, 4:9), potentially detached from family ties, lacking support, and facing challenges in life. Exposing women to pregnancy dangers in such circumstances also infringes upon the principle of *hifz an-nasl*, which pertains to reproductive and family protection in Islamic law."³⁰

The comprehensive excerpt above illustrates how MK KUPI meticulously elaborated on the concept of *Maqāṣid ash-Syarī'ah*, employing the framework of the five principles (*al-kulliyāt al-khams*) integrated with the perspective of *Mubādalah*. This approach renders the concept particularly relevant to the protection of women's lives in the specific context of pregnancies resulting from rape.

³⁰ Tim Perumus MK KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) ke-2*. (Jakarta: KUPI, 2023), pp. 188-189.

Conclusions

In conclusion, MK KUPI asserts that *Maqāṣid ash-Syarī'ah* should be conceptualized and practiced within the framework that views men and women as complete human beings and full subjects of life. This perspective is termed "*Maqāṣid ash-Syarī'ah cum-Mubādalah*." This methodology employs two strategies: first, recognizing the commonalities in the needs and benefits of both men and women, and second, acknowledging the differences between them. This ensures that the unique biological and social needs of women are considered essential humanitarian needs within the conception of *Maqāṣid ash-Syarī'ah*. Themes of *Maqāṣid ash-Syarī'ah cum-Mubādalah* are evident from the problem description section (*taṣawwur*) of MK KUPI on child marriage and pregnancy due to rape. These themes continue to emerge from the textual references (*adillah*), especially during the analysis and synthesis phase (*istidlāl*). All these themes are intricately combined to construct main arguments. However, this paper discussed only two out of the eight MK KUPI. Exploring the remaining six could potentially yield different nuances in relation to *Maqāṣid ash-Sharī'ah*. Additionally, it is noteworthy that within the scope of MK KUPI's discussions, there hasn't been a singular issue exclusive to men. Given the *Mubādalah* principle's acknowledgment of both men and women as comprehensive and interdependent subjects, exploring its methodology in addressing issues specific to men could lead to distinctive insights and conclusions, warranting further study and discussion.

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Feedbacks:

Introductory Part Suggestions:

It is imperative to delve into the contextual landscape of fatwa methodology in Indonesia, specifically examining how other fatwa institutions within the country position maqashid sharia in their fatwa production. This contextual analysis is crucial for discerning similarities and differences in the application of maqashid sharia in the formulation of fatwas.

I have inserted your suggestion in the last paragraph of the introduction. Thanks for the suggestion.

Inclusion of an Additional Question:

To enhance the depth of the exploration, it is essential to introduce another question: What are the implications of the concept and its implementation for the practice of issuing fatwas within the context of the fatwa discourse in Indonesia and, more broadly, in Muslim society? This additional query will shed light on the significance of employing the mubadalah method in the production of fatwas related to issues such as child marriage and the protection of female rape victims.

I have added the above question in the Method and its answer in the conclusion.

Discussion on the Validity of Women's Perspective in Fatwa Production:

A critical examination is warranted concerning the validity of women's perspectives within the fatwa production process. How can the theoretical validity of women's viewpoints be established in the realm of knowledge production?

This suggestion seems to require many paragraphs to explain. However, I have tried to re-edit several paragraphs to fulfill this suggestion, especially the paragraph that you put yellow color on.

Discussion:

Following the conclusion of the methodology and approach section, a transitional paragraph is necessary to pave the way for the upcoming discussion. This bridging paragraph will provide insight into the next section, which will focus on the application of the mubadalah perspective. This analytical lens will be specifically applied to two critical issues: child marriage and the protection of female rape victims. Within this section, it is also pertinent to articulate specific questions and outline the contents of the fatwas to provide a comprehensive understanding.

I have written for this suggestion one paragraph in last discussion of methodology and approach.

Maqāṣid ash-Sharī'ah Cum-Mubādalalah:
Methodology of Religious Deliberation by the Indonesian Women's Ulama Congress (KUPI) in Formulating Gender-Equitable Fiqh

Article history: Received:

Abstract:

The fatwas, or religious opinions, issued through the Religious Deliberation (*Musyawarah Keagamaan*) conducted by the Indonesian Women's Ulama Congress (KUPI) stand out due to their unique engagement of women as active participants in both the methodology and the entire process. This paper explores the methodology employed by KUPI to develop gender-equitable fiqh. KUPI's approach integrates *Maqāṣid ash-Sharī'ah*, the objectives of Islamic law, with a perspective emphasizing the equality and cooperation between men and women. Referred to as *Maqāṣid ash-sharī'ah cum-Mubādalalah*, this methodology positions men and women as complete subjects, mutually contributing to the formulation of Islamic legal principles. This paper delves into specific cases addressed by KUPI, focusing on issues unique to women, such as child marriage and the protection of women's lives from the risks of pregnancy due to rape. It evaluates how KUPI grounds its decisions not solely in the literal texts of Islamic law but within the logical framework of *Maqāṣid ash-Sharī'ah cum-Mubādalalah*. KUPI's *ijtihad* (intellectual exercise) employing the *Maqāṣid ash-Sharī'ah cum-Mubādalalah* methodology is notably relevant as an endeavor to foster gender-equitable contemporary fiqh—an objective championed by numerous global ulama and intellectuals, including those in Indonesia. The analysis reflects on the implications of KUPI's approach, providing insights into the evolving landscape of Islamic jurisprudence guided by gender-inclusive perspectives.

Keywords:

Maqāṣid ash-Sharī'ah, Mubādalalah, Fiqh, Gender, and KUPI.

Introduction

Fiqh, encompassing classical and contemporary Islamic laws and opinions, represents scholars' endeavor to address real-life issues by referring to foundational texts—the Qur'an and Hadith. While

these source texts remain unchanged, the interpretation of their content undoubtedly evolves, resulting in the continuous development of *fiqh*. Consequently, the methodology for interpreting these texts must also evolve to authentically respond to the dynamic realities of life. As these evolving issues invariably involve women, the formulation of a *fiqh* methodology must ensure their active participation and guarantee that they genuinely benefit from its outcomes.¹

The neutral nature of *fiqh* methodology, spanning *Qiyās*, *Istiḥsān*, *Istiṣlāh*, and *Maqāṣid ash-Sharī'ah*, implies its foundation in exploring human benefits, encompassing both men and women, embedded in the texts shaping *fiqh* or Islamic laws and opinions. Nonetheless, this neutrality can inadvertently result in outcomes that disregard the benefits of women or prioritize those of men. Fatwas regarding women and life issues often hinge on logic that prioritizes men's convenience over women's needs. For instance, a fatwa on women working may be deemed *ḥarām* if it is assumed to lead to slander, *makrūh* if it might cause slander, and *mubāḥ* if it is perceived as unlikely to cause slander. This logic primarily gauges the impact on men without adequately considering women's necessity for such work.²

In classical *fiqh*, marriage is often defined from a perspective that primarily addresses men's needs, neglecting those of women. For instance, in *Al-Fiqh 'alā Madhāhib al-Arba'ah*, marriage is defined as "established by the Shari'a so that men can benefit by lawfully enjoying the woman's genitals and her entire body."³ However, contemporary scholars have revised this definition to emphasize

¹ For the development of *fiqh* on women's issues may refer to: Syafiqh Hasyim, *Understanding Women in Islam: An Indonesian Perspective*, (Jakarta: ICIP, 2006). There are chapters on historical development of *fiqh*, patriarchal tendencies of *fiqh*, and alternative opinions on *fiqh* regarding women's issues.

² Nur Rofiah, "Reading the Qur'an Through Women's Experience", in: Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rumminger and Sarah Marso (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, (London: Oneworld Academic, 2022), 82; and Khalid Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, (Oxford: Oneworld Publications, 2003).

³ 'Abd ar-Raḥmān Al-Jazīrī, *Al-Fiqh 'alā Madzāhib al-Arba'ah*, (Beirut: Dar al-Kutub al-'Ilmiyah, 2004), vol. 4, 8-9.

equality between men and women as partners in marriage, stressing that both should derive benefits from the union.⁴

The redefinition of marriage is pivotal in Islamic family law reform efforts worldwide, aiming to prevent injustices towards women and children and ensure their benefits—a fundamental objective of Islamic law. Reforms encompass setting minimum marriage age limits, improving women's access to divorce, limiting men's polygamous rights, mandating marriage and divorce registrations, and establishing specialized courts for marriage disputes. Countries like Indonesia have engaged theologians and intellectuals to advocate for women's primary benefit in family law.⁵

Continuing these endeavors, it's crucial to highlight the contributions of the Indonesian Women's Ulama Congress (KUPI). KUPI, held twice, first in 2017 at Pesantren Kebon Jambu al-Islami Babakan Ciwaringin Cirebon, and second in 2022 at Pesantren Hasyim Asy'ari Bangsri Jepara, features a core activity called the religious deliberation (*Musyawarah Keagamaan*) to discuss and decide KUPI's religious opinions. The 2017 congress addressed three critical issues: sexual violence, child marriage, and environmental destruction. Meanwhile, the 2022 Congress discussed five issues: women and religious radicalism, waste management, forced marriage, abortion of rape victims, and female genital mutilation without medical reasons.⁶

As current efforts to reform Islamic law for the advancement of women's rights remain partial, atomistic, eclectic, and lack focus on fundamental issues, it is imperative to persist in these endeavors, particularly at a more comprehensive methodological level. In this regard, the KUPI fatwa process through *Musyawarah Keagamaan* (MK) stands out for its uniqueness. The MK KUPI involves community-level stages, is collective, integrates women's experiences,

⁴ For example, Sheikh Abu Zahrah includes sexual benefits in the definition of marriage for both parties, the man and the woman. Abū Zahrah, *al-Aḥwāl ash-Shakhṣiyyah*, (Cairo: Dar al-Fikr al-'Arabi, . 1957), 17-18.

⁵ Khoiruddin Nasution, "Women's Rights in the Islamic Family Law of Indonesia", *Jurnal Hukum*, No. 28, vol. 12, Januari 2005, 147-159.

⁶ Umma Farida and Abdurrahman Kasdi. "The 2017 KUPI congress and Indonesian female ulama." *Journal of Indonesian Islam*, 12(2), 2018, 135-158.

and catalyzes social, cultural, and spiritual movements.⁷ Given that current endeavors to reform Islamic law for the advancement of women's rights are still partial, atomistic, eclectic, and lack a focus on the fundamental issues, it is imperative to persist in these efforts. This persistence is especially crucial at a more comprehensive methodological level.⁸

Furthermore, when global fatwa institutions address contemporary issues like the SDGs, where gender equality is crucial, *Maqāṣid ash-sharī'ah* becomes vital in their methodology, ensuring logical and relevant fatwa formulations.⁹ In Indonesia, *Maqāṣid ash-sharī'ah* elements are integrated into the benefit maximization principles (*maṣlahah*) of fatwa methodologies of Nahdlatul Ulama, Muhammadiyah, and particularly Majelis Ulama Indonesia (MUI).¹⁰ These elements are extensively used in MUI fatwas regarding Shariah economics and COVID-19 but not explored in women's issues, making MUI fatwas patriarchal.¹¹ Here, the relevance and importance of the *Maqāṣid ash-sharī'ah* methodology introduced by MK KUPI for examination are underscored, particularly with the full participation of female ulama throughout its fatwa-making process—a significant

⁷ David Kloos and Nor Ismah. "Siting Islamic feminism: The Indonesian Congress of Women Islamic Scholars and the challenge of challenging patriarchal authority", *History and Anthropology*, 34:5, (2023), 1-26; and Inayah Rohmaniyah, Samia Kotele, and Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia", *Academic Journal of Interdisciplinary Studies*, vo. 11, no. 2, May 2022, 60-70.

⁸ Khoirudin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer". dalam: *UNISIA*. vol. xxx. no. 66, December 2007, 329-341.

⁹ Ainul Isman and Ummu Kaltsum. "The Relevance Of Sustainable Development Goals (SDGs) in Maqāṣid al-Sharī'ah Dimensions." *Journal of Islamic Economics Management and Business (JIEMB)* [Online], 4.2 (2022): 125-136. Web. 2 Mar. 2024; and Tim Research Center, *Islam Membincang SDGs: Membumikan Kesadaran Ekologis di Tengah Kontur Masyarakat Muslim*, (Cairo: PCINU Mesir, 2023).

¹⁰ Muhammad Sholihin and Fuad Zein. "Maslahah Reasoning behind Fatwa of the Indonesian Ulema Council: Between Ijtihad's Method and Pragmatism". *Ijtihad*. Vol. 36, No. 2 (2020), 1-10.

¹¹ Nurhayati and Muhammad Syukri Albani Nasution. "Maqāṣid al-Sharī'a in the Fatwa of the Indonesian Ulama Council Regarding Congregational Worship During the COVID-19 Pandemic". *Asy-Syir'ah*. Vol. 54, No. 2, (2020), 251-275; and Anthin Lathifa. "Perempuan dalam Fatwa Ulama di Indonesia: Karakteristik Hukum dan Perspektif Feminis Muslim". *Laporan Penelitian*. (Semarang: LP2M UIN Walisongo, 2019).

aspect lacking in other fatwa organizations in Indonesia and the world.

Method

This paper employs library research and adopts descriptive and qualitative methods to unveil and elucidate the steps undertaken by the *Musyawarah Keagamaan* (MK) KUPI in integrating women's perspectives into the methodology, process, and outcomes of its fatwas. The primary data comprises the fatwa results from KUPI's two congresses, namely Cirebon in 2017 and Jepara in 2022. In Cirebon, it yielded three fatwas, while in Jepara, it produced five fatwas. This dataset underwent thorough reading and analysis to discern how the concept of *Maqāṣid ash-Sharī'ah*, established and evolved by classical and contemporary scholars, is applied by KUPI, which adheres to a gender-just paradigm.

This study investigates how KUPI ulama perceive and apply the *Maqāṣid ash-sharī'ah* concept, viewing women and men as equal entities in societal dynamics. Three discussions are outlined: the position of MK KUPI methodology within *Maqāṣid ash-sharī'ah*, the implementation of *Maqāṣid ash-sharī'ah cum-Mubādalāh* in the 2017 MK KUPI fatwa on child marriage, and its application in the 2022 MK KUPI fatwa on safeguarding women from pregnancy resulting from rape. Then, this study aims also to explore the implications of MK KUPI's methodology and application on fatwa issuance within Indonesian discourse and broader Muslim societies in the world.

Result and Discussion

Methodology and Approach

Fiqh is an understanding of ulama by referring to source texts—the Qur'an and Hadith, to address various life challenges, thereby becoming a source of benefit for humanity, both in this world and the hereafter. In contemporary times, scholars, starting with Ibn Asyur (d. 1973), have considered the use of *Maqāṣid ash-Sharī'ah* as imperative when other methods in *Uṣūl al-Fiqh* (methodology of Islamic Jurisprudence) prove insufficient to respond to the diverse

challenges of modern life.¹² According to Tazul Islam, *Maqāṣid ash-Sharī'ah* has developed "from secondary methodology to a basic methodology and finally to a multidisciplinary science" in order "to embrace wider area of *ijtihad*" in all aspects of modern life.¹³

The definition of *Maqāṣid ash-Sharī'ah* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Al-Khadimi encapsulates these various definitions by asserting that *Maqāṣid ash-Sharī'ah* encompasses "the main aims and objectives contained in Islamic law, both general and specific objectives, all of which lead to obedience and worship to Allah SWT, as well as to obtain (human) goodness in this world and the hereafter."¹⁴

Among the most prominent conceptualizations is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 505 H/1111 AD), who identified five objectives of Islamic law. These include protecting religion (*ḥifẓ ad-dīn*), soul (*an-nafs*), reason (*al-'aql*), property (*al-māl*), and family/offspring (*an-nasl*). Contrary to this closed classification, some scholars, led by Ibn Taymiyah (d. 1328 AD), have proposed a more expansive understanding of *Maqāṣid ash-Sharī'ah*. Contemporary scholars such as Rasyid Rida, Ibn Assyur, Yusuf al-Qaradawi, KH. Ali Yafie, Zaynab al-'Ulwani, and Hashim Kamali have extended the scope of *Maqāṣid ash-Sharī'ah* to address themes on socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, protection of nature, and more.¹⁵

Rashid Rida (d. 1345 H/1935 AD) proposes socio-political reform and championed the fulfillment of women's rights as themes of *Maqāṣid ash-Sharī'ah*.¹⁶ Ibn Assyur (d. 1393 H/1973 AD) expanded the themes of *Maqāṣid ash-Sharī'ah* by incorporating principles of

¹² Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, (Mizan: Bandung, 2013), p. 164-168; and Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda*. (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), 32-41.

¹³ Tazul Islam, "Expansion of Maqosid Thought Beyon Maqosid al-Shari'ah: Maqosid al-Qur'an as a New Paradigm", *Hamdard Islamicus*, Vol. 45, No. (4, 2022), 84.

¹⁴ Nur ad-dīn Al-Khādimī, *al-Maqāṣid ash-Sharī'ah: Ta'rīfuhā, Amthilatuhā, Ḥujjiyyatuhā*, (Riyad: Eshbelia, 2003), vo. 1, 26.

¹⁵ Kamali, *Membumikan Syariah*, 167-168.

¹⁶ Zaprul Khan, *Rekonstruksi Paradigma Maqāshid asy-Syarī'ah: Kajian Kritis dan Komprehensif*, (Yogyakarta: IRCISOD, 2020), 174-196.

freedom, equality, and tolerance.¹⁷ Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.¹⁸ Similarly, KH. Ali Yafie proposed the inclusion of *ḥifẓ al-bī'ah* (protection of nature and the environment) as the sixth principle, emphasizing the ecological dimension within the broader objectives of Islamic law.¹⁹ Zaynab al-'Ulwani took a specific focus, including *sakīnah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid ash-sharī'ah fi al-usrah*).²⁰

This diversity of perspectives highlights the ongoing relevance of *Maqāṣid ash-Sharī'ah* in addressing the evolving needs of societies and individuals, including gender issues.²¹ Many scholars have employed the *Maqāṣid ash-Sharī'ah* methodology to explore women's rights in Islam.²² However, there has been a gap in these discussions, lacking a paradigmatic conceptualization of *Maqāṣid ash-Sharī'ah* that inherently incorporates gender justice and a process its implementation in making fatwa that engages fully female scholars.²³ Here lies the uniqueness, novelty, and significance of the KUPI approach to the *Maqāṣid ash-Sharī'ah* methodology.

The *Musyawarah Keagamaan* (MK) KUPI, conducted in Cirebon (2017) and Jepara (2022), embraced the *Maqāṣid ash-sharī'ah*

¹⁷ Muḥammad aṭ-Ṭāhir Ibn 'Ashūr, *Maqāṣid ash-Sharī'ah al-Islāmiyyah*, (Cairo: Dar as-Salam, 2006), specifically, regarding the four values above, you can see them on the pages: 449-63.

¹⁸ Yusuf Al-Qaradāwī, *Madkhal li-Dirasāt ash-Sharī'ah al-Islāmiyyah*, (Cairo: Maktabah Wahbah, 1997), 75.

¹⁹ Alie Yafie, *Merintis Fiqh Lingkungan Hidup*, (Jakarta: Yayasan Amanah, 2006), 223-234.

²⁰ Zaynab Ṭahā Al-'Ulwani, *al-Ussrah fi Maqāṣid ash-Sharī'ah: Qirā'ah fī Qaḍāyā az-Zawāj wa aṭ-Ṭalāq fi Amirikā*. (Herndon: IIIT, 2012), 90-97.

²¹ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System of Approach*, London: IIIT, 2007, 1-25; and Wael B. Hallaq, "Maqāṣid and the Challenges of Modernity", *al-Jami'ah: Journal of Islamic Studies*, vol. 49, no. 1 (2011), 1-32.

²² Adis Duderija. "Maqāṣid al-Sharī'a, Gender Non-patriarchal Qur'ān-Sunna Hermeneutics, and the Reformation of Muslim Family Law". In: *Maqāṣid al-Sharī'a and Contemporary Reformist Muslim Thought*. Edited by Aids Duderija. (New York: Palgrave Macmillan, 2014), pp. 193-218.

²³ Basma I. Abdelgafar, "Re-envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam" in: R. Naguib (ed.), *Women's Empowerment and Public Policy in the Arab Gulf States*, December 2023, 55-73.

methodology, yet its distinctiveness lies in its incorporation of *Maqāṣid ash-Sharī'ah* with women's perspectives and experiences, recognizing the authority of their knowledge and experiences. It is essential to acknowledge the significance of women's perspectives and experiences, including those of biologically and socially marginalized women, and to validate their viewpoints.²⁴ In Nor Ismah's research, the validation of women's perspectives and experiences in the MK KUPI is evident through the involvement of female ulama in all fatwa processes, the acknowledgment of women's experiences as a source of knowledge, and the fatwa results promoting gender justice. Ethnographically, the MK KUPI fatwa process transcends mere "doctrinal reform" and "ethical practice" between the fatwa requester and giver; it also serves as "a safe space and empowerment" for women, particularly notable when women issue fatwas.²⁵

In the MK KUPI perspective, men and women are seen as complete individuals and full participants in life, valuing their experiences as authoritative knowledge. Women actively contribute to formulating religious fatwas, ensuring their experiences are recognized and their interests protected. This unique approach, known as *Maqāṣid ash-sharī'ah cum-Mubādalah*, emphasizes cooperation and mutual exchange, positioning both genders as equal participants in life. It ensures equal consideration of men's and women's experiences, preventing their marginalization in life's challenges. Recognizing men and women as complete individuals involves acknowledging their diverse dimensions—physical, psychological, social, and spiritual—beyond traditional gender roles.²⁶

This *Maqāṣid ash-sharī'ah cum-Mubādalah* employs a dual strategy. First, it emphasizes the equality of men and women as complete human beings, servants of Allah SWT, caliphs of the earth

²⁴ Majella Frazmann. *Women and Religion*. (New York and Oxford: Oxford University Press, 2000), 1-35.

²⁵ Nor Ismah, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia*, (Doctoral Dissertation in Leiden University, 2023), especially on pages: 23-32 and 140-142.

²⁶ Faqihuddin Abdul Kodir, "Qirā'a Mubadala: Reciprocal Reading of Hadith on Marital Relationship", in: Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rumminger and Sarah Marso (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, (London: Oneworld Academic, 2022), 181-209.

(*khalifah fi al-ard*), and full subjects of life. This approach aligns with contemporary scholars' interpretations of *Maqāṣid ash-Sharī'ah*, addressing principles like *tawhīd*, *istikhlāf*, *qiwāmah*, and *zawjiyyah* in Islamic family law.²⁷ The second strategy focuses on acknowledging the unique experiences of women, both biologically and socially, that differentiate them from men. This includes biological aspects such as menstruation, pregnancy, childbirth, postpartum, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. A gender-sensitive approach considers and respects these differences in shaping Islamic methodologies and addressing life issues.²⁸

Both strategies are indispensable components of the conception and validation of the *Maqāṣid ash-Sharī'ah cum-Mubādalāh* approach. Through the first strategy, all forms of *Maqāṣid ash-Sharī'ah*, whether closed (*al-kullīyyāt al-khams*) or open form (other general principles), encompass both men and women as equal human beings, servants of Allah, His representatives on earth, and complete subjects of life. Simultaneously, the second strategy regards the distinctive biological and social experiences of women as human experiences integral to all forms of *Maqāṣid ash-Sharī'ah*. Thus, these unique female experiences are deemed a shared responsibility of both men and women, not exclusive to women alone.

The realization of Islamic benefits through *al-kullīyyāt al-khams*, for instance, encompasses the well-being of both men and women as fellow human beings (first strategy). Key indicators include acknowledging the unique biological and social experiences of women that are also incorporated into the understanding of benefit (second strategy). Protecting the human soul (*ḥifẓ an-nafs*), for instance, involves safeguarding all individuals, men and women, from death. This is achieved by providing the essential nutrition needed by both genders (first strategy) and ensuring the specific nutritional requirements of pregnant and breastfeeding women (second strategy). Moreover, it involves providing adequate facilities to safeguard women giving birth from unnecessary maternal mortality (second strategy).

²⁷ al-'Ulwanī, *al-Ussrah fi Maqashid asy-Syari'ah*, 74-82.

²⁸ Nur Rofiah, "Reading the Qur'an Through Women's Experience", 71-72.

Similarly, in various facets of *Maqāṣid ash-Sharī'ah*, the cum-*Mubādalāh* approach is realized by integrating these two strategies. Ensuring and preserving religion (*ḥifẓ ad-dīn*), for instance, involves guaranteeing that both men and women can freely practice worship as servants of Allah SWT. Thus, if men require freedom from certain activities for worship, women have an equal right to the same (first strategy). Within this *ḥifẓ ad-dīn*, there is an emphasis on ensuring that women's religious qualities are not diminished due to their unique reproductive experiences (second strategy). This approach is mirrored in formulating and validating concepts such as protection of reason (*ḥifẓ al-'aql*), family/descendants (*ḥifẓ an-nasl*), honor (*ḥifẓ al-'ird*), assets (*ḥifẓ al-māl*), and environmental conservation (*ḥifẓ al-bī'ah*).

The KUPI has established the aforementioned *Maqāṣid ash-Sharī'ah cum-Mubādalāh* framework as a methodological approach for deliberating religious perspectives on various life issues in eight fatwas, three delivered in 2017 and five in 2022. This study focuses on the implementation of *Maqāṣid ash-Sharī'ah cum-Mubādalāh* in only two fatwas of MK KUPI concerning child marriage (2017) and pregnant rape victims (2022). Specifically, this research aims to address the following questions: What innovations did MK KUPI introduce with this methodology concerning basic legal analysis, particularly regarding *Maqāṣid ash-Sharī'ah*, the logic of argumentation, and the formulation of fatwa results on these two issues?

Fatwa on Child Marriage

Traditional fiqh commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.²⁹ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for children.³⁰ *Maqāṣid ash-Sharī'ah* is also invoked in these discussions,

²⁹ Wahbah az-Zuhailī, *al-Fiqh al-Islāmī wa Adillatuhū*, Damaskus: Dar al-Fikr, vol. 7, 179.

³⁰ Fatum Abu Bakr, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)", *Jurnal Ilmu Syari'ah dan Hukum*, Vol. 4, Nomor 2, 2019, 97-118; and Husain Al-

particularly in consideration of women's rights.³¹ However, KUPI's distinctive approach in formulating *Maqāṣid ash-Sharī'ah* adds an intriguing dimension to this discourse.

The Musyawarah Keagamaan (MK) KUPI did not make a conclusive decision on the legality of child marriage but focused on the imperative to safeguard children from such unions. In formulating its stance on child marriage, the MK KUPI employed the *Maqāṣid ash-Sharī'ah* approach. This involved outlining the problem (*taṣawwur*), presenting textual evidence (*Adillah*) from the Qur'an, Hadith, and the opinions of scholars (*Aqwāl al-'Ulamā'*), and conducting an analysis (*Istidlāl*) to construct an argument on necessary protection of children from marriage.

Concerning the issue of child marriage, the *taṣawwur* of MK KUPI incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *taṣawwur*, numerous expressions derived from this data are correlated with the themes of *Maqāṣid ash-sharī'ah*, particularly emphasizing open (general principles) rather than closed ones (*al-kulliyāt al-khams*). Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' frequently emerge as conclusions drawn from qualitative data on child marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqāṣid ash-sharī'ah* analysis (the close form: *al-kulliyāt al-khams*).

Certain data also includes expressions that can represent the concept of *Mubādalah* in both *taṣawwur* and *istidlāl*. This is evident in various health, educational, and social issues. The first strategy of *Mubādalah*, which centers on shared needs between men and women, such as the need for education and health, has been thoroughly elaborated. Similarly, the second strategy of *Mubādalah* addresses reproductive problems experienced by married girls, their educational challenges, and many other social issues faced by them.

Hakami & Kenneth McLaughlin, "Debatable Marriages: Marriage and Child Marriage in Saudi Arabia", *Marriage and Family Review*, 30 May 2016, 1-11.

³¹ Muhammad Shofwan Taufiq and M. Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage", *Muhammadiyah Law Review*, Vol 7, No 2 (2023), 1-23; and Edi Kurniawan, Handesman, Rahmadi & Khairun Najib, "Early Marriage, Human Rights, and the Living Fiqh: a Maqasid Al-Shari'a Review", *Al-Risalah*, Vol. 20, No. 1, June 2020, 1-15.

Many of these issues are not encountered by young men who are married.

The textual references (*Adillah*) employed by the MK KUPI also encompass themes that are congruent with the structure of *Maqāṣid ash-sharī'ah*, as elucidated by contemporary scholars, particularly in the form of general principles of Islamic law (open form). Specifically, the *Adillah* of MK KUPI concerning child marriage comprise 7 Quranic verses, 5 Hadith texts, and 6 statements from scholars (*Aqwal al-Ulama*). These textual references are aligned with themes correlating with the *Maqāṣid ash-sharī'ah*. These themes encompass the objective of marriage as attaining peace of mind, the prohibition of begetting a weak generation, the directive to become the best people, the proscription against self-condemnation to destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the recommendation to seek knowledge. The Hadith-derived *Adillah* also exhibit themes consistent with *Maqāṣid ash-sharī'ah*. These include the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Meanwhile, the *Adillah* derived from the perspectives of scholars (*aqwal al-ulama*) encompass the principle of forbidding harm and evil, as well as the five principles of protection (*al-kulliyāt al-khams*).

In the analysis (*Istidlāl*) section, all these themes serve as pivotal concepts for MK KUPI to argue that the practice of child marriage contradicts *Maqāṣid ash-sharī'ah* and protection of children from early marriage is necessary in the goals of Islamic law. The focus of *istidlāl* lies more on expounding the key concepts derived from *Adillah* themes, which constitute the objectives of Islamic law (*Maqāṣid ash-sharī'ah*). These objectives are subsequently presented as robust, unequivocal, and compelling arguments affirming Islam's obligation to safeguard children from early marriage.

One of the elucidations provided by MK KUPI regarding *al-kulliyāt al-khamsah* pertains to child marriage is as below:

“The preservation of religion (*ḥifẓ ad-dīn*) entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their

understanding of religion in general and to fulfill the specific marriage goals outlined by religion. Safeguarding the soul (*ḥifẓ an-nafs*) involves shielding children from potential harm or premature death due to their immature reproductive activities associated with early marriage. The protection of reason (*ḥifẓ al-'aql*) encompasses shielding children from the possibility of hindering intellectual development resulting from the interruption of their education. Preserving offspring (*ḥifẓ an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*ḥifẓ al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they must work prematurely to support the family due to their early marriage. Preserving wealth (*ḥifẓ al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage.”³²

The quote above illustrates how the five principles (*al-kulliyat al-khams*) are explained using an approach of *Maqāṣid ash-Sharī'ah cum-Mubādalah*. Thus, instead of relying solely on literal texts of Islamic law, MK KUPI grounds its fatwa in the logical framework of *Maqāṣid ash-sharī'ah* integrated with the perspective of *Mubādalah*. Within this conceptual framework, the primary contention put forth by MK KUPI is that Islam encourages the protection of children, particularly girls, from the detrimental consequences arising from early marriages.

Fatwa on Protection of Female Rape Victim

The second MK KUPI session in Jepara in 2022 addressed five key issues, with one focusing on "Protection of Women's Lives from the Dangers of Pregnancy Due to Rape." Hence, this specific MK KUPI fatwa can be succinctly referred to as "MK KUPI on Protection." Until now, discussions on Islamic law have predominantly centered around the legal aspects of abortion for women impregnated through rape, with consideration given to the age of the fetus. This discourse frequently highlights variations among classical schools of *fiqh*.³³

³² Tim KUPI, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia*, (Jakarta and Cirebon: KUPI), 2017), p. 115.

³³ Moh. Manaf Badri and Muhibbin Muhibbin, "Legality of Abortion by Rapes Perspective of Islamic Law, Indonesian Positive Law and Human Rights", *Budapest*

Concerning the rights of female victims of rape in Islamic law, the discussions have primarily focused on the exemption from punishment, given that the victim is considered innocent of unlawful adultery, and financial compensation (*diyah*) for the victim.³⁴ Notably, *Maqāṣid ash-Sharī'ah* has not been extensively employed to explore the protection of pregnant women resulting from rape in the discussions of contemporary *fiqh*.

Differing from conventional discussions on this subject, MK KUPI avoids delving into the legal intricacies of abortion, a common focal point in existing *fiqh* discussions, often involving the determination of the permissible age for abortion. Instead, MK KUPI places a significant emphasis on safeguarding the well-being of pregnant women who have fallen victim to rape. According to MK KUPI, the permissibility of abortion is contingent upon its role in preserving a woman's life, irrespective of the age of her fetus, with the primary objective of genuinely protecting her life. Conversely, if the decision is made to continue the pregnancy for the woman's life, comprehensive support from all stakeholders is deemed imperative. This distinctive fatwa argument is groundbreaking and achieves legitimacy only when firmly rooted in the principles of *Maqāṣid ash-Sharī'ah*.

The title of fatwa, i.e. "Protection of Women's Lives from the Dangers of Pregnancy Due to Rape", inherently encapsulates the nuances of *Maqāṣid ash-sharī'ah* while incorporating the perspective of *Mubādalāh*. The phrase "protection of the life" is integral to *Maqāṣid ash-Sharī'ah*, specifically one of the five principles (*al-kulliyāt al-khams*), known as *ḥifẓ an-nafs*. Simultaneously, the expression "women exposed to the dangers of pregnancy due to rape" explicitly addresses the distinct experiences of women, a pivotal concept within the perspective of *Mubādalāh*.

In the explanatory section (*taṣawwur*), "MK KUPI on protection" conveys three key aspects aligned with *Maqāṣid ash-sharī'ah*. These include the adverse effects of rape that everyone should avoid, the imperative to shield humans—especially women—from these

International Research and Critics Institute-Journal, Vol 5, No 3 (2022), 23506-23513; and Firdaus, Firdaus, et al. "Abortion Due to Unwanted Pregnancy: Perspective of Islamic Law and Positive Law." *Al-Qisthu*, vol. 19, no. 2, 2021, 188-201.

³⁴ Azman bin Mohd Noor and Ahmad Basri bin Ibrahim, "The Rights of a Rape Victim in Islamic Law", *IIUM Law Journal*, vol. 16, no. 1 (2008), 65-83.

negative impacts, and, notably, the protection of the lives of women impregnated as a result of rape. The data presented in the MK KUPI *taṣawwur* also correlates with the fundamental concepts of *Maqāṣid ash-sharī'ah*. Similar to MK KUPI's stance on child marriage, this "MK KUPI on protection" unequivocally underscores *Maqāṣid ash-sharī'ah* as a pivotal concept in elucidating the challenges faced by women who are victims of rape.

In the *Adillah* section, "MK KUPI on protection" enumerates themes pertinent to *Maqāṣid ash-sharī'ah*, drawn from the texts of the Qur'an, Hadith, and *Aqwāl al-'Ulamā'*. The Qur'anic verses cover themes such as human dignity, the mission of Islamic mercy, prohibitions against harming individuals, insulting, condemning oneself to destruction, safeguarding the weak, refraining from blaming those coerced, and offering forgiveness for victims of sexual coercion. Hadith texts highlight themes like the prohibition of tyranny, avoidance of harm to others, assistance to the weak, refraining from causing harm to oneself and others, alleviating others' difficulties, refraining from blaming coerced individuals, consistently treating women with kindness, aiding those wronged, and requesting leaders to facilitate matters for the people.

Two of the themes in *Adillah* section explicitly center on women as victims deserving protection, forgiveness, and support. In the analysis (*Istidlāl*) section, these themes are systematically restructured into a comprehensive framework, fortifying several arguments: the inherent injustice of rape, attributing wrongdoing to the perpetrator, and emphasizing that women who have experienced rape are not only innocent but also individuals requiring assistance, support, and companionship. These arguments serve as the groundwork for fostering awareness regarding the crucial importance of attending to women who are victims of rape, specifically addressing their need for protection, particularly in the context of their lives post-rape and the ramifications of pregnancy resulting from such incidents.

"Rape victims facing pregnancy may encounter challenges in practicing *ḥifẓ ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to question Islam's stance. The lives of women who are victims of rape and experience pregnancy are highly susceptible to ongoing stigmatization,

discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *hifz an-nafs*, which emphasizes the protection of human lives in Islamic law.

Moreover, women who are victims of rape and become pregnant often endure prolonged mental and intellectual disorders, face barriers to education, struggle to think clearly and logically for their own well-being, and may harbor thoughts of self-degradation and endangerment. Allowing women who are victims of rape to remain exposed to the dangers of pregnancy thus violates the principle of *hifz al-'aql*, which underscores the protection of the mind in Islamic law.

Furthermore, women who, due to rape, become pregnant and suffer from impaired thinking are likely to face challenges managing their assets, may experience job loss or termination, and encounter difficulties accessing the societal economy. The recovery costs, both physically and psychologically, from the trauma of rape, as well as the expenses associated with maintaining a healthy pregnancy and caring for the child throughout their life, are not inconsequential. Leaving women who are victims of rape exposed to the dangers of pregnancy in such conditions also contradicts the principle of *hifz al-māl*, or property protection in Islamic law.

Worse still are the implications for reproductive organs and family dynamics. Women impregnated through rape may harbor resentment towards themselves and the fetus, entertain thoughts of self-endangerment and neglect their well-being and that of the fetus with insufficient nutrition. This may result in the birth of a vulnerable generation, as cautioned in the Quran (QS. An-Nisa, 4:9), potentially detached from family ties, lacking support, and facing challenges in life. Exposing women to pregnancy dangers in such circumstances also infringes upon the principle of *hifz an-nasl*, which pertains to reproductive and family protection in Islamic law."³⁵

The comprehensive excerpt above illustrates how MK KUPI meticulously elaborated on the concept of *Maqāṣid ash-Sharī'ah*, employing the framework of the five principles (*al-kulliyāt al-khams*) integrated with the perspective of *Mubāḍalah*. This approach renders the concept particularly relevant to the protection of women's lives in the specific context of pregnancies resulting from rape.

³⁵ Tim Perumus MK KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) ke-2*. (Jakarta: KUPI, 2023), pp. 188-189.

Conclusions

This paper concludes, based on the analysis of two fatwas issued by MK KUPI regarding child marriage and the protection of pregnant rape victims, that the *Maqāṣid ash-Sharī'ah* methodology, to foster gender-equitable fiqh, must be conceived within a framework that acknowledges men and women as complete individuals and equal contributors in society. This approach, termed "*Maqāṣid ash-Sharī'ah cum-Mubādalah*," ensures women's active involvement in all fatwa processes, validating inquiries and assessing their impact through women's experiences. By blending Islamic legal principles with these experiences, MK KUPI ensures that fatwa outcomes acknowledge the equal status of men and women as complete human beings. This study suggests that adopting this approach could lead to different arguments, logic, and fatwa outcomes for Indonesian societies and globally, empowering women and necessitating further research into its substantive and institutional impacts.

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Maqāṣid ash-Sharī'ah Cum-Mubādalah: Methodology of Religious Deliberation by the Indonesian Women's Ulama Congress (KUPI) in Formulating Gender- Equitable Fiqh

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Abstract:

The fatwas, or religious opinions, issued through the Religious Deliberation (*Musyawarah Keagamaan*) conducted by the Indonesian Women's Ulama Congress (KUPI) stand out due to their unique engagement of women as active participants in both the methodology and the entire process. This paper explores the methodology employed by KUPI to develop gender-equitable fiqh. KUPI's approach integrates *Maqāṣid ash-Sharī'ah*, the objectives of Islamic law, with a perspective emphasizing the equality and cooperation between men and women. Referred to as *Maqāṣid ash-sharī'ah cum-Mubādalah*, this methodology positions men and women as complete subjects, mutually contributing to the formulation of Islamic legal principles. This paper delves into specific cases addressed by KUPI, focusing on issues unique to women, such as child marriage and the protection of women's lives from the risks of pregnancy due to rape. It evaluates how KUPI grounds its decisions not solely in the literal texts of Islamic law but within the logical framework of *Maqāṣid ash-Sharī'ah cum-Mubādalah*. KUPI's *ijtihād* (intellectual exercise) employing the *Maqāṣid ash-Sharī'ah cum-Mubādalah* methodology is notably relevant as an endeavor to foster gender-equitable contemporary fiqh—an objective championed by numerous global ulama and intellectuals, including those in Indonesia. The analysis reflects on the implications of KUPI's approach, providing insights into the evolving landscape of Islamic jurisprudence guided by gender-inclusive perspectives.

Keywords:

Maqāṣid ash-Sharī'ah, Mubādalah, Fiqh, Gender, and KUPI.

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Introduction

Fiqh, encompassing classical and contemporary Islamic laws and opinions, represents scholars' endeavor to address real-life issues by referring to foundational texts—the Qur'an and Hadith. While these source texts remain unchanged, the interpretation of their content undoubtedly evolves, resulting in the continuous development of *fiqh*. Consequently, the methodology for interpreting these texts must also evolve to authentically respond to the dynamic realities of life. As these evolving issues invariably involve women, the formulation of a *fiqh* methodology must ensure their active participation and guarantee that they genuinely benefit from its outcomes.¹

The neutral nature of *fiqh* methodology, spanning *Qiyās*, *Istihsān*, *Istiṣlāh*, and *Maqāṣid ash-Sharī'ah*, implies its foundation in exploring human benefits, encompassing both men and women, embedded in the texts shaping *fiqh* or Islamic laws and opinions. Nonetheless, this neutrality can inadvertently result in outcomes that disregard the benefits of women or prioritize those of men. Fatwas regarding women and life issues often hinge on logic that prioritizes men's convenience over women's needs. For instance, a fatwa on women working may be deemed *ḥarām* if it is assumed to lead to slander, *makrūh* if it might cause slander, and *mubāh* if it is perceived as unlikely to cause slander. This logic primarily gauges the impact on men without adequately considering women's necessity for such work.²

In classical *fiqh*, marriage is often defined from a perspective that primarily addresses men's needs, neglecting those of women. For instance, in *Al-Fiqh 'alā Madhāhib al-Arba'ah*, marriage is defined as "established by the Shari'a so that men can benefit by lawfully

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¹ For the development of *fiqh* on women's issues may refer to: Syafiqh Hasyim, *Understanding Women in Islam: An Indonesian Perspective*, (Jakarta: ICIP, 2006). There are chapters on historical development of *fiqh*, patriarchal tendencies of *fiqh*, and alternative opinions on *fiqh* regarding women's issues.

² Nur Rofiah, "Reading the Qur'an Through Women's Experience", in: Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rumminger and Sarah Marso (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, (London: Oneworld Academic, 2022), 82; and Khalid Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, (Oxford: Oneworld Publications, 2003).

enjoying the woman's genitals and her entire body."³ However, contemporary scholars have revised this definition to emphasize equality between men and women as partners in marriage, stressing that both should derive benefits from the union.⁴

The redefinition of marriage is pivotal in Islamic family law reform efforts worldwide, aiming to prevent injustices towards women and children and ensure their benefits—a fundamental objective of Islamic law. Reforms encompass setting minimum marriage age limits, improving women's access to divorce, limiting men's polygamous rights, mandating marriage and divorce registrations, and establishing specialized courts for marriage disputes. Countries like Indonesia have engaged theologians and intellectuals to advocate for women's primary benefit in family law.⁵

Continuing these endeavors, it's crucial to highlight the contributions of the Indonesian Women's Ulama Congress (KUPI). KUPI, held twice, first in 2017 at Pesantren Kebon Jambu al-Islami Babakan Ciwaringin Cirebon, and second in 2022 at Pesantren Hasyim Asy'ari Bangsri Jepara, features a core activity called the religious deliberation (*Musyawarah Keagamaan*) to discuss and decide KUPI's religious opinions. The 2017 congress addressed three critical issues: sexual violence, child marriage, and environmental destruction. Meanwhile, the 2022 Congress discussed five issues: women and religious radicalism, waste management, forced marriage, abortion of rape victims, and female genital mutilation without medical reasons.⁶

As current efforts to reform Islamic law for the advancement of women's rights remain partial, atomistic, eclectic, and lack focus on fundamental issues, it is imperative to persist in these endeavors, particularly at a more comprehensive methodological level. In this regard, the KUPI fatwa process through *Musyawarah Keagamaan*

³ 'Abd ar-Rahmān Al-Jazīrī, *Al-Fiqh 'alā Madzāhib al-Arba'ah*, (Beirut: Dar al-Kutub al-'Ilmiyah, 2004), vol. 4, 8–9.

⁴ For example, Sheikh Abu Zahrah includes sexual benefits in the definition of marriage for both parties, the man and the woman. Abū Zahrah, *al-Aḥwāl ash-Shakhṣiyyah*, (Cairo: Dar al-Fikr al-'Arabi, . 1957), 17-18.

⁵ Khoiruddin Nasution, "Women's Rights in the Islamic Family Law of Indonesia", *Jurnal Hukum*, No. 28, vol. 12, Januari 2005, 147-159.

⁶ Umma Farida and Abdurrahman Kasdi. "The 2017 KUPI congress and Indonesian female ulama." *Journal of Indonesian Islam*, 12(2), 2018, 135–158.

(MK) stands out for its uniqueness. The MK KUPI involves community-level stages, is collective, integrates women's experiences, and catalyzes social, cultural, and spiritual movements.⁷ Given that current endeavors to reform Islamic law for the advancement of women's rights are still partial, atomistic, eclectic, and lack a focus on the fundamental issues, it is imperative to persist in these efforts. This persistence is especially crucial at a more comprehensive methodological level.⁸

Furthermore, when global fatwa institutions address contemporary issues like the SDGs, where gender equality is crucial, *Maqāṣid ash-sharī'ah* becomes vital in their methodology, ensuring logical and relevant fatwa formulations.⁹ In Indonesia, *Maqāṣid ash-sharī'ah* elements are integrated into the benefit maximization principles (*maṣlaḥah*) of fatwa methodologies of Nahdlatul Ulama, Muhammadiyah, and particularly Majelis Ulama Indonesia (MUI).¹⁰ These elements are extensively used in MUI fatwas regarding Shariah economics and COVID-19 but not explored in women's issues, making MUI fatwas patriarchal.¹¹ Here, the relevance and importance of the *Maqāṣid ash-sharī'ah* methodology introduced by MK KUPI for

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⁷ David Kloos and Nor Ismah. "Siting Islamic feminism: The Indonesian Congress of Women Islamic Scholars and the challenge of challenging patriarchal authority", *History and Anthropology*, 34:5, (2023), 1-26; and Inayah Rohmaniyah, Samia Kotele, and Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia", *Academic Journal of Interdisciplinary Studies*, vo. 11, no. 2, May 2022, 60-70.

⁸ Khoirudin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer". dalam: *UNISIA*. vol. xxx. no. 66, December 2007, 329-341.

⁹ Ainul Isman and Ummu Kaltsum. "The Relevance Of Sustainable Development Goals (SDGs) in Maqāṣid al-Sharī'ah Dimensions." *Journal of Islamic Economics Management and Business (JIEMB)* [Online], 4.2 (2022): 125-136. Web. 2 Mar. 2024; and Tim Research Center, *Islam Membincang SDGs: Membumikan Kesadaran Ekologis di Tengah Kontur Masyarakat Muslim*, (Cairo: PCINU Mesir, 2023).

¹⁰ Muhammad Sholihin and Fuad Zein. "Maslahah Reasoning behind Fatwa of the Indonesian Ulema Council: Between Ijtihad's Method and Pragmatism". *Ijtihad*. Vol. 36, No. 2 (2020), 1-10.

¹¹ Nurhayati and Muhammad Syukri Albani Nasution. "Maqāṣid al-Sharīa in the Fatwa of the Indonesian Ulama Council Regarding Congregational Worship During the COVID-19 Pandemic". *Asy-Syir'ah*. Vol. 54, No. 2, (2020), 251-275; and Anthin Lathifa. "Perempuan dalam Fatwa Ulama di Indonesia: Karakteristik Hukum dan Perspektif Feminis Muslim". *Laporan Penelitian*. (Semarang: LP2M UIN Walisongo, 2019).

examination are underscored, particularly with the full participation of female ulama throughout its fatwa-making process—a significant aspect lacking in other fatwa organizations in Indonesia and the world.

Method

This paper employs library research and adopts descriptive and qualitative methods to unveil and elucidate the steps undertaken by the *Musyawarah Keagamaan* (MK) KUPI in integrating women's perspectives into the methodology, process, and outcomes of its fatwas. The primary data comprises the fatwa results from KUPI's two congresses, namely Cirebon in 2017 and Jepara in 2022. In Cirebon, it yielded three fatwas, while in Jepara, it produced five fatwas. This dataset underwent thorough reading and analysis to discern how the concept of *Maqāṣid ash-Sharī'ah*, established and evolved by classical and contemporary scholars, is applied by KUPI, which adheres to a gender-just paradigm.

This study investigates how KUPI ulama perceive and apply the *Maqāṣid ash-sharī'ah* concept, viewing women and men as equal entities in societal dynamics. Three discussions are outlined: the position of MK KUPI methodology within *Maqāṣid ash-sharī'ah*, the implementation of *Maqāṣid ash-sharī'ah cum-Mubādalah* in the 2017 MK KUPI fatwa on child marriage, and its application in the 2022 MK KUPI fatwa on safeguarding women from pregnancy resulting from rape. Then, this study aims also to explore the implications of MK KUPI's methodology and application on fatwa issuance within Indonesian discourse and broader Muslim societies in the world.

Result and Discussion

Methodology and Approach

Fiqh is an understanding of ulama by referring to source texts—the Qur'an and Hadith, to address various life challenges, thereby becoming a source of benefit for humanity, both in this world and the hereafter. In contemporary times, scholars, starting with Ibn Asyur (d. 1973), have considered the use of *Maqāṣid ash-Sharī'ah* as imperative when other methods in *Uṣūl al-Fiqh* (methodology of Islamic Jurisprudence) prove insufficient to respond to the diverse

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challenges of modern life.¹² According to Tazul Islam, *Maqāṣid ash-Sharī'ah* has developed "from secondary methodology to a basic methodology and finally to a multidisciplinary science" in order "to embrace wider area of *ijtihad*" in all aspects of modern life.¹³

The definition of *Maqāṣid ash-Sharī'ah* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Al-Khadimi encapsulates these various definitions by asserting that *Maqāṣid ash-Sharī'ah* encompasses "the main aims and objectives contained in Islamic law, both general and specific objectives, all of which lead to obedience and worship to Allah SWT, as well as to obtain (human) goodness in this world and the hereafter."¹⁴

Among the most prominent conceptualizations is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 505 H/1111 AD), who identified five objectives of Islamic law. These include protecting religion (*ḥifẓ ad-dīn*), soul (*an-nafs*), reason (*al-'aql*), property (*al-māl*), and family/offspring (*an-nasl*). Contrary to this closed classification, some scholars, led by Ibn Taymiyah (d. 1328 AD), have proposed a more expansive understanding of *Maqāṣid ash-Sharī'ah*. Contemporary scholars such as Rasyid Rida, Ibn Assyur, Yusuf al-Qaradawi, KH. Ali Yafie, Zaynab al-'Ulwani, and Hashim Kamali have extended the scope of *Maqāṣid ash-Sharī'ah* to address themes on socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, protection of nature, and more.¹⁵

Rashid Rida (d. 1345 H/1935 AD) proposes socio-political reform and championed the fulfillment of women's rights as themes of *Maqāṣid ash-Sharī'ah*.¹⁶ Ibn Assyur (d. 1393 H/1973 AD) expanded the themes of *Maqāṣid ash-Sharī'ah* by incorporating principles of

¹² Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, (Mizan: Bandung, 2013), p. 164-168; and Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda*. (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), 32-41.

¹³ Tazul Islam, "Expansion of Maqosid Thought Beyon Maqosid al-Shari'ah: Maqosid al-Qur'an as a New Paradigm", *Hamdard Islamicus*, Vol. 45, No. (4, 2022), 84.

¹⁴ Nur ad-dīn Al-Khādīmī, *al-Maqāṣid ash-Sharī'ah: Ta'rīfuhā, Amthilatuhā, Hujjiyyatuhā*, (Riyad: Eshbelia, 2003), vo. 1, 26.

¹⁵ Kamali, *Membumikan Syariah*, 167-168.

¹⁶ Zaprulkhan, *Rekonstruksi Paradigma Maqāshid asy-Syari'ah: Kajian Kritis dan Komprehensif*, (Yogyakarta: IRCISOD, 2020), 174-196.

freedom, equality, and tolerance.¹⁷ Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.¹⁸ Similarly, KH. Ali Yafie proposed the inclusion of *ḥifẓ al-bi'ah* (protection of nature and the environment) as the sixth principle, emphasizing the ecological dimension within the broader objectives of Islamic law.¹⁹ Zaynab al-'Ulwani took a specific focus, including *sakinah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid ash-sharī'ah fī al-usrah*).²⁰

This diversity of perspectives highlights the ongoing relevance of *Maqāṣid ash-Sharī'ah* in addressing the evolving needs of societies and individuals, including gender issues.²¹ Many scholars have employed the *Maqāṣid ash-Sharī'ah* methodology to explore women's rights in Islam.²² However, there has been a gap in these discussions, lacking a paradigmatic conceptualization of *Maqāṣid ash-Sharī'ah* that inherently incorporates gender justice and a process its implementation in making fatwa that engages fully female scholars.²³ Here lies the uniqueness, novelty, and significance of the KUPI approach to the *Maqāṣid ash-Sharī'ah* methodology.

The *Musyawarah Keagamaan* (MK) KUPI, conducted in Cirebon (2017) and Jepara (2022), embraced the *Maqāṣid ash-sharī'ah*

¹⁷ Muḥammad aṭ-Ṭāhir Ibn 'Ashūr, *Maqāṣid ash-Sharī'ah al-Islāmiyyah*, (Cairo: Dar as-Salam, 2006), specifically, regarding the four values above, you can see them on the pages: 449-63.

¹⁸ Yusuf Al-Qaradāwī, *Madkhal li-Dirasāt ash-Sharī'ah al-Islāmiyyah*, (Cairo: Maktabah Wahbah, 1997), 75.

¹⁹ Alie Yafie, *Merintis Fiqh Lingkungan Hidup*, (Jakarta: Yayasan Amanah, 2006), 223-234.

²⁰ Zaynab Tahā Al-'Ulwani, *al-Ushrah fī Maqāṣid ash-Sharī'ah: Qirā'ah fī Qaḍāyā az-Zawāj wa aṭ-Ṭalāq fī Amirikā*. (Herndon: IIIT, 2012), 90-97.

²¹ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System of Approach*, London: IIIT, 2007, 1-25; and Wael B. Hallaq, "Maqāṣid and the Challenges of Modernity", *al-Jami'ah: Journal of Islamic Studies*, vol. 49, no. 1 (2011), 1-32.

²² Adis Duderija. "Maqāṣid al-Sharī'a, Gender Non-patriarchal Qur'ān-Sunna Hermeneutics, and the Reformation of Muslim Family Law". In: *Maqāṣid al-Sharī'a and Contemporary Reformist Muslim Thought*. Edited by Aids Duderija. (New York: Palgrave Macmillan, 2014), pp. 193-218.

²³ Basma I. Abdelgafar, "Re-envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam" in: R. Naguib (ed.), *Women's Empowerment and Public Policy in the Arab Gulf States*, December 2023, 55-73.

methodology, yet its distinctiveness lies in its incorporation of *Maqāṣid ash-Sharī'ah* with women's perspectives and experiences, recognizing the authority of their knowledge and experiences. It is essential to acknowledge the significance of women's perspectives and experiences, including those of biologically and socially marginalized women, and to validate their viewpoints.²⁴ In Nor Ismah's research, the validation of women's perspectives and experiences in the MK KUPI is evident through the involvement of female ulama in all fatwa processes, the acknowledgment of women's experiences as a source of knowledge, and the fatwa results promoting gender justice. Ethnographically, the MK KUPI fatwa process transcends mere "doctrinal reform" and "ethical practice" between the fatwa requester and giver; it also serves as "a safe space and empowerment" for women, particularly notable when women issue fatwas.²⁵

In the MK KUPI perspective, men and women are seen as complete individuals and full participants in life, valuing their experiences as authoritative knowledge. Women actively contribute to formulating religious fatwas, ensuring their experiences are recognized and their interests protected. This unique approach, known as *Maqāṣid ash-sharī'ah cum-Mubādalah*, emphasizes cooperation and mutual exchange, positioning both genders as equal participants in life. It ensures equal consideration of men's and women's experiences, preventing their marginalization in life's challenges. Recognizing men and women as complete individuals involves acknowledging their diverse dimensions—physical, psychological, social, and spiritual—beyond traditional gender roles.²⁶

This *Maqāṣid ash-sharī'ah cum-Mubādalah* employs a dual strategy. First, it emphasizes the equality of men and women as complete human beings, servants of Allah SWT, caliphs of the earth

²⁴ Majella Frazmann. *Women and Religion*. (New York and Oxford: Oxford University Press, 2000), 1-35.

²⁵ Nor Ismah, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia*, (Doctoral Dissertation in Leiden University, 2023), especially on pages: 23-32 and 140-142.

²⁶ Faqihuddin Abdul Kodir, "Qirā'a Mubadala: Reciprocal Reading of Hadith on Marital Relationship", in: Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rummingier and Sarah Marso (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, (London: Oneworld Academic, 2022), 181-209.

(*khalīfah fī al-ard*), and full subjects of life. This approach aligns with contemporary scholars' interpretations of *Maqāṣid ash-Sharī'ah*, addressing principles like *tawḥīd*, *istikhlāf*, *qiwāmah*, and *zawjiyyah* in Islamic family law.²⁷ The second strategy focuses on acknowledging the unique experiences of women, both biologically and socially, that differentiate them from men. This includes biological aspects such as menstruation, pregnancy, childbirth, postpartum, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. A gender-sensitive approach considers and respects these differences in shaping Islamic methodologies and addressing life issues.²⁸

Both strategies are indispensable components of the conception and validation of the *Maqāṣid ash-Sharī'ah cum-Mubādalah* approach. Through the first strategy, all forms of *Maqāṣid ash-Sharī'ah*, whether closed (*al-kullīyyāt al-khams*) or open form (other general principles), encompass both men and women as equal human beings, servants of Allah, His representatives on earth, and complete subjects of life. Simultaneously, the second strategy regards the distinctive biological and social experiences of women as human experiences integral to all forms of *Maqāṣid ash-Sharī'ah*. Thus, these unique female experiences are deemed a shared responsibility of both men and women, not exclusive to women alone.

The realization of Islamic benefits through *al-kullīyyāt al-khams*, for instance, encompasses the well-being of both men and women as fellow human beings (first strategy). Key indicators include acknowledging the unique biological and social experiences of women that are also incorporated into the understanding of benefit (second strategy). Protecting the human soul (*ḥifẓ an-nafs*), for instance, involves safeguarding all individuals, men and women, from death. This is achieved by providing the essential nutrition needed by both genders (first strategy) and ensuring the specific nutritional requirements of pregnant and breastfeeding women (second strategy). Moreover, it involves providing adequate facilities to safeguard women giving birth from unnecessary maternal mortality (second strategy).

²⁷ al-'Ulwani, *al-Uslah fī Maqashid asy-Syari'ah*, 74-82.

²⁸ Nur Rofiah, "Reading the Qur'an Through Women's Experience", 71-72.

Similarly, in various facets of *Maqāṣid ash-Sharī'ah*, the *cum-Mubādalah* approach is realized by integrating these two strategies. Ensuring and preserving religion (*ḥifẓ ad-dīn*), for instance, involves guaranteeing that both men and women can freely practice worship as servants of Allah SWT. Thus, if men require freedom from certain activities for worship, women have an equal right to the same (first strategy). Within this *ḥifẓ ad-dīn*, there is an emphasis on ensuring that women's religious qualities are not diminished due to their unique reproductive experiences (second strategy). This approach is mirrored in formulating and validating concepts such as protection of reason (*ḥifẓ al-'aql*), family/descendants (*ḥifẓ an-nasl*), honor (*ḥifẓ al-'ird*), assets (*ḥifẓ al-māl*), and environmental conservation (*ḥifẓ al-bī'ah*).

The KUPI has established the aforementioned *Maqāṣid ash-Sharī'ah cum-Mubādalah* framework as a methodological approach for deliberating religious perspectives on various life issues in eight fatwas, three delivered in 2017 and five in 2022. This study focuses on the implementation of *Maqāṣid ash-Sharī'ah cum-Mubādalah* in only two fatwas of MK KUPI concerning child marriage (2017) and pregnant rape victims (2022). Specifically, this research aims to address the following questions: What innovations did MK KUPI introduce with this methodology concerning basic legal analysis, particularly regarding *Maqāṣid ash-Sharī'ah*, the logic of argumentation, and the formulation of fatwa results on these two issues?

Fatwa on Child Marriage

Traditional fiqh commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.²⁹ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for children.³⁰ *Maqāṣid ash-Sharī'ah* is also invoked in these discussions,

²⁹ Wahbah az-Zuhailī, *al-Fiqh al-Islāmī wa Adillatuhū*, Damaskus: Dar al-Fikr, vol. 7, 179.

³⁰ Fatum Abu Bakr, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)", *Jurnal Ilmu Syari'ah dan Hukum*, Vol. 4, Nomor 2, 2019, 97-118; and Husain Al-

particularly in consideration of women's rights.³¹ However, KUPI's distinctive approach in formulating *Maqāṣid ash-Sharī'ah* adds an intriguing dimension to this discourse.

The Musyawarah Keagamaan (MK) KUPI did not make a conclusive decision on the legality of child marriage but focused on the imperative to safeguard children from such unions. In formulating its stance on child marriage, the MK KUPI employed the *Maqāṣid ash-Sharī'ah* approach. This involved outlining the problem (*taṣawwur*), presenting textual evidence (*Adillah*) from the Qur'an, Hadith, and the opinions of scholars (*Aqwāl al-'Ulamā'*), and conducting an analysis (*Istidlāl*) to construct an argument on necessary protection of children from marriage.

Concerning the issue of child marriage, the *taṣawwur* of MK KUPI incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *taṣawwur*, numerous expressions derived from this data are correlated with the themes of *Maqāṣid ash-sharī'ah*, particularly emphasizing open (general principles) rather than closed ones (*al-kullīyyāt al-khams*). Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' frequently emerge as conclusions drawn from qualitative data on child marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqāṣid ash-sharī'ah* analysis (the close form: *al-kullīyyāt al-khams*).

Certain data also includes expressions that can represent the concept of *Mubādalah* in both *taṣawwur* and *istidlāl*. This is evident in various health, educational, and social issues. The first strategy of *Mubādalah*, which centers on shared needs between men and women, such as the need for education and health, has been thoroughly elaborated. Similarly, the second strategy of *Mubādalah* addresses reproductive problems experienced by married girls, their educational challenges, and many other social issues faced by them.

Hakami & Kenneth McLaughlin, "Debatable Marriages: Marriage and Child Marriage in Saudi Arabia", *Marriage and Family Review*, 30 May 2016, 1-11.

³¹ Muhammad Shofwan Taufiq and M. Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage", *Muhammadiyah Law Review*, Vol 7, No 2 (2023), 1-23; and Edi Kurniawan, Handesman, Rahmadi & Khairun Najib, "Early Marriage, Human Rights, and the Living Fiqh: a Maqasid Al-Shari'a Review", *Al-Risalah*, Vol. 20, No. 1, June 2020, 1-15.

Many of these issues are not encountered by young men who are married.

The textual references (*Adillah*) employed by the MK KUPI also encompass themes that are congruent with the structure of *Maqāṣid ash-sharī'ah*, as elucidated by contemporary scholars, particularly in the form of general principles of Islamic law (open form). Specifically, the *Adillah* of MK KUPI concerning child marriage comprise 7 Quranic verses, 5 Hadith texts, and 6 statements from scholars (*Aqwal al-Ulama*). These textual references are aligned with themes correlating with the *Maqāṣid ash-sharī'ah*. These themes encompass the objective of marriage as attaining peace of mind, the prohibition of begetting a weak generation, the directive to become the best people, the proscription against self-condemnation to destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the recommendation to seek knowledge. The Hadith-derived *Adillah* also exhibit themes consistent with *Maqāṣid ash-sharī'ah*. These include the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Meanwhile, the *Adillah* derived from the perspectives of scholars (*aqwal al-ulama*) encompass the principle of forbidding harm and evil, as well as the five principles of protection (*al-kulliyāt al-khams*).

In the analysis (*Istidlāl*) section, all these themes serve as pivotal concepts for MK KUPI to argue that the practice of child marriage contradicts *Maqāṣid ash-sharī'ah* and protection of children from early marriage is necessary in the goals of Islamic law. The focus of *istidlāl* lies more on expounding the key concepts derived from *Adillah* themes, which constitute the objectives of Islamic law (*Maqāṣid ash-sharī'ah*). These objectives are subsequently presented as robust, unequivocal, and compelling arguments affirming Islam's obligation to safeguard children from early marriage.

One of the elucidations provided by MK KUPI regarding *al-kulliyāt al-khamsah* pertains to child marriage is as below:

"The preservation of religion (*ḥifẓ ad-dīn*) entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their

understanding of religion in general and to fulfill the specific marriage goals outlined by religion. Safeguarding the soul (*hiḥf an-nafs*) involves shielding children from potential harm or premature death due to their immature reproductive activities associated with early marriage. The protection of reason (*hiḥf al-'aql*) encompasses shielding children from the possibility of hindering intellectual development resulting from the interruption of their education. Preserving offspring (*hiḥf an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*hiḥf al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they must work prematurely to support the family due to their early marriage. Preserving wealth (*hiḥf al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage.”³²

The quote above illustrates how the five principles (*al-kulliyat al-khams*) are explained using an approach of *Maqāṣid ash-Sharī'ah cum-Mubādalah*. Thus, instead of relying solely on literal texts of Islamic law, MK KUPI grounds its fatwa in the logical framework of *Maqāṣid ash-sharī'ah* integrated with the perspective of *Mubādalah*. Within this conceptual framework, the primary contention put forth by MK KUPI is that Islam encourages the protection of children, particularly girls, from the detrimental consequences arising from early marriages.

Fatwa on Protection of Female Rape Victim

The second MK KUPI session in Jepara in 2022 addressed five key issues, with one focusing on "Protection of Women's Lives from the Dangers of Pregnancy Due to Rape." Hence, this specific MK KUPI fatwa can be succinctly referred to as "MK KUPI on Protection." Until now, discussions on Islamic law have predominantly centered around the legal aspects of abortion for women impregnated through rape, with consideration given to the age of the fetus. This discourse frequently highlights variations among classical schools of *fiqh*.³³

³² Tim KUPI, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia*, (Jakarta and Cirebon: KUPI), 2017), p. 115.

³³ Moh. Manaf Badri and Muhibbin Muhibbin, "Legality of Abortion by Rapes Perspective of Islamic Law, Indonesian Positive Law and Human Rights", *Budapest*

Concerning the rights of female victims of rape in Islamic law, the discussions have primarily focused on the exemption from punishment, given that the victim is considered innocent of unlawful adultery, and financial compensation (*diyyah*) for the victim.³⁴ Notably, *Maqāṣid ash-Sharī'ah* has not been extensively employed to explore the protection of pregnant women resulting from rape in the discussions of contemporary *fiqh*.

Differing from conventional discussions on this subject, MK KUPI avoids delving into the legal intricacies of abortion, a common focal point in existing *fiqh* discussions, often involving the determination of the permissible age for abortion. Instead, MK KUPI places a significant emphasis on safeguarding the well-being of pregnant women who have fallen victim to rape. According to MK KUPI, the permissibility of abortion is contingent upon its role in preserving a woman's life, irrespective of the age of her fetus, with the primary objective of genuinely protecting her life. Conversely, if the decision is made to continue the pregnancy for the woman's life, comprehensive support from all stakeholders is deemed imperative. This distinctive fatwa argument is groundbreaking and achieves legitimacy only when firmly rooted in the principles of *Maqāṣid ash-Sharī'ah*.

The title of fatwa, i.e. "Protection of Women's Lives from the Dangers of Pregnancy Due to Rape", inherently encapsulates the nuances of *Maqāṣid ash-sharī'ah* while incorporating the perspective of *Mubādalah*. The phrase "protection of the life" is integral to *Maqāṣid ash-Sharī'ah*, specifically one of the five principles (*al-kulliyāt al-khams*), known as *ḥifẓ an-nafs*. Simultaneously, the expression "women exposed to the dangers of pregnancy due to rape" explicitly addresses the distinct experiences of women, a pivotal concept within the perspective of *Mubādalah*.

In the explanatory section (*taṣawwur*), "MK KUPI on protection" conveys three key aspects aligned with *Maqāṣid ash-sharī'ah*. These include the adverse effects of rape that everyone should avoid, the imperative to shield humans—especially women—from these

International Research and Critics Institute-Journal, Vol 5, No 3 (2022), 23506-23513; and Firdaus, Firdaus, et al. "Abortion Due to Unwanted Pregnancy: Perspective of Islamic Law and Positive Law." *Al-Qisthu*, vol. 19, no. 2, 2021, 188-201.

³⁴ Azman bin Mohd Noor and Ahmad Basri bin Ibrahim, "The Rights of a Rape Victim in Islamic Law", *IJUM Law Journal*, vol. 16, no. 1 (2008), 65-83.

negative impacts, and, notably, the protection of the lives of women impregnated as a result of rape. The data presented in the MK KUPI *taṣawwuf* also correlates with the fundamental concepts of *Maqāṣid ash-sharī'ah*. Similar to MK KUPI's stance on child marriage, this "MK KUPI on protection" unequivocally underscores *Maqāṣid ash-sharī'ah* as a pivotal concept in elucidating the challenges faced by women who are victims of rape.

In the *Adillah* section, "MK KUPI on protection" enumerates themes pertinent to *Maqāṣid ash-sharī'ah*, drawn from the texts of the Qur'an, Hadith, and *Aqwāl al-'Ulamā'*. The Qur'anic verses cover themes such as human dignity, the mission of Islamic mercy, prohibitions against harming individuals, insulting, condemning oneself to destruction, safeguarding the weak, refraining from blaming those coerced, and offering forgiveness for victims of sexual coercion. Hadith texts highlight themes like the prohibition of tyranny, avoidance of harm to others, assistance to the weak, refraining from causing harm to oneself and others, alleviating others' difficulties, refraining from blaming coerced individuals, consistently treating women with kindness, aiding those wronged, and requesting leaders to facilitate matters for the people.

Two of the themes in *Adillah* section explicitly center on women as victims deserving protection, forgiveness, and support. In the analysis (*Istidlāl*) section, these themes are systematically restructured into a comprehensive framework, fortifying several arguments: the inherent injustice of rape, attributing wrongdoing to the perpetrator, and emphasizing that women who have experienced rape are not only innocent but also individuals requiring assistance, support, and companionship. These arguments serve as the groundwork for fostering awareness regarding the crucial importance of attending to women who are victims of rape, specifically addressing their need for protection, particularly in the context of their lives post-rape and the ramifications of pregnancy resulting from such incidents.

"Rape victims facing pregnancy may encounter challenges in practicing *ḥifẓ ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to question Islam's stance. The lives of women who are victims of rape and experience pregnancy are highly susceptible to ongoing stigmatization,

discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *ḥifẓ an-nafs*, which emphasizes the protection of human lives in Islamic law.

Moreover, women who are victims of rape and become pregnant often endure prolonged mental and intellectual disorders, face barriers to education, struggle to think clearly and logically for their own well-being, and may harbor thoughts of self-degradation and endangerment. Allowing women who are victims of rape to remain exposed to the dangers of pregnancy thus violates the principle of *ḥifẓ al-'aql*, which underscores the protection of the mind in Islamic law.

Furthermore, women who, due to rape, become pregnant and suffer from impaired thinking are likely to face challenges managing their assets, may experience job loss or termination, and encounter difficulties accessing the societal economy. The recovery costs, both physically and psychologically, from the trauma of rape, as well as the expenses associated with maintaining a healthy pregnancy and caring for the child throughout their life, are not inconsequential. Leaving women who are victims of rape exposed to the dangers of pregnancy in such conditions also contradicts the principle of *ḥifẓ al-māl*, or property protection in Islamic law.

Worse still are the implications for reproductive organs and family dynamics. Women impregnated through rape may harbor resentment towards themselves and the fetus, entertain thoughts of self-endangerment and neglect their well-being and that of the fetus with insufficient nutrition. This may result in the birth of a vulnerable generation, as cautioned in the Quran (QS. An-Nisa, 4:9), potentially detached from family ties, lacking support, and facing challenges in life. Exposing women to pregnancy dangers in such circumstances also infringes upon the principle of *ḥifẓ an-nasl*, which pertains to reproductive and family protection in Islamic law.³⁵

The comprehensive excerpt above illustrates how MK KUPI meticulously elaborated on the concept of *Maqāṣid ash-Sharī'ah*, employing the framework of the five principles (*al-kulliyāt al-khams*) integrated with the perspective of *Mubādalah*. This approach renders the concept particularly relevant to the protection of women's lives in the specific context of pregnancies resulting from rape.

³⁵ Tim Perumus MK KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) ke-2*. (Jakarta: KUPI, 2023), pp. 188-189.

Conclusions

This paper concludes, based on the analysis of two fatwas issued by MK KUPI regarding child marriage and the protection of pregnant rape victims, that the *Maqāṣid ash-Sharī'ah* methodology, to foster gender-equitable fiqh, must be conceived within a framework that acknowledges men and women as complete individuals and equal contributors in society. This approach, termed "*Maqāṣid ash-Sharī'ah cum-Mubādalah*," ensures women's active involvement in all fatwa processes, validating inquiries and assessing their impact through women's experiences. By blending Islamic legal principles with these experiences, MK KUPI ensures that fatwa outcomes acknowledge the equal status of men and women as complete human beings. This study suggests that adopting this approach could lead to different arguments, logic, and fatwa outcomes for Indonesian societies and globally, empowering women and necessitating further research into its substantive and institutional impacts.

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Feedbacks:

Introductory Part Suggestions:

It is imperative to delve into the contextual landscape of fatwa methodology in Indonesia, specifically examining how other fatwa institutions within the country position maqashid sharia in their fatwa production. This contextual analysis is crucial for discerning similarities and differences in the application of maqashid sharia in the formulation of fatwas.

I have inserted your suggestion in the last paragraph of the introduction. Thanks for the suggestion.

Inclusion of an Additional Question:

To enhance the depth of the exploration, it is essential to introduce another question: What are the implications of the concept and its implementation for the practice of issuing fatwas within the context of the fatwa discourse in Indonesia and, more broadly, in Muslim society? This additional query will shed light on the significance of employing the mubadalah method in the production of fatwas related to issues such as child marriage and the protection of female rape victims.

I have added the above question in the Method and its answer in the conclusion.

Discussion on the Validity of Women's Perspective in Fatwa Production:

A critical examination is warranted concerning the validity of women's perspectives within the fatwa production process. How can the theoretical validity of women's viewpoints be established in the realm of knowledge production?

This suggestion seems to require many paragraphs to explain. However, I have tried to re-edit several paragraphs to fulfill this suggestion, especially the paragraph that you put yellow color on.

Discussion:

Following the conclusion of the methodology and approach section, a transitional paragraph is necessary to pave the way for the upcoming discussion. This bridging paragraph will provide insight into the next

section, which will focus on the application of the mubadalah perspective. This analytical lens will be specifically applied to two critical issues: child marriage and the protection of female rape victims. Within this section, it is also pertinent to articulate specific questions and outline the contents of the fatwas to provide a comprehensive understanding.

I have written for this suggestion one paragraph in last discussion of methodology and approach.



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Women's Experiences in Islamic Law: Exploring KUPI's Methodology of *Fatwa* on Child Marriage and Abortion in Cases of Rape

Article history: Received:

Abstract:

The production of *fatwas* in Indonesia has traditionally been dominated by male scholars and rooted in conventional methodologies that prioritize textual sources, often neglecting the lived experiences of women. This article examines innovative methodology proposed by the Indonesian Congress of Women Ulama (*Kongres Ulama Perempuan Indonesia*, or KUPI) to develop a gender-just approach to Islamic jurisprudence (*fiqh*). KUPI's framework integrates *Maqāṣid al-Sharī'ah* (the objectives of Islamic law) with *Mubādalāh*—a perspective emphasizing equality and reciprocity between men and women. Termed *Maqāṣid cum-Mubādalāh*, this methodology recognizes lived experiences of women as one of the sources to formulate religious opinions, or *fatwa*, in Islamic legal tradition. Drawing on participant observation of KUPI's fatwa-making processes and literature analysis, this study explores two key questions: (1) To what extent does KUPI's *Maqāṣid cum-Mubādalāh* methodology foster gender-just *fiqh*? (2) How does KUPI apply this methodology, incorporating both women's experiential perspectives and literal Islamic texts, in issuing its *fatwas* on child marriage (Cirebon, 2017) and abortion in cases of rape (Jepara, 2022)? The analysis highlights how KUPI's *Maqāṣid cum-Mubādalāh* approach challenges traditional jurisprudence, showcasing its transformative potential. This article underscores the importance of integrating women's experiential perspectives into Islamic legal discourse, offering new insights into evolving interpretations of *fiqh* that prioritize justice and equality.

Keywords:

Fatwa, Gender-Just *Fiqh*, *Maqāṣid*, *Mubādalāh*, and KUPI.

Introduction

The basis of religious legal opinion, known as *fatwa*, issued by religious institutions, such as the Indonesian Ulama Council (MUI) is *fiqh*, an Islamic jurisprudence which reflects scholars endeavor to address real-life challenges by referring to foundational texts—the

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Qur'an and Hadith.¹ Although these source texts remain unchanged, the interpretation of their content has naturally evolved, resulting in ongoing developments in *fiqh*, particularly regarding women's issues in family law.² This evolution in *fiqh* requires a comprehensive and holistic methodology,³ in which women's participation becomes a "means of ensuring just and lasting reforms".⁴

Contemporary *fatwas* which rely on classical *fiqh* without incorporating critical methodologies, have inadvertently led to outcomes that disregard rights of women and prioritize those of men.⁵ *Fatwas* issued by the Indonesian Ulama Council (MUI) are good examples.⁶ Indeed, the marginalization of women from the religious knowledge production domain and the consolidation of religious authority, which narrowed the *ijtihadic* possibilities, has led to the development of an interpretive methodology centered on the male gaze.⁷ Nur Rofiah argues that *fatwas* regarding women are determined "by how the issue impacts men".⁸ For instance, a *fatwa* on women working may be deemed *harām* (forbidden) if it is assumed to lead to *fitna* or slander to men, *makrūh* (unpreferrable) if it might cause slander, and *mubāh* (allowed) if it is perceived as unlikely to cause slander. This

¹ Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975–1998)," *Journal of Islamic Studies* 15, no. 2 (May 1, 2004): 147–79, <https://doi.org/10.1093/jis/15.2.147>.

² Ziba Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," *Hawwa* 1 (2003): 1–28, <https://api.semanticscholar.org/CorpusID:73552279>.

³ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer," *UNISIA* XXX, no. 66 (2007): 329–41.

⁴ John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (New York: Syracuse University Press, 2001), p. 162.

⁵ Khalid Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2003).

⁶ Anthin Lathifa, "Perempuan Dalam Fatwa Ulama Di Indonesia: Karakteristik Hukum Dan Perspektif Feminis Muslim" (2019, 2019); Zainul Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law," *AHKAM: Jurnal Ilmu Syariah* 24, no. 1 (2024): 135–52, <https://doi.org/10.15408/ajis.v24i1.34744>.

⁷ Asma Sayeed, *Women and the Transmission of Religious Knowledge in Islam* (Cambridge: Cambridge University Press, 2013).

⁸ Nur Rofiah, "Reading the Qur'an Through Women's Experience," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hossemi et al. (London: Oneworld, 2022), p. 82.

logic primarily gauges the impact on men without adequately considering women's necessity for such work.⁹

The gender-biased logic within *fiqh*, which serves as the primary reference for contemporary *fatwas*, is particularly evident in various aspects of women's issues in family law, prompting reforms by contemporary scholars.¹⁰ This bias is exemplified, for instance, in the definition of marriage. In classical *fiqh*, marriage is often defined from a perspective that primarily addresses the needs of men while neglecting those of women.¹¹ However, contemporary scholars have revised this definition to emphasize equality between men and women as partners in marriage, stressing that both should derive benefits from the union.¹²

The redefinition of marriage is pivotal in Islamic family law reform efforts worldwide as it aims to prevent injustices towards women and children and ensure their benefits—a fundamental objective of Islamic law.¹³ Reforms encompass setting minimum marriage age limits, improving women's access to divorce, limiting men's polygamous rights, mandating marriage and divorce registrations, and establishing specialized courts for marriage disputes.¹⁴ The reform of these issues, and other issues related to the position and rights of women in the family and society, with various

⁹ See also: Nur Rofiah, Nikmatullah Nikmatullah, and Zakiyatul Mufidah, "The Traces of Qur'anic Women's Hakiki Justice Interpretation in KUPI's Fatwas," *PALASTREN: Jurnal Studi Gender* 17, no. 1 (2024): 1–22, <https://journal.iainkudus.ac.id/index.php/Palastren/article/view/26496>, especially pages: 13–14.

¹⁰ (Esposito and DeLong-Bas 2001; Khoirudin Nasution 2005; Mir-Hosseini, Al-Sharmani, and Rumming 2015)

¹¹ 'Abd ar-Rahmān Al-Jazirī, *Al-Fiqh 'Alā Maqāhib Al-Arba'Ah* (Beirut: Dar al-Kutub al-'Ilmiyah, 2004), vol. 4, pp. 8–9.

¹² Muhammad Abū Zahrah, *Al-Aḥwāl Ash-Shakhṣiyyah* (Cairo: Dar al-Fikr al-'Arabi, 1957); Ahmad Ghandur, *Al-Aḥwāl Al-Shakhṣiyyah Fī Al-Tashrī' Al-Islāmī Ma'a Bayān Mā 'alayhi Al-'amal Fī Maḥākīm Al-Kuwayt* (Kuwait: Jamī'ah al-Kuwayt, 1972); Idris Al-Hammadi, *Al-Bu'd Al-Maqasidi Wa Ishlah Mudawwanah Al-Ushrah* (Al-Dar al-Baydha': Ifriqiya asy-Syarq, 2005).

¹³ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2009), pp. 35–43.

¹⁴ Nasution, "Women's Right in the Islamic Family Law of Indonesia."

methodological offers and approaches, continue to be voiced by various parties to formulate gender-just *fiqh*.¹⁵

According to Ziba Mir-Hosseini (2015), the reform and formulation of gender-just *fiqh* have undergone three significant phases. The first phase is the codification moment, during which Muslim countries throughout the twentieth century transformed classical *fiqh* into codified family laws. However, it did not include any critique of the patriarchal structures inherent in classical *fiqh*. The second phase is marked by the rise of political Islam, beginning in the 1970s, with its peak in 1979 in countries like Iran, Egypt, and Pakistan, where there was a movement to return to Islamic sharia, which is really classical *fiqh*. The third phase is characterized by the emergence of Islamic feminism, pioneered by scholars such as Azizah al-Hibri, Riffat Hassan, and Amina Wadud. These scholars began to reclaim Islam's egalitarian message from its original sources and challenged the patriarchal dimensions of Islamic tradition.¹⁶

In this third phase, the Indonesian Congress of Women Ulama (KUPI), established in 2017, uniquely integrates Islamic sources with women's knowledge and experiences. This approach, according to Kloos and Ismah (2023), expands the global Islamic feminist project from a primarily scholarly and intellectual movement into a locally resonant and potentially impactful social movement.¹⁷ KUPI, held twice, first in 2017 at the Islamic boarding school, or *Pesantren* Kebon Jambu al-Islami Cirebon West Java, and second in 2022 at *Pesantren* Hasyim Asy'ari Bangsri Jepara Central Java, featured a core activity called the religious deliberation (*Musyawarah Keagamaan*) to discuss and decide KUPI's religious opinions.

Numerous studies on KUPI have underscored its importance in highlighting the presence and influence of women in clerical roles,

¹⁵ Ziba Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," in *Men in Charge?: Rethinking Authority in Muslim Legal Tradition*, ed. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumming (London: Oneworld Publications, 2015), 13–43.

¹⁶ Mir-Hosseini, p. 25.

¹⁷ David Kloos and Nor Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority," *History and Anthropology* 34, no. 5 (October 20, 2023): 818–43, <https://doi.org/10.1080/02757206.2023.2249495>.

especially in *fatwa* making, in which they participate in all of its processes.¹⁸ This distinguishes KUPI from other *fatwa*-issuing institutions, such as the MUI, and serves as a response to the challenge posed by various scholars and activists advocating for women's involvement in the issuance of religious *fatwas*.¹⁹ Furthermore, the *Musyawarah Keagamaan* (MK), the body within KUPI responsible for issuing *fatwas*, operates through community-level stages, promotes collective decision-making, integrates women's perspectives, and catalyzes social, cultural, and spiritual movements.²⁰

Though past studies have been useful in defining Islamic knowledge within KUPI's movement, they lack an analysis of how KUPI conceptualizes *fiqh* methodologies, such as *Maqāṣid*, to formulate gender-just *fiqh*. Filling this gap, this article aims to delve into a pivotal framework utilized in classical and contemporary *fiqh*, i.e. *Maqāṣid al-Sharī'ah*, reinterpreted by KUPI within the *Mubādalah* (reciprocity) approach. This *Mubādalah* has been adopted by KUPI as a perspectiva and a method to enable a gender-sensitive reinterpretation of Islamic texts, emphasizing reciprocal roles for both genders, promoting cooperative relationships, and remaining open to reinterpretation to accommodate evolving contexts. By analyzing the KUPI *fatwas* addressing child marriage and protecting women's lives from

¹⁸ Umma Farida and Abdurrohman Kasdi, "The 2017 KUPI Congress and Indonesian Female 'Ulama,'" *Journal of Indonesian Islam* 12, no. 2 (2018): 135–58, <https://doi.org/10.15642/JIIS.2018.12.2.135-158>; Inayah Rohmaniyah, Samia Kotele, and Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia," *Academic Journal of Interdisciplinary Studies* 11, no. 3 (May 1, 2022): 60–70, <https://doi.org/10.36941/ajis-2022-0068>; Kloos and Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority"; Arifah Millati Agustina and Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>; Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law"; Rofiah, Nikmatullah, and Mufidah, "The Traces of Qur'anic Women's Hakiki Justice Interpretation in KUPI's Fatwas."

¹⁹ Esposito and DeLong-Bas, *Women in Muslim Family Law*, p. 162; Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," p. 26.

²⁰ Kloos and Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority."

pregnancy risks due to rape, this article seeks to elucidate *Maqāṣid* as the underlying principle of the *Mubādalah* framework, known as *Maqāṣid cum-Mubādalah*.

The discussion of *Maqāṣid cum-Mubādalah* in this article is crucial, given the fragmented and piecemeal efforts to reform Islamic law for the advancement of women's rights, which often overlook fundamental issues. This focus is particularly significant at a broader methodological level, where *Maqāṣid* must be revisited to address the challenges of modernity.²¹ In Indonesia, elements of *Maqāṣid* are observed within the *fatwa* methodologies of the Indonesian Ulama Council (MUI).²² While these principles are extensively applied in MUI *fatwas* related to economic and health matters,²³ they are often overlooked when addressing women's issues, resulting in patriarchal *fatwas*.²⁴ MUI has even demonstrated how *Maqāṣid* methodology is used to permit, and at times encourage, the practice of female circumcision,²⁵ which is viewed by some as harmful to women, infringing upon their basic sexual rights.²⁶ Hence, the relevance and importance of *Maqāṣid cum-Mubādalah* methodology introduced by KUPI for examination is emphasized here, particularly because there was full participation of female ulama throughout its *fatwa*-making process—a crucial aspect absent in other *fatwa* organizations in Indonesia and globally.

Methods

²¹ Wael B Hallaq, "Maqasid and the Challenges of Modernity," *Al-Jami'ah* 49, no. 1 (2011): 1–32.

²² Muhammad Sholihin and Fuad Zein, "Maslahah Reasoning behind Fatwa of the Indonesian Ulema Council: Between Ijtihad's Method and Pragmatism," *Ijtihad* 36, no. 2 (2020): 1–10.

²³ Nurhayati and Muhammad Syukri Albani Nasution, "Maqāṣid Al-Sharīa in the Fatwa of the Indonesian Ulama Council Regarding Congregational Worship During the COVID-19 Pandemic," *ASy-Syir'ah* 54, no. 2 (2020): 251–75.

²⁴ Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law."

²⁵ M. Asrorun Ni'am Sholeh, "Fatwa MUI Tentang Khitan Perempuan," *AHKAM: Jurnal Ilmu Syariah* 12, no. 2 (2012): 35–46, <https://doi.org/10.15408/ajis.v12i2.964>.

²⁶ Jauharotul Farida et al., "Sunat Pada Anak Perempuan (Khifadz) Dan Perlindungan Anak Perempuan Di Indonesia: Studi Kasus Di Kabupaten Demak," *Sawwa: Jurnal Studi Gender* 12, no. 3 (2018): 371, <https://doi.org/10.21580/sa.v12i3.2086>.

The primary data for this article were collected through participant observation of KUPI's *fatwa*-making processes during the first Congress in Cirebon (2017) and the second Congress in Jepara (2022). This was complemented by literature analysis, including documents and writings related to the *Mubādalāh* concept and its application in formulating KUPI fatwas. The data were analyzed using a hermeneutic framework, focusing on epistemological foundations, the evolution of thought, and the development, conceptualization, and dissemination of women's experiences within the *Maqāṣid cum-Mubādalāh* approach in the context of the KUPI movement in Indonesia.

To highlight the significance of women's experiences as a key element in fatwa formulation, two KUPI *fatwas* were selected for analysis: the fatwa on child marriage and the fatwa on protecting women's lives from pregnancy risks due to rape, commonly associated with abortion in such cases. This analysis examines the steps taken by the KUPI Religious Deliberation (*Musyawarah Keagamaan*) to integrate women's perspectives into the methodology, process, and outcomes of its *fatwas*. These topics were chosen as they represent key discussions from the first and second KUPI congresses, which have sparked scholarly debate due to differing perspectives and methodologies in fatwa production.

Result and Discussion

Fostering Gender-Just Fiqh: KUPI's Maqāṣid cum-Mubādalāh Approach

As the foundation for contemporary *fatwas*, *fiqh* represents the scholars' understanding of Islamic source texts—the Qur'an and Hadith—to address various life challenges, thereby serving as a source of benefit for humanity in both this world and the hereafter. In modern times, beginning with Ibn Ashur (d. 1973), scholars have increasingly viewed the use of *Maqāṣid* as essential when other methods in *Uṣūl al-Fiqh* (the methodology of Islamic jurisprudence) prove inadequate to address the diverse challenges of contemporary life.²⁷ This *Maqāṣid* has evolved "from a secondary methodology to a primary methodology

²⁷ Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam* (Bandung: Mizan, 2013), pp. 164-8; Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda* (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), pp. 32-41.

and ultimately to a multidisciplinary science" in order "to encompass a broader scope of *ijtihad*" across all aspects of modern life.²⁸

The definition of *Maqāṣid* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Al-Khadimi encapsulates these various definitions by asserting that *Maqāṣid* encompasses "the main aims and objectives contained in Islamic law, both general and specific objectives, all of which lead to obedience and worship to Allah SWT, as well as to obtain (human) goodness in this world and the hereafter".²⁹

Among the most prominent conceptualizations of *Maqāṣid al-Sharī'ah* is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 1111), who identified five core objectives of Islamic law: the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-māl*), and lineage or offspring (*ḥifẓ al-nasl*). Contemporary scholars have expanded the scope of *Maqāṣid* to encompass a broader range of issues, including socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, and the protection of nature, among others.³⁰

The principle of *Maqāṣid* has been mobilized by a wide range of ulama in the Islamic world, in a wide range of domains. Rashid Rida (d. 1935) offers a socio-political reform and championed the fulfillment of women's rights as themes of *Maqāṣid*.³¹ Ibn Ashur expanded the themes of *Maqāṣid* by incorporating principles of freedom, equality, and tolerance.³² Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.³³ Zaynab al-'Ulwani took a specific

²⁸ Tazul Islam, "Expansion of Maqasid Thought Beyond Maqasid Al-Shariah: Maqasid Al-Qur'an as a New Paradigm," *Hamdard Islamicus* 45, no. 4 (2022): 79-95, <https://doi.org/10.57144/hi.v45i4.514>.

²⁹ Nur ad-dīn Al-Khādimī, *Al-Maqāṣid Ash-Sharī'ah: Ta'Rifuhā, Amthilatuḥā, Ḥujjiyyatuhā* (Riyad: Isbaliya, 2003), vol. 1, p. 26.

³⁰ Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, pp. 164-168.

³¹ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣid Asy-Syarī'ah: Kajian Kritis Dan Komprehensif* (Yogyakarta: IRCISOD, 2020), pp. 177-8.

³² Muḥammad at-Tāhir Ibn 'Ashūr, *Maqāṣid Ash-Sharī'ah Al-Islāmiyyah* (Cairo: Dar al-Salam, 2006), pp. 449-63.

³³ Yusuf Al-Qaradāwī, *Madkhal Li-Dirasāt Ash-Sharī'ah Al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1997), p. 75.

focus, including *sakīnah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid al-sharī'ah fī al-usrah*).³⁴

The diversity of perspectives and usages mentioned above underscores the ongoing relevance of *Maqāṣid* in addressing the evolving needs of societies and individuals, including gender issues. Contemporary scholars and intellectuals, particularly Jasser Audah, argue that *Maqāṣid* is the only comprehensive methodology capable of making the sources of Islamic law relevant to contemporary issues, including women's issues in family and society.³⁵ *Fatwas* that incorporate *Maqāṣid* as understood by these contemporary scholars will be authoritative because they are rooted in the sources of Islamic law, while also being responsive to the needs of modern society in the realities of their lives.³⁶

However, classical *fiqh* has marginalized the concept of *Maqāṣid* in relation to women's issues and family law, making it imperative to employ the *Maqāṣid* methodology in contemporary gender reform. This includes concepts such as *'adl* (justice), *qisṭ* (equity), *iḥsan* (moral excellence), *raḥmah* (mercy), and *wasāṭiyya* (moderation).³⁷ Contemporary scholars generally agree that *Maqāṣid* embodies universal values like social justice, public good, and economic welfare, which are applicable to both men and women.³⁸ However, they have not sufficiently elaborated on how the *Maqāṣid* methodology can be specifically applied to gender issues. Duderija proposes integrating the *Maqāṣid* methodology with the non-patriarchal Qur'anic hermeneutics offered by contemporary scholars such as Amina Wadud and Asma Barlas.³⁹ Building on this non-patriarchal Qur'anic hermeneutic,

³⁴ Zaynab Ṭahā Al-'Ulwānī, *Al-Ussrah Fi Maqāṣid Ash-Sharī'Ah: Qirā'Ah Fī Qaḍāyā Az-Zawāj Wa Aṭ-Ṭalāq Fi Amirikā* (Herndon: IIIT, 2012), pp. 90-97.

³⁵ Jasser Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach* (London: IIIT, 2007), pp. 24-25.

³⁶ Syaifei, "Tracing Maqāṣid Al-Sharī'ah in the Fatwas of Indonesian Council of Ulama (MUI).", pp. 105-111.

³⁷ Mohammad Hashim Kamali, "Islamic Family Law Reform: Problems and Prospects," *Islam and Civilisational Renewal* 3, no. 1 (2011): 37-52.

³⁸ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣhid Asy-Syarī'ah: Kajian Kritis Dan Komprehensif*, pp. 174-95.

³⁹ Adis Duderija, "Maqāṣid Al-Sharī'a, Gender Non-Patriarchal Qur'an-Sunna Hermeneutics, and the Reformation of Muslim Family Law," in *Maqāṣid Al-Sharī'a and Contemporary Reformist Muslim Thought*, ed. Adis Duderija, 2014, 193-218.

Abdelgafar offers a new *Maqāṣid* methodology for examining women's issues in Islam, which recognizes their relationship with their Creator, as well as their relationships with themselves, other individuals and groups, and all other creatures.⁴⁰

Some studies on Islamic law in the Indonesian context, even those employing the *Maqāṣid* approach, have yet to fully engage with conceptions of *Maqāṣid* that involve women and incorporate their life experiences.⁴¹ Recognizing women's perspectives and experiences is crucial for producing authentic religious knowledge,⁴² and KUPI has made this a cornerstone of its use of *Maqāṣid* in formulating gender-just *fiqh*.⁴³ The Religious Deliberation (*Musyawarah Keagamaan*) of KUPI, held in Cirebon (2017) and Jepara (2022), adopted the *Maqāṣid* methodology, but its distinctiveness is found in its integration of *Maqāṣid* with women's perspectives and experiences. The validation of women's perspectives and experiences is demonstrated through the active involvement of female ulama in all KUPI's *fatwa* processes, the acknowledgment of women's experiences as a legitimate source of knowledge, and the resulting *fatwas* that promote gender justice.⁴⁴

In the KUPI's perspective, men and women are seen as complete individuals and full participants in life, with their experiences valued

⁴⁰ Basma I. Abdelgafar, "Re-Envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam," in *Gulf Studies*, vol. 11 (Springer, 2024), 55–73, https://doi.org/10.1007/978-981-99-6006-4_3.

⁴¹ See: Syafei, "Tracing Maqāṣid Al-Sharī'ah in the Fatwas of Indonesian Council of Ulama (MUI)"; Edi Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari'ah Review," *Al-Risalah* 20, no. 1 (May 28, 2020): 1, <https://doi.org/10.30631/al-risalah.v20i1.565>; Nurhayati and Nasution, "Maqāṣid Al-Sharia in the Fatwa of the Indonesian Ulama Council Regarding Congregational Worship During the COVID-19 Pandemic"; Anthin Lathifah et al., "The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāṣid Hifz Al-Dīn," *Samarah* 6, no. 1 (2022): 369–90, <https://doi.org/10.22373/sjhk.v6i1.10957>; Agustina and Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages."

⁴² Majella Franzmann, *Women and Religion* (New York and Oxford: Oxford University Press, n.d.), pp. 1–35.

⁴³ Faqihuddin Abdul Kodir, *Metodologi Fatwa KUPI: Pokok-Pokok Pikiran Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia*, (Cirebon: Fahmina Institute, 2022), pp. 34–49 and 92–112.

⁴⁴ Nor Ismah, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia* (Leiden: Unpublished Dissertation in Leiden University, 2023), pp. 179–189.

as authoritative knowledge. Women actively contribute to formulating religious *fatwas*, ensuring their experiences are recognized and their interests protected. This approach emphasizes cooperation and mutual exchange, positioning both genders as equal participants in life. It ensures equal consideration of men's and women's experiences, preventing their marginalization in life's challenges. Recognizing men and women as complete individuals involves acknowledging their diverse dimensions—physical, psychological, social, and spiritual—beyond traditional gender roles.⁴⁵

The *Musyawarah Keagamaan* (MK), the body that issues *fatwas* in KUPI, embraces this perspective and employs two strategies in conceptualizing, referring, and implementing the *Maqāṣid* methodology. First, it emphasizes the equality of men and women as complete human beings, servants of Allah SWT, caliphs of the earth (*khalīfah fi al-ard*), and full subjects of life. Here, women together with men should actively participate in all *fatwa* processes, acting as both contributors and recipients of its outcomes. The second strategy focuses on acknowledging the unique experiences of women that differentiate them from men. This includes biological aspects such as menstruation, pregnancy, childbirth, postpartum experience, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. These unique biological and social experiences for women become integrated into the human experience, and serve as sources of knowledge, including religious opinions, such as *fiqh* and *fatwa*.⁴⁶

The protection of offspring (*ḥifẓ al-nasl*), one of the five core principles in the *Maqāṣid* methodology, has been expanded by contemporary scholars to encompass the protection of the integrity and

⁴⁵ Rofiah, "Reading the Qur'an Through Women's Experience"; Faqihuddin Abdul Kodir, "Qirā'a Mubadala: Reciprocal Reading of Hadith on Marital Relationship," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hosseini et al. (London: Oneworld, 2022), 181–209.

⁴⁶ Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, pp. 13–14.

welfare of family life.⁴⁷ This principle has been reconceptualized by KUPI through two primary strategies. First, the principle of *ḥifẓ al-nasl* is understood to encompass and prioritize the welfare of both men and women within the context of family life, integrating the experiences of both genders into its framework. Second, KUPI incorporates considerations related to women's reproductive health, both biological and social, into the formulation of *ḥifẓ al-nasl* in various *fatwas*. For example, the potential harm to the wombs of underage girls caused by pregnancy – a risk that is exclusive to female reproductive organs – has led KUPI to prohibit the marriage of children. Additionally, the social consequences uniquely faced by girls who marry young, such as restrictions on their access to education and social activities, are factored into the application of the *ḥifẓ al-nasl* principle in efforts to protect the welfare of families.⁴⁸

The other four principles of *Maqāṣid* – the protection of the soul, mind, property, and religion – are also conceptualized through these two strategies, ensuring that the equal needs of men and women as human beings are addressed while simultaneously accommodating the specific biological and social needs of women. These strategies are similarly applied to other *Maqāṣid* principles developed by contemporary scholars, which are grounded in universal values such as justice, mercy, benefit, freedom, and the elimination of all forms of injustice, harm, and violence.⁴⁹ This approach is evident in the structure of KUPI's *fatwas*, from the initial description of the issue (*Taṣawwur*), to the formulation of themes based on *fatwa* sources (*Adillah*), and

⁴⁷ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, p. 22; Syafei, "Tracing Maqāṣid Al-Shari'ah in the Fatwas of Indonesian Council of Ulama (MUI)", pp. 108-109.

⁴⁸ Tim KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia* (Cirebon: KUPI, 2017), pp. 111-5; Tim Perumus MK KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2* (Jakarta: KUPI, 2023), pp. 145-8; Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, pp. 11-14.

⁴⁹ Abdul Kodir, *Metodologi Fatwa KUPI: Pokok-Pokok Pikiran Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia*, pp. 108-9; Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*; Rofiah, Nikmatullah, and Mufidah, "The Traces of Qur'anic Women's Hakiki Justice Interpretation in KUPI's Fatwas", pp. 9-10.

particularly in the preparation of arguments during the analysis of evidence (*Istidlāl*).

In the *Taṣawwur* section, KUPI presents data on the adverse effects experienced by women in the cases under review for *fatwa*, emphasizing the necessity for women to avoid these harms in accordance with the principles of justice and benefit as outlined in Islamic teachings. In the *Adillah* section, KUPI compiles themes based on universal values, drawing sources from the Qur'an, Hadith, and *fiqh*. These themes include teachings that apply broadly to both men and women – such as those promoting human dignity, justice, compassion, and general kindness toward humans and nature – as well as those that specifically address women, such as the command to treat women well, the prohibition against causing harm to women, and the emphasis on compassion for women during pregnancy, childbirth, and breastfeeding. In the *Istidlāl* section, KUPI connects the experiences of women highlighted in the *Taṣawwur* with the universal themes outlined in the *Adillah*, ensuring that the resulting arguments are relevant and aligned with the principles of the *Maqāṣid* methodology.

Overall, KUPI has adopted the *Maqāṣid cum-Mubādalah* framework, as outlined above, to deliberate on religious perspectives concerning various life issues, resulting in the issuance of their gender just *fatwas*. This article specifically examines the application of this framework in two particular *fatwas*: child marriage and pregnancy resulting from rape.⁵⁰

Fatwa on Child Marriage

Traditional *fiqh* commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.⁵¹ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for children, especially the girls, in which the *Maqāṣid* methodology is

⁵⁰ The three fatwas issued in Cirebon (2017) were on sexual violence, child marriage, and natural damage. The five fatwas issued in Jepara (2022) were on women's participation in combating religious extremism, waste management, forced marriage, pregnancy due to rape, and female genital cutting and harmful practices.

⁵¹ Wahbah Az-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhū* (Damascus: Dar al-Fikr, 1989), vol. 7, p. 179.

invoked in the discussion.⁵² MUI does not yet have a *fatwa* on child marriage, while NU's *fatwa* represents traditional *fiqh* which allows child marriage.⁵³ Although Muhammadiyah's *fatwa* disregards under-aged marriage, its explanation on *Maqāṣid* methodology is very minimal, as it mostly discusses related hadiths.⁵⁴

Therefore, KUPI's distinctive approach in incorporating *Maqāṣid* into its formulation adds a significant and nuanced dimension to the discourse on child marriage, contributing to the development of gender-just *fiqh*. The *fatwa* of KUPI (2017) did not issue a definitive ruling on the legality of child marriage but instead emphasized the imperative to protect children from entering into such unions. In shaping its stance on child marriage, KUPI employed the *Maqāṣid* approach, which involved several key steps: first, outlining the issue (*taṣawwur*); second, presenting textual evidence (*Adillah*) drawn from the Qur'an, Hadith, and the opinions of scholars (*Aqwāl al-'Ulamā'*); and finally, conducting an analysis (*Istidlāl*) to construct a compelling argument for the necessary protection of children from marriage.

Concerning the issue of child marriage, the *Taṣawwur* of KUPI incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *Taṣawwur*, numerous expressions derived from this data are correlated with the themes of *Maqāṣid* advocated by contemporary scholars. Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' occur frequently, which are relevant to the themes of *Maqāṣid*, emerging as conclusions drawn from qualitative data on child

⁵² Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari'ah Review"; Muhammad Shofwan Taufiq and M Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage," *Muhammadiyah Law Reform* 7, no. 2 (2023): 1-23, <https://doi.org/10.24127/mlr.v7i2.2764>; Agus Purnomo et al., "Dimensions Maqāṣid Al-Shari'ah and Human Rights in The Constitutional Court's Decision on Marriage Age Difference in Indonesia," *Samarah* 7, no. 3 (2023): 1397-1421, <https://doi.org/10.22373/sjkh.v7i3.13283>; Arbanur Rasyid et al., "Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari' a," *Jurnal Ilmiah Peuradeun: The Indonesian Journal of the Social Sciences* 12, no. 2 (2024).

⁵³ PBNU, *Keputusan Mukhtar XXXII Nahdlatul Ulama*, ed. Abdul Mun'im DZ (Jakarta: Pengurus Besar Nahdlatul Ulama, 2010), pp. 206-8.

⁵⁴ Agung Danarto et al., *Tanfidz Keputusan Musyawarah Nasional Tarjih XXVIII* (Yogyakarta: Pimpinan Pusat Muhammadiyah, 2015), pp. 135-9.

marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqāṣid* analysis of five principles, i.e. the expanded meaning of protection of life, mind, wealth, descent, and religion.

The *Taṣawwur* section of KUPI's *fatwa* is replete with postulates that align with the universal values of *Maqāṣid* as proposed by contemporary scholars. What distinguishes KUPI's *fatwa* is its grounding in and exploration of data on the lived experiences of women. The *Taṣawwur* section details the adverse impacts of child marriage, including its contributions to illiteracy rates, maternal and infant mortality rates, the difficulties faced by married girls and young mothers, their malnutrition, low educational attainment, high school dropout rates, and the challenges faced by young women who are divorced from early marriages. It also addresses the mental and emotional strain these girls endure as wives, their low levels of well-being, high dependency, and the prevalence of domestic violence. These postulates are systematically organized in the *Taṣawwur* section to demonstrate how child marriage contradicts the values upheld by the principles of *Maqāṣid*.⁵⁵

The textual references (*Adillah*) employed by KUPI, following the *Taṣawwur* section, also encompass themes that align with the structure of *Maqāṣid* as universal values. Specifically, the *Adillah* concerning child marriage include seven Quranic verses, five Hadith texts, and six statements from scholars (*Aqwal al-'Ulamā'*). These references are systematically aligned with *Maqāṣid*-related themes, which include the objective of marriage as a means of attaining peace of mind, the prohibition against producing a weak generation, the directive to become the best among people, the proscription against self-destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the encouragement to seek knowledge. The Hadith-derived *Adillah* further reinforce these themes, emphasizing the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Additionally, the *Adillah* drawn from the

⁵⁵ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, pp. 101-104.

perspectives of scholars (*Aqwāl al-'Ulamā'*) highlight the principle of forbidding harm and evil, as well as the five foundational principles of protection, which are central to the *Maqāṣid* methodology.⁵⁶

In the *Istidlāl* section, all the themes identified in the *Taṣawwur* and *Adillah* serve as fundamental concepts for KUPI to argue that child marriage contradicts the principles of *Maqāṣid* and that protecting children from early marriage is essential to the objectives of Islamic law. The focus of *Istidlāl* is on elaborating the key concepts derived from the *Adillah* themes, which align with the objectives of Islamic law. These objectives are then presented as strong, clear, and persuasive arguments affirming Islam's obligation to protect children from early marriage.

When contemporary scholars extended the five core principles (*kullīyyāt al-khams*) of *Maqāṣid* into new dimensions, KUPI similarly expanded them to address the specific objective of safeguarding children, particularly girls, from early marriage. According to Jasser Audah, the principle of preserving religion (*ḥifẓ al-dīn*) has evolved to encompass freedom of belief.⁵⁷ For KUPI, in this context, the preserving religion

"entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their understanding of religion in general and to fulfill the specific marriage goals outlined by religion."⁵⁸

The principle of preserving the mind (*ḥifẓ al-'aql*), which has evolved to include the propagation of scientific thinking, the suppression of herd mentality, and the avoidance of brain drain,⁵⁹ is further explained by MK KUPI as encompassing the need to "shield

⁵⁶ KUPI, pp. 104-10.

⁵⁷ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, 248.

⁵⁸ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, 114-5.

⁵⁹ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, 22.

children from the possibility of hindering intellectual development resulting from the interruption of their education."

Similarly, while the preservation of offspring (*hifz an-nasl*), honor (*hifz al-'ird*), and wealth (*hifz al-māl*) have evolved to include the care of family, the protection of human dignity, and economic development respectively,⁶⁰ KUPI clarifies that:

"Preserving offspring (*hifz an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*hifz al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they are forced to work prematurely to support the family due to early marriage. Preserving wealth (*hifz al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage."⁶¹

Thus, rather than relying solely on the literal interpretation of Islamic legal texts, KUPI grounds its *fatwa* in the logical framework of the *Maqāṣid*, integrated with the perspective of *Mubādalah* through two strategies. The first strategy focuses on the shared needs between men and women, such as the need for education and health, which has been thoroughly elaborated. The second strategy addresses the specific reproductive challenges experienced by married girls, their educational obstacles, and various other social issues they face—issues that are not typically encountered by young married men. Within this conceptual framework, i.e. *Maqāṣid cum-Mubādalah*, the primary contention advanced by KUPI is that Islam advocates for the protection of children, particularly girls, from the harmful consequences of early marriages. KUPI asserts that this protection should be provided by parents, families, society, and, most importantly, by the government and state. Grounded in the principles of the *Maqāṣid cum-Mubādalah*, KUPI also mandates that these entities ensure the rights of children,

⁶⁰ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, pp. 248-9.

⁶¹ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, 114-5.

even those who are married, to education, health, care, and protection from all forms of violence, exploitation, and discrimination.⁶²

Fatwa on Pregnancy Due to Rape

Contemporary *fatwas* in Indonesia, as grounded in classical *fiqh*, emphasize the permissible age for aborting a pregnancy resulting from rape, rather than addressing the profound traumatic experiences and criminalization faced by many female victims. *Fatwas* issued by formal institutions primarily focus on the permissibility of abortion within 40 days of conception or the act of rape, thereby neglecting the complex realities and challenges faced by these women.⁶³ However, due to the profound mental trauma experienced by rape victims, many women may not even become aware of their pregnancies until well beyond this 40-day window.⁶⁴ In response to this gap, particularly the absence of women's experiences in religious *fatwas* concerning rape victims, women in Indonesia – including ulama, scholars, activists, and victims' advocates – organized a series of meetings informed by their respective studies. These efforts culminated in the second KUPI Religious Conference (MK) in Jepara in 2022, which issued a *fatwa* aimed at protecting pregnant rape victims, grounded in the lived experiences of women.⁶⁵

MUI's *fatwa* 4/2005 categorizes rape as a secondary necessity (*al-hajah*), in contrast to severe medical conditions like advanced cancer, which are regarded as primary emergencies (*al-darūra*). In these two situations, according to the MUI, pregnancy may be terminated within 40 days of conception to protect the mother's well-being. Specifically, in cases of rape, the decision to terminate the pregnancy must involve consultation with the family, medical professionals, and religious scholars. Unfortunately, because the *fatwa* does not take into account

⁶² KUPI, 116.

⁶³ Ibnu Fadli, "Legalitas Aborsi Bagi Korban Perkosaan (Tinjauan Menurut Hukum Positif Dan Hukum Islam)," *Jurnal Lex Renaissance* 7, no. 3 (2022): 559–70, <https://doi.org/10.20885/jlr.vol7.iss3.art8>.

⁶⁴ Maidina Rahmawati, Arinta Dea Dini Singgi, and A.T. Erasmus Napitupulu, *Penyelenggaraan Kebijakan Aborsi Aman, Bermutu, Dan Bertanggung Jawab Sesuai Dengan UU Kesehatan Di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2021), pp. 43–5.

⁶⁵ KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, pp. 164–210.

women's experiences, the consent of women who have been raped is not considered in the decision to permit abortion. This *fatwa* is grounded in several Qur'anic verses and Hadith texts that do not explicitly address rape or abortion. Additionally, it draws upon quotations from classical *fiqh* scholars concerning *Maqāṣid* principles, such as the obligation to eliminate harm, the permissibility of otherwise prohibited actions in emergencies, and other related considerations.

Unlike the MUI's *fatwa*, the KUPI's *fatwa* (2022) on "Protection of Women's Lives from the Danger of Pregnancy as a Result of Rape" focuses its considerations on the physical, psychological, and social conditions of the female victim when determining the permissibility of terminating a pregnancy or the obligation to continue it.⁶⁶ This KUPI's *fatwa* is grounded in the *Maqāṣid cum-Mubādalāh* approach, employing two key strategies: the principle of equality between men and women, and the recognition of women's unique biological and social experiences. These *Maqāṣid cum-Mubādalāh* postulates are integrated throughout the *fatwa*'s structure, addressing the specific challenges faced by women who are victims of rape. In the *Taṣawwūr* section, the *fatwa* highlights three central aspects that resonate with the *Maqāṣid cum-Mubādalāh* framework: the harmful effects of rape that must be avoided, the necessity of protecting individuals—especially women—from these adverse consequences, and the crucial need to safeguard the lives of women who become pregnant as a result of rape. The data presented in this section is closely aligned with the core concepts of *Maqāṣid*.⁶⁷

In the *Adillah* section, there are themes which are closely aligned with the principles of *Maqāṣid*, derived from the Qur'an, Hadith, and *Aqwāl al-'Ulamā'*. There are 17 Qur'anic verses, 13 Hadith texts, and 8 quotes from *Aqwāl al-'Ulamā'* referenced in the KUPI's *fatwa*. The Qur'anic verses address key themes such as the inherent dignity of human beings, the mission of Islam to promote mercy, prohibitions against harming others, self-condemnation, safeguarding the vulnerable, refraining from blaming those who are coerced, and extending forgiveness to victims of sexual coercion. The Hadith texts

⁶⁶ KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, pp. 194-5.

⁶⁷ KUPI, pp. 164-70.

further reinforce these themes, emphasizing the prohibition of tyranny, the avoidance of harm to oneself and others, the importance of supporting the weak, alleviating the difficulties of others, treating women with kindness, aiding those who have been wronged, and urging leaders to facilitate ease for the people. Excerpts from *Aqwāl al-'Ulamā'* in KUPI's *fatwa* address several critical themes: the objectives of Islamic law (*Maqāṣid al-Sharī'ah*), the imperative to eliminate harm (*daf'u al-ḍarar*), the principle that emergencies can justify prohibitions (*al-ḍarūrāt tubīḥ al-maḥzūrāt*), the recognition of rape as a crime against women, the prioritization of the mother's life over that of the unborn child in critical circumstances, and the government's duty to prioritize the welfare of the people (*maṣlaḥa al-ummah*).⁶⁸

The themes of *Maqāṣid* in the *Adillah* section are explicitly focused on women as victims who are entitled to protection, forgiveness, and support. In the analysis (*Istidlāl*) section, then, these themes are methodically reorganized into a cohesive framework that reinforces several key arguments: the inherent injustice of rape, the attribution of wrongdoing solely to the perpetrator, and the assertion that women who have been raped are not only innocent but are also in need of assistance, support, and companionship. These arguments lay the foundation for raising awareness about the critical importance of addressing the needs of women who are victims of rape, particularly emphasizing their need for protection in the aftermath of rape and the consequences of pregnancy resulting from such traumatic events.⁶⁹

The five principles of *Maqāṣid* – protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-māl*), and lineage or offspring (*ḥifẓ al-nasl*) – are also invoked by KUPI with particular emphasis on the lived experiences of women who are victims of rape. Here, KUPI defines protection of religion (*ḥifẓ al-dīn*) and life (*ḥifẓ al-nafs*) within the *Maqāṣid cum-Mubādalāh* Methodology, by saying that:

“Rape victims facing pregnancy may encounter challenges in practicing *ḥifẓ ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to

⁶⁸ KUPI, pp. 170-85.

⁶⁹ KUPI, pp. 187-94.

question Islam's stance. The lives of women who are victims of rape and experience pregnancy are highly susceptible to ongoing stigmatization, discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *ḥifẓ an-nafs*, which emphasizes the protection of human lives in Islamic law".⁷⁰

KUPI also argues that exposing rape survivors to the risks of pregnancy violates the principle of *ḥifẓ al-'aql*, which prioritizes the preservation of mental integrity within the framework of Islamic law. This conclusion stems from evidence indicating that women who become pregnant due to rape often endure long-term psychological and cognitive disturbances, face substantial barriers to education, and struggle to sustain clear and rational thought processes critical to their well-being. Such conditions may further result in feelings of self-worth deterioration and an increased risk of self-harm.

According to KUPI, allowing women who are victims of rape to remain vulnerable to the risks of pregnancy also contravenes the principle of *ḥifẓ al-māl*, which emphasizes the protection of property within Islamic law. This is because women who become pregnant as a result of rape and experience cognitive impairments may struggle to manage their assets effectively, face the risk of job loss or dismissal, and encounter barriers to economic participation. Additionally, the financial burden of recovery from the physical and psychological trauma of rape, coupled with the costs of maintaining a healthy pregnancy and providing for the child over their lifetime, is substantial and cannot be overlooked.

Furthermore, KUPI argues that subjecting women to the risks of pregnancy under these circumstances violates the principle of *ḥifẓ an-nasl*, which underscores the protection of lineage and family in Islamic law. The logic is that women who become pregnant due to rape may experience self-directed resentment and harbor negative feelings toward the fetus, potentially leading to self-harm or neglect of their own and the fetus's well-being, including inadequate nutrition. Such

⁷⁰ KUPI, pp. 188-9.

conditions risk the birth of a vulnerable generation, as warned in the Quran (QS. An-Nisa, 4:9), potentially alienated from familial bonds, lacking essential support, and facing significant life challenges.

Based on the *Maqāṣid cum-Mubādalah* norms grounded in women's experiences, as elaborated above, MK KUPI issued *fatwa* on protection of women from the danger of pregnancy due to rape, consisting of three decisions: (1) the protection of women's lives from the dangers of pregnancy resulting from rape is obligatory at any stage of pregnancy, whether by continuing or terminating the pregnancy; (2) all relevant parties bear the responsibility to protect women's lives from the dangers associated with pregnancy resulting from rape; and (3) parties who have the responsibility and ability in providing protection to women's lives from the dangers of pregnancy resulting from rape are prohibited to abandon their responsibility.

These three points of KUPI's *fatwa* on pregnancy resulting from rape differ not only from similar *fatwas* issued by official institutions in Indonesia, such as MUI, but also from scholarly works that have employed the *Maqāṣid* methodology in addressing related issues. Azizah, Shahnan, and Panjaitan's (2024) study on the legality of abortion from a *Maqāṣid* perspective allows abortion for rape victims based on principles of justice, balance, and humanity but does not incorporate women's experiences or involvement in the decision-making process.⁷¹ KUPI's *fatwa* stands out particularly because it actively involves women in the deliberation process and grounds its methodology in the lived experiences of women, especially those who are victims of rape.

Conclusions.

The explanation of the *Maqāṣid cum-Mubādalah* Methodology as implemented by KUPI in addressing the issues of child marriage and pregnancy resulting from rape, addresses at least three key challenges identified by scholars and gender justice activists. First, women are actively involved in all stages of the *fatwa* process, including data collection, discussions, the *fatwa* meetings, and the final formulation of

⁷¹ Nur Azizah and Budi Sastra Panjaitan, "The Legality of Abortion by Medical Personnel for Rape Victims in Indonesia: A Perspective from Maqashid Sharia by Al-Syatibi and Al-Tufi," *Madania* 28, no. 1 (2024): 35–44.

the *fatwa*. Second, women's lived experiences are deeply integrated into the fatwa's methodological framework and are crucial in shaping the final *fatwa* decisions. Third, KUPI has successfully formulated and implemented a contemporary *fiqh* methodology that promotes gender justice.

In contrast to traditional approaches that often sideline women's experiences, KUPI validates their authority in religious discourse by incorporating their viewpoints. This inclusivity is vital for promoting gender justice within Islamic legal frameworks, ensuring that gender considerations are thoroughly integrated into the interpretation and application of Islamic law. By actively involving female ulama in the *fatwa* process and valuing their expertise, KUPI ensures a comprehensive understanding of gender issues. However, further research is needed to explore how KUPI *fatwas* function within civil society movements for social change. This could involve observing female ulama's daily activities to understand how they apply their knowledge and networks in advocating for gender equality.

Among the gaps that have not been explored in this article, and which could serve as an agenda for future research, is the application of gender-just *fiqh* methodologies to male-specific issues or those where men require special consideration due to their biological or social conditions. Thus far, the *Maqāṣid cum-Mubādalāh* methodology has primarily been applied by KUPI to issues affecting women. However, as the gender just-*fiqh* aims to ensure fairness for both men and women, it should also be equipped to address issues specific to men or those in which men require affirmation due to their distinct biological or social conditions.

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Women's Experiences in Islamic Law: Exploring KUPI's Methodology of *Fatwa* on Child Marriage and Abortion in Cases of Rape

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Abstract:

The production of *fatwas* in Indonesia has traditionally been dominated by male scholars and rooted in conventional methodologies that prioritize textual sources, often neglecting the lived experiences of women. This article examines innovative methodology proposed by the Indonesian Congress of Women Ulama (*Kongres Ulama Perempuan Indonesia*, or KUPI) to develop a gender-just approach to Islamic jurisprudence (*fiqh*). KUPI's framework integrates *Maqāṣid al-Sharī'ah* (the objectives of Islamic law) with *Mubādalah*—a perspective emphasizing equality and reciprocity between men and women. Termed *Maqāṣid cum-Mubādalah*, this methodology recognizes lived experiences of women as one of the sources to formulate religious opinions, or *fatwa*, in Islamic legal tradition. Drawing on participant observation of KUPI's *fatwa*-making processes and literature analysis, this study explores two key questions: (1) To what extent does KUPI's *Maqāṣid cum-Mubādalah* methodology foster gender-just *fiqh*? (2) How does KUPI apply this methodology, incorporating both women's experiential perspectives and literal Islamic texts, in issuing its *fatwas* on child marriage (Cirebon, 2017) and abortion in cases of rape (Jepara, 2022)? The analysis highlights how KUPI's *Maqāṣid cum-Mubādalah* approach challenges traditional jurisprudence, showcasing its transformative potential. This article underscores the importance of integrating women's experiential perspectives into Islamic legal discourse, offering new insights into evolving interpretations of *fiqh* that prioritize justice and equality.

Keywords:

Fatwa, Gender-Just *Fiqh*, *Maqāṣid*, *Mubādalah*, and KUPI.

Introduction

The basis of religious legal opinion, known as *fatwa*, issued by religious institutions, such as the Indonesian Ulama Council (MUI) is *fiqh*, an Islamic jurisprudence which reflects scholars endeavor to address real-life challenges by referring to foundational texts—the

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Qur'an and Hadith.¹ Although these source texts remain unchanged, the interpretation of their content has naturally evolved, resulting in ongoing developments in *fiqh*, particularly regarding women's issues in family law.² This evolution in *fiqh* requires a comprehensive and holistic methodology,³ in which women's participation becomes a "means of ensuring just and lasting reforms".⁴

Contemporary *fatwas* which rely on classical *fiqh* without incorporating critical methodologies, have inadvertently led to outcomes that disregard rights of women and prioritize those of men.⁵ *Fatwas* issued by the Indonesian Ulama Council (MUI) are good examples.⁶ Indeed, the marginalization of women from the religious knowledge production domain and the consolidation of religious authority, which narrowed the *ijtihadic* possibilities, has led to the development of an interpretive methodology centered on the male gaze.⁷ Nur Rofiah argues that *fatwas* regarding women are determined "by how the issue impacts men".⁸ For instance, a *fatwa* on women working may be deemed *harām* (forbidden) if it is assumed to lead to *fitna* or slander to men, *makrūh* (unpreferrable) if it might cause slander, and *mubāh* (allowed) if it is perceived as unlikely to cause slander. This

¹ Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975–1998)," *Journal of Islamic Studies* 15, no. 2 (May 1, 2004): 147–79, <https://doi.org/10.1093/jis/15.2.147>.

² Ziba Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," *Hawwa* 1 (2003): 1–28, <https://api.semanticscholar.org/CorpusID:73552279>.

³ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer," *UNISIA* XXX, no. 66 (2007): 329–41.

⁴ John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (New York: Syracuse University Press, 2001), p. 162.

⁵ Khalid Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2003).

⁶ Anthin Lathifa, "Perempuan Dalam Fatwa Ulama Di Indonesia: Karakteristik Hukum Dan Perspektif Feminis Muslim" (2019, 2019); Zainul Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law," *AHKAM: Jurnal Ilmu Syariah* 24, no. 1 (2024): 135–52, <https://doi.org/10.15408/ajis.v24i1.34744>.

⁷ Asma Sayeed, *Women and the Transmission of Religious Knowledge in Islam* (Cambridge: Cambridge University Press, 2013).

⁸ Nur Rofiah, "Reading the Qur'an Through Women's Experience," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hossemi et al. (London: Oneworld, 2022), p. 82.

logic primarily gauges the impact on men without adequately considering women's necessity for such work.⁹

The gender-biased logic within *fiqh*, which serves as the primary reference for contemporary *fatwas*, is particularly evident in various aspects of women's issues in family law, prompting reforms by contemporary scholars.¹⁰ This bias is exemplified, for instance, in the definition of marriage. In classical *fiqh*, marriage is often defined from a perspective that primarily addresses the needs of men while neglecting those of women.¹¹ However, contemporary scholars have revised this definition to emphasize equality between men and women as partners in marriage, stressing that both should derive benefits from the union.¹²

The redefinition of marriage is pivotal in Islamic family law reform efforts worldwide as it aims to prevent injustices towards women and children and ensure their benefits—a fundamental objective of Islamic law.¹³ Reforms encompass setting minimum marriage age limits, improving women's access to divorce, limiting men's polygamous rights, mandating marriage and divorce registrations, and establishing specialized courts for marriage disputes.¹⁴ The reform of these issues, and other issues related to the position and rights of women in the family and society, with various

⁹ See also: Nur Rofiah, Nikmatullah Nikmatullah, and Zakiyatul Mufidah, "The Traces of Qur'anic Women's Hakiki Justice Interpretation in KUPI's Fatwas," *PALASTREN: Jurnal Studi Gender* 17, no. 1 (2024): 1–22, <https://journal.iainkudus.ac.id/index.php/Palastren/article/view/26496>, especially pages: 13–14.

¹⁰ (Esposito and DeLong-Bas 2001; Khoirudin Nasution 2005; Mir-Hosseini, Al-Sharmani, and Rumming 2015)

¹¹ 'Abd ar-Rahmān Al-Jazirī, *Al-Fiqh 'Alā Maqāhib Al-Arba'Ah* (Beirut: Dar al-Kutub al-'Ilmiyah, 2004), vol. 4, pp. 8–9.

¹² Muhammad Abū Zahrah, *Al-Aḥwāl Ash-Shakhṣiyyah* (Cairo: Dar al-Fikr al-'Arabi, 1957); Ahmad Ghandur, *Al-Aḥwāl Al-Shakhṣiyyah Fī Al-Tashrī' Al-Islāmī Ma'a Bayān Mā 'alayhi Al-'amal Fī Maḥākīm Al-Kuwayt* (Kuwait: Jamī'ah al-Kuwayt, 1972); Idris Al-Hammadi, *Al-Bu'd Al-Maqasidi Wa Ishlah Mudawwanah Al-Ussrah* (Al-Dar al-Baydha': Ifriqiya asy-Syarq, 2005).

¹³ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2009), pp. 35–43.

¹⁴ Nasution, "Women's Right in the Islamic Family Law of Indonesia."

methodological offers and approaches, continue to be voiced by various parties to formulate gender-just *fiqh*.¹⁵

According to Ziba Mir-Hosseini (2015), the reform and formulation of gender-just *fiqh* have undergone three significant phases. The first phase is the codification moment, during which Muslim countries throughout the twentieth century transformed classical *fiqh* into codified family laws. However, it did not include any critique of the patriarchal structures inherent in classical *fiqh*. The second phase is marked by the rise of political Islam, beginning in the 1970s, with its peak in 1979 in countries like Iran, Egypt, and Pakistan, where there was a movement to return to Islamic sharia, which is really classical *fiqh*. The third phase is characterized by the emergence of Islamic feminism, pioneered by scholars such as Azizah al-Hibri, Riffat Hassan, and Amina Wadud. These scholars began to reclaim Islam's egalitarian message from its original sources and challenged the patriarchal dimensions of Islamic tradition.¹⁶

In this third phase, the Indonesian Congress of Women Ulama (KUPI), established in 2017, uniquely integrates Islamic sources with women's knowledge and experiences. This approach, according to Kloos and Ismah (2023), expands the global Islamic feminist project from a primarily scholarly and intellectual movement into a locally resonant and potentially impactful social movement.¹⁷ KUPI, held twice, first in 2017 at the Islamic boarding school, or *Pesantren* Kebon Jambu al-Islami Cirebon West Java, and second in 2022 at *Pesantren* Hasyim Asy'ari Bangsri Jepara Central Java, featured a core activity called the religious deliberation (*Musyawarah Keagamaan*) to discuss and decide KUPI's religious opinions.

Numerous studies on KUPI have underscored its importance in highlighting the presence and influence of women in clerical roles,

¹⁵ Ziba Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," in *Men in Charge?: Rethinking Authority in Muslim Legal Tradition*, ed. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumming (London: Oneworld Publications, 2015), 13–43.

¹⁶ Mir-Hosseini, p. 25.

¹⁷ David Kloos and Nor Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority," *History and Anthropology* 34, no. 5 (October 20, 2023): 818–43, <https://doi.org/10.1080/02757206.2023.2249495>.

especially in *fatwa* making, in which they participate in all of its processes.¹⁸ This distinguishes KUPI from other *fatwa*-issuing institutions, such as the MUI, and serves as a response to the challenge posed by various scholars and activists advocating for women's involvement in the issuance of religious *fatwas*.¹⁹ Furthermore, the *Musyawarah Keagamaan* (MK), the body within KUPI responsible for issuing *fatwas*, operates through community-level stages, promotes collective decision-making, integrates women's perspectives, and catalyzes social, cultural, and spiritual movements.²⁰

Though past studies have been useful in defining Islamic knowledge within KUPI's movement, they lack an analysis of how KUPI conceptualizes *fiqh* methodologies, such as *Maqāṣid*, to formulate gender-just *fiqh*. Filling this gap, this article aims to delve into a pivotal framework utilized in classical and contemporary *fiqh*, i.e. *Maqāṣid al-Sharī'ah*, reinterpreted by KUPI within the *Mubādalah* (reciprocity) approach. This *Mubādalah* has been adopted by KUPI as a perspectiva and a method to enable a gender-sensitive reinterpretation of Islamic texts, emphasizing reciprocal roles for both genders, promoting cooperative relationships, and remaining open to reinterpretation to accommodate evolving contexts. By analyzing the KUPI *fatwas* addressing child marriage and protecting women's lives from

¹⁸ Umma Farida and Abdurrohman Kasdi, "The 2017 KUPI Congress and Indonesian Female 'Ulama,'" *Journal of Indonesian Islam* 12, no. 2 (2018): 135–58, <https://doi.org/10.15642/JIIS.2018.12.2.135-158>; Inayah Rohmaniyah, Samia Kotele, and Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia," *Academic Journal of Interdisciplinary Studies* 11, no. 3 (May 1, 2022): 60–70, <https://doi.org/10.36941/ajis-2022-0068>; Kloos and Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority"; Arifah Millati Agustina and Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>; Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law"; Rofiah, Nikmatullah, and Mufidah, "The Traces of Qur'anic Women's Hakiki Justice Interpretation in KUPI's Fatwas."

¹⁹ Esposito and DeLong-Bas, *Women in Muslim Family Law*, p. 162; Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," p. 26.

²⁰ Kloos and Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority."

pregnancy risks due to rape, this article seeks to elucidate *Maqāṣid* as the underlying principle of the *Mubādalah* framework, known as *Maqāṣid cum-Mubādalah*.

The discussion of *Maqāṣid cum-Mubādalah* in this article is crucial, given the fragmented and piecemeal efforts to reform Islamic law for the advancement of women's rights, which often overlook fundamental issues. This focus is particularly significant at a broader methodological level, where *Maqāṣid* must be revisited to address the challenges of modernity.²¹ In Indonesia, elements of *Maqāṣid* are observed within the *fatwa* methodologies of the Indonesian Ulama Council (MUI).²² While these principles are extensively applied in MUI *fatwas* related to economic and health matters,²³ they are often overlooked when addressing women's issues, resulting in patriarchal *fatwas*.²⁴ MUI has even demonstrated how *Maqāṣid* methodology is used to permit, and at times encourage, the practice of female circumcision,²⁵ which is viewed by some as harmful to women, infringing upon their basic sexual rights.²⁶ Hence, the relevance and importance of *Maqāṣid cum-Mubādalah* methodology introduced by KUPI for examination is emphasized here, particularly because there was full participation of female ulama throughout its *fatwa*-making process—a crucial aspect absent in other *fatwa* organizations in Indonesia and globally.

Methods

²¹ Wael B Hallaq, "Maqasid and the Challenges of Modernity," *Al-Jami'ah* 49, no. 1 (2011): 1–32.

²² Muhammad Sholihin and Fuad Zein, "Maslahah Reasoning behind Fatwa of the Indonesian Ulema Council: Between Ijtihad's Method and Pragmatism," *Ijtihad* 36, no. 2 (2020): 1–10.

²³ Nurhayati and Muhammad Syukri Albani Nasution, "Maqāṣid Al-Sharīa in the Fatwa of the Indonesian Ulama Council Regarding Congregational Worship During the COVID-19 Pandemic," *ASy-Syir'ah* 54, no. 2 (2020): 251–75.

²⁴ Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law."

²⁵ M. Asrorun Ni'am Sholeh, "Fatwa MUI Tentang Khitan Perempuan," *AHKAM: Jurnal Ilmu Syariah* 12, no. 2 (2012): 35–46, <https://doi.org/10.15408/ajis.v12i2.964>.

²⁶ Jauharotul Farida et al., "Sunat Pada Anak Perempuan (Khifadz) Dan Perlindungan Anak Perempuan Di Indonesia: Studi Kasus Di Kabupaten Demak," *Sawwa: Jurnal Studi Gender* 12, no. 3 (2018): 371, <https://doi.org/10.21580/sa.v12i3.2086>.

The primary data for this article were collected through participant observation of KUPI's *fatwa*-making processes during the first Congress in Cirebon (2017) and the second Congress in Jepara (2022). This was complemented by literature analysis, including documents and writings related to the *Mubādalāh* concept and its application in formulating KUPI fatwas. The data were analyzed using a hermeneutic framework, focusing on epistemological foundations, the evolution of thought, and the development, conceptualization, and dissemination of women's experiences within the *Maqāṣid cum-Mubādalāh* approach in the context of the KUPI movement in Indonesia.

To highlight the significance of women's experiences as a key element in fatwa formulation, two KUPI *fatwas* were selected for analysis: the fatwa on child marriage and the fatwa on protecting women's lives from pregnancy risks due to rape, commonly associated with abortion in such cases. This analysis examines the steps taken by the KUPI Religious Deliberation (*Musyawarah Keagamaan*) to integrate women's perspectives into the methodology, process, and outcomes of its *fatwas*. These topics were chosen as they represent key discussions from the first and second KUPI congresses, which have sparked scholarly debate due to differing perspectives and methodologies in fatwa production.

Result and Discussion

Fostering Gender-Just Fiqh: KUPI's Maqāṣid cum-Mubādalāh Approach

As the foundation for contemporary *fatwas*, *fiqh* represents the scholars' understanding of Islamic source texts—the Qur'an and Hadith—to address various life challenges, thereby serving as a source of benefit for humanity in both this world and the hereafter. In modern times, beginning with Ibn Ashur (d. 1973), scholars have increasingly viewed the use of *Maqāṣid* as essential when other methods in *Uṣūl al-Fiqh* (the methodology of Islamic jurisprudence) prove inadequate to address the diverse challenges of contemporary life.²⁷ This *Maqāṣid* has evolved "from a secondary methodology to a primary methodology

²⁷ Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam* (Bandung: Mizan, 2013), pp. 164-8; Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda* (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), pp. 32-41.

and ultimately to a multidisciplinary science" in order "to encompass a broader scope of *ijtihad*" across all aspects of modern life.²⁸

The definition of *Maqāṣid* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Al-Khadimi encapsulates these various definitions by asserting that *Maqāṣid* encompasses "the main aims and objectives contained in Islamic law, both general and specific objectives, all of which lead to obedience and worship to Allah SWT, as well as to obtain (human) goodness in this world and the hereafter".²⁹

Among the most prominent conceptualizations of *Maqāṣid al-Sharī'ah* is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 1111), who identified five core objectives of Islamic law: the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-māl*), and lineage or offspring (*ḥifẓ al-nasl*). Contemporary scholars have expanded the scope of *Maqāṣid* to encompass a broader range of issues, including socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, and the protection of nature, among others.³⁰

The principle of *Maqāṣid* has been mobilized by a wide range of ulama in the Islamic world, in a wide range of domains. Rashid Rida (d. 1935) offers a socio-political reform and championed the fulfillment of women's rights as themes of *Maqāṣid*.³¹ Ibn Ashur expanded the themes of *Maqāṣid* by incorporating principles of freedom, equality, and tolerance.³² Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.³³ Zaynab al-'Ulwani took a specific

²⁸ Tazul Islam, "Expansion of Maqasid Thought Beyond Maqasid Al-Shariah: Maqasid Al-Qur'an as a New Paradigm," *Hamdard Islamicus* 45, no. 4 (2022): 79-95, <https://doi.org/10.57144/hi.v45i4.514>.

²⁹ Nur ad-dīn Al-Khādimī, *Al-Maqāṣid Ash-Sharī'ah: Ta'Rifuhā, Amthilatuḥā, Ḥujjiyyatuhā* (Riyad: Isbaliya, 2003), vol. 1, p. 26.

³⁰ Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, pp. 164-168.

³¹ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣid Asy-Syarī'ah: Kajian Kritis Dan Komprehensif* (Yogyakarta: IRCISOD, 2020), pp. 177-8.

³² Muḥammad at-Tāhir Ibn 'Ashūr, *Maqāṣid Ash-Sharī'ah Al-Islāmiyyah* (Cairo: Dar al-Salam, 2006), pp. 449-63.

³³ Yusuf Al-Qaradāwī, *Madkhal Li-Dirasāt Ash-Sharī'ah Al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1997), p. 75.

focus, including *sakīnah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid al-sharī'ah fī al-usrah*).³⁴

The diversity of perspectives and usages mentioned above underscores the ongoing relevance of *Maqāṣid* in addressing the evolving needs of societies and individuals, including gender issues. Contemporary scholars and intellectuals, particularly Jasser Audah, argue that *Maqāṣid* is the only comprehensive methodology capable of making the sources of Islamic law relevant to contemporary issues, including women's issues in family and society.³⁵ *Fatwas* that incorporate *Maqāṣid* as understood by these contemporary scholars will be authoritative because they are rooted in the sources of Islamic law, while also being responsive to the needs of modern society in the realities of their lives.³⁶

However, classical *fiqh* has marginalized the concept of *Maqāṣid* in relation to women's issues and family law, making it imperative to employ the *Maqāṣid* methodology in contemporary gender reform. This includes concepts such as *'adl* (justice), *qisṭ* (equity), *iḥsan* (moral excellence), *raḥmah* (mercy), and *wasāṭiyya* (moderation).³⁷ Contemporary scholars generally agree that *Maqāṣid* embodies universal values like social justice, public good, and economic welfare, which are applicable to both men and women.³⁸ However, they have not sufficiently elaborated on how the *Maqāṣid* methodology can be specifically applied to gender issues. Duderija proposes integrating the *Maqāṣid* methodology with the non-patriarchal Qur'anic hermeneutics offered by contemporary scholars such as Amina Wadud and Asma Barlas.³⁹ Building on this non-patriarchal Qur'anic hermeneutic,

³⁴ Zaynab Ṭahā Al-'Ulwānī, *Al-Ussrah Fi Maqāṣid Ash-Sharī'Ah: Qirā'Ah Fī Qaḍāyā Az-Zawāj Wa Aṭ-Ṭalāq Fi Amirikā* (Herndon: IIIT, 2012), pp. 90-97.

³⁵ Jasser Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach* (London: IIIT, 2007), pp. 24-25.

³⁶ Syaifei, "Tracing Maqāṣid Al-Sharī'ah in the Fatwas of Indonesian Council of Ulama (MUI).", pp. 105-111.

³⁷ Mohammad Hashim Kamali, "Islamic Family Law Reform: Problems and Prospects," *Islam and Civilisational Renewal* 3, no. 1 (2011): 37-52.

³⁸ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣhid Asy-Syarī'ah: Kajian Kritis Dan Komprehensif*, pp. 174-95.

³⁹ Adis Duderija, "Maqāṣid Al-Sharī'a, Gender Non-Patriarchal Qur'an-Sunna Hermeneutics, and the Reformation of Muslim Family Law," in *Maqāṣid Al-Sharī'a and Contemporary Reformist Muslim Thought*, ed. Adis Duderija, 2014, 193-218.

Abdelgafar offers a new *Maqāṣid* methodology for examining women's issues in Islam, which recognizes their relationship with their Creator, as well as their relationships with themselves, other individuals and groups, and all other creatures.⁴⁰

Some studies on Islamic law in the Indonesian context, even those employing the *Maqāṣid* approach, have yet to fully engage with conceptions of *Maqāṣid* that involve women and incorporate their life experiences.⁴¹ Recognizing women's perspectives and experiences is crucial for producing authentic religious knowledge,⁴² and KUPI has made this a cornerstone of its use of *Maqāṣid* in formulating gender-just *fiqh*.⁴³ The Religious Deliberation (*Musyawarah Keagamaan*) of KUPI, held in Cirebon (2017) and Jepara (2022), adopted the *Maqāṣid* methodology, but its distinctiveness is found in its integration of *Maqāṣid* with women's perspectives and experiences. The validation of women's perspectives and experiences is demonstrated through the active involvement of female ulama in all KUPI's *fatwa* processes, the acknowledgment of women's experiences as a legitimate source of knowledge, and the resulting *fatwas* that promote gender justice.⁴⁴

In the KUPI's perspective, men and women are seen as complete individuals and full participants in life, with their experiences valued

⁴⁰ Basma I. Abdelgafar, "Re-Envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam," in *Gulf Studies*, vol. 11 (Springer, 2024), 55–73, https://doi.org/10.1007/978-981-99-6006-4_3.

⁴¹ See: Syafei, "Tracing Maqāṣid Al-Sharī'ah in the Fatwas of Indonesian Council of Ulama (MUI)"; Edi Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari'ah Review," *Al-Risalah* 20, no. 1 (May 28, 2020): 1, <https://doi.org/10.30631/al-risalah.v20i1.565>; Nurhayati and Nasution, "Maqāṣid Al-Sharia in the Fatwa of the Indonesian Ulama Council Regarding Congregational Worship During the COVID-19 Pandemic"; Anthin Lathifah et al., "The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāṣid Hifz Al-Dīn," *Samarah* 6, no. 1 (2022): 369–90, <https://doi.org/10.22373/sjhk.v6i1.10957>; Agustina and Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages."

⁴² Majella Franzmann, *Women and Religion* (New York and Oxford: Oxford University Press, n.d.), pp. 1–35.

⁴³ Faqihuddin Abdul Kodir, *Metodologi Fatwa KUPI: Pokok-Pokok Pikiran Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia*, (Cirebon: Fahmina Institute, 2022), pp. 34–49 and 92–112.

⁴⁴ Nor Ismah, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia* (Leiden: Unpublished Dissertation in Leiden University, 2023), pp. 179–189.

as authoritative knowledge. Women actively contribute to formulating religious *fatwas*, ensuring their experiences are recognized and their interests protected. This approach emphasizes cooperation and mutual exchange, positioning both genders as equal participants in life. It ensures equal consideration of men's and women's experiences, preventing their marginalization in life's challenges. Recognizing men and women as complete individuals involves acknowledging their diverse dimensions—physical, psychological, social, and spiritual—beyond traditional gender roles.⁴⁵

The *Musyawarah Keagamaan* (MK), the body that issues *fatwas* in KUPI, embraces this perspective and employs two strategies in conceptualizing, referring, and implementing the *Maqāṣid* methodology. First, it emphasizes the equality of men and women as complete human beings, servants of Allah SWT, caliphs of the earth (*khalīfah fi al-ard*), and full subjects of life. Here, women together with men should actively participate in all *fatwa* processes, acting as both contributors and recipients of its outcomes. The second strategy focuses on acknowledging the unique experiences of women that differentiate them from men. This includes biological aspects such as menstruation, pregnancy, childbirth, postpartum experience, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. These unique biological and social experiences for women become integrated into the human experience, and serve as sources of knowledge, including religious opinions, such as *fiqh* and *fatwa*.⁴⁶

The protection of offspring (*ḥifẓ al-nasl*), one of the five core principles in the *Maqāṣid* methodology, has been expanded by contemporary scholars to encompass the protection of the integrity and

⁴⁵ Rofiah, "Reading the Qur'an Through Women's Experience"; Faqihuddin Abdul Kodir, "Qirā'a Mubadala: Reciprocal Reading of Hadith on Marital Relationship," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hosseini et al. (London: Oneworld, 2022), 181–209.

⁴⁶ Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, pp. 13–14.

welfare of family life.⁴⁷ This principle has been reconceptualized by KUPI through two primary strategies. First, the principle of *ḥifẓ al-nasl* is understood to encompass and prioritize the welfare of both men and women within the context of family life, integrating the experiences of both genders into its framework. Second, KUPI incorporates considerations related to women's reproductive health, both biological and social, into the formulation of *ḥifẓ al-nasl* in various *fatwas*. For example, the potential harm to the wombs of underage girls caused by pregnancy – a risk that is exclusive to female reproductive organs – has led KUPI to prohibit the marriage of children. Additionally, the social consequences uniquely faced by girls who marry young, such as restrictions on their access to education and social activities, are factored into the application of the *ḥifẓ al-nasl* principle in efforts to protect the welfare of families.⁴⁸

The other four principles of *Maqāṣid* – the protection of the soul, mind, property, and religion – are also conceptualized through these two strategies, ensuring that the equal needs of men and women as human beings are addressed while simultaneously accommodating the specific biological and social needs of women. These strategies are similarly applied to other *Maqāṣid* principles developed by contemporary scholars, which are grounded in universal values such as justice, mercy, benefit, freedom, and the elimination of all forms of injustice, harm, and violence.⁴⁹ This approach is evident in the structure of KUPI's *fatwas*, from the initial description of the issue (*Taṣawwur*), to the formulation of themes based on *fatwa* sources (*Adillah*), and

⁴⁷ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, p. 22; Syafei, "Tracing Maqāṣid Al-Shari'ah in the Fatwas of Indonesian Council of Ulama (MUI)", pp. 108-109.

⁴⁸ Tim KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia* (Cirebon: KUPI, 2017), pp. 111-5; Tim Perumus MK KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2* (Jakarta: KUPI, 2023), pp. 145-8; Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, pp. 11-14.

⁴⁹ Abdul Kodir, *Metodologi Fatwa KUPI: Pokok-Pokok Pikiran Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia*, pp. 108-9; Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*; Rofiah, Nikmatullah, and Mufidah, "The Traces of Qur'anic Women's Hakiki Justice Interpretation in KUPI's Fatwas", pp. 9-10.

particularly in the preparation of arguments during the analysis of evidence (*Istidlāl*).

In the *Taṣawwur* section, KUPI presents data on the adverse effects experienced by women in the cases under review for *fatwa*, emphasizing the necessity for women to avoid these harms in accordance with the principles of justice and benefit as outlined in Islamic teachings. In the *Adillah* section, KUPI compiles themes based on universal values, drawing sources from the Qur'an, Hadith, and *fiqh*. These themes include teachings that apply broadly to both men and women – such as those promoting human dignity, justice, compassion, and general kindness toward humans and nature – as well as those that specifically address women, such as the command to treat women well, the prohibition against causing harm to women, and the emphasis on compassion for women during pregnancy, childbirth, and breastfeeding. In the *Istidlāl* section, KUPI connects the experiences of women highlighted in the *Taṣawwur* with the universal themes outlined in the *Adillah*, ensuring that the resulting arguments are relevant and aligned with the principles of the *Maqāṣid* methodology.

Overall, KUPI has adopted the *Maqāṣid cum-Mubādalah* framework, as outlined above, to deliberate on religious perspectives concerning various life issues, resulting in the issuance of their gender just *fatwas*. This article specifically examines the application of this framework in two particular *fatwas*: child marriage and pregnancy resulting from rape.⁵⁰

Fatwa on Child Marriage

Traditional *fiqh* commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.⁵¹ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for children, especially the girls, in which the *Maqāṣid* methodology is

⁵⁰ The three fatwas issued in Cirebon (2017) were on sexual violence, child marriage, and natural damage. The five fatwas issued in Jepara (2022) were on women's participation in combating religious extremism, waste management, forced marriage, pregnancy due to rape, and female genital cutting and harmful practices.

⁵¹ Wahbah Az-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhū* (Damascus: Dar al-Fikr, 1989), vol. 7, p. 179.

invoked in the discussion.⁵² MUI does not yet have a *fatwa* on child marriage, while NU's *fatwa* represents traditional fiqh which allows child marriage.⁵³ Although Muhammadiyah's *fatwa* disregards under-aged marriage, its explanation on *Maqāṣid* methodology is very minimal, as it mostly discusses related hadiths.⁵⁴

Therefore, KUPI's distinctive approach in incorporating *Maqāṣid* into its formulation adds a significant and nuanced dimension to the discourse on child marriage, contributing to the development of gender-just *fiqh*. The *fatwa* of KUPI (2017) did not issue a definitive ruling on the legality of child marriage but instead emphasized the imperative to protect children from entering into such unions. In shaping its stance on child marriage, KUPI employed the *Maqāṣid* approach, which involved several key steps: first, outlining the issue (*taṣawwur*); second, presenting textual evidence (*Adillah*) drawn from the Qur'an, Hadith, and the opinions of scholars (*Aqwāl al-'Ulamā'*); and finally, conducting an analysis (*Istidlāl*) to construct a compelling argument for the necessary protection of children from marriage.

Concerning the issue of child marriage, the *Taṣawwur* of KUPI incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *Taṣawwur*, numerous expressions derived from this data are correlated with the themes of *Maqāṣid* advocated by contemporary scholars. Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' occur frequently, which are relevant to the themes of *Maqāṣid*, emerging as conclusions drawn from qualitative data on child

⁵² Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari'ah Review"; Muhammad Shofwan Taufiq and M Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage," *Muhammadiyah Law Reform* 7, no. 2 (2023): 1-23, <https://doi.org/10.24127/mlr.v7i2.2764>; Agus Purnomo et al., "Dimensions Maqāsid Al-Shari'ah and Human Rights in The Constitutional Court's Decision on Marriage Age Difference in Indonesia," *Samarah* 7, no. 3 (2023): 1397-1421, <https://doi.org/10.22373/sjkh.v7i3.13283>; Arbanur Rasyid et al., "Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari' a," *Jurnal Ilmiah Peuradeun: The Indonesian Journal of the Social Sciences* 12, no. 2 (2024).

⁵³ PBNU, *Keputusan Mukhtar XXXII Nahdlatul Ulama*, ed. Abdul Mun'im DZ (Jakarta: Pengurus Besar Nahdlatul Ulama, 2010), pp. 206-8.

⁵⁴ Agung Danarto et al., *Tanfidz Keputusan Musyawarah Nasional Tarjih XXVIII* (Yogyakarta: Pimpinan Pusat Muhammadiyah, 2015), pp. 135-9.

marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqāṣid* analysis of five principles, i.e. the expanded meaning of protection of life, mind, wealth, descent, and religion.

The *Taṣawwur* section of KUPI's *fatwa* is replete with postulates that align with the universal values of *Maqāṣid* as proposed by contemporary scholars. What distinguishes KUPI's *fatwa* is its grounding in and exploration of data on the lived experiences of women. The *Taṣawwur* section details the adverse impacts of child marriage, including its contributions to illiteracy rates, maternal and infant mortality rates, the difficulties faced by married girls and young mothers, their malnutrition, low educational attainment, high school dropout rates, and the challenges faced by young women who are divorced from early marriages. It also addresses the mental and emotional strain these girls endure as wives, their low levels of well-being, high dependency, and the prevalence of domestic violence. These postulates are systematically organized in the *Taṣawwur* section to demonstrate how child marriage contradicts the values upheld by the principles of *Maqāṣid*.⁵⁵

The textual references (*Adillah*) employed by KUPI, following the *Taṣawwur* section, also encompass themes that align with the structure of *Maqāṣid* as universal values. Specifically, the *Adillah* concerning child marriage include seven Quranic verses, five Hadith texts, and six statements from scholars (*Aqwal al-'Ulamā'*). These references are systematically aligned with *Maqāṣid*-related themes, which include the objective of marriage as a means of attaining peace of mind, the prohibition against producing a weak generation, the directive to become the best among people, the proscription against self-destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the encouragement to seek knowledge. The Hadith-derived *Adillah* further reinforce these themes, emphasizing the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Additionally, the *Adillah* drawn from the

⁵⁵ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, pp. 101-104.

perspectives of scholars (*Aqwāl al-'Ulamā'*) highlight the principle of forbidding harm and evil, as well as the five foundational principles of protection, which are central to the *Maqāṣid* methodology.⁵⁶

In the *Istidlāl* section, all the themes identified in the *Taṣawwur* and *Adillah* serve as fundamental concepts for KUPI to argue that child marriage contradicts the principles of *Maqāṣid* and that protecting children from early marriage is essential to the objectives of Islamic law. The focus of *Istidlāl* is on elaborating the key concepts derived from the *Adillah* themes, which align with the objectives of Islamic law. These objectives are then presented as strong, clear, and persuasive arguments affirming Islam's obligation to protect children from early marriage.

When contemporary scholars extended the five core principles (*kullīyyāt al-khams*) of *Maqāṣid* into new dimensions, KUPI similarly expanded them to address the specific objective of safeguarding children, particularly girls, from early marriage. According to Jasser Audah, the principle of preserving religion (*ḥifẓ al-dīn*) has evolved to encompass freedom of belief.⁵⁷ For KUPI, in this context, the preserving religion

"entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their understanding of religion in general and to fulfill the specific marriage goals outlined by religion."⁵⁸

The principle of preserving the mind (*ḥifẓ al-'aql*), which has evolved to include the propagation of scientific thinking, the suppression of herd mentality, and the avoidance of brain drain,⁵⁹ is further explained by MK KUPI as encompassing the need to "shield

⁵⁶ KUPI, pp. 104-10.

⁵⁷ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, 248.

⁵⁸ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, 114-5.

⁵⁹ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, 22.

children from the possibility of hindering intellectual development resulting from the interruption of their education."

Similarly, while the preservation of offspring (*hifz an-nasl*), honor (*hifz al-'ird*), and wealth (*hifz al-māl*) have evolved to include the care of family, the protection of human dignity, and economic development respectively,⁶⁰ KUPI clarifies that:

"Preserving offspring (*hifz an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*hifz al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they are forced to work prematurely to support the family due to early marriage. Preserving wealth (*hifz al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage."⁶¹

Thus, rather than relying solely on the literal interpretation of Islamic legal texts, KUPI grounds its *fatwa* in the logical framework of the *Maqāṣid*, integrated with the perspective of *Mubādalah* through two strategies. The first strategy focuses on the shared needs between men and women, such as the need for education and health, which has been thoroughly elaborated. The second strategy addresses the specific reproductive challenges experienced by married girls, their educational obstacles, and various other social issues they face—issues that are not typically encountered by young married men. Within this conceptual framework, i.e. *Maqāṣid cum-Mubādalah*, the primary contention advanced by KUPI is that Islam advocates for the protection of children, particularly girls, from the harmful consequences of early marriages. KUPI asserts that this protection should be provided by parents, families, society, and, most importantly, by the government and state. Grounded in the principles of the *Maqāṣid cum-Mubādalah*, KUPI also mandates that these entities ensure the rights of children,

⁶⁰ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, pp. 248-9.

⁶¹ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, 114-5.

even those who are married, to education, health, care, and protection from all forms of violence, exploitation, and discrimination.⁶²

Fatwa on Pregnancy Due to Rape

Contemporary *fatwas* in Indonesia, as grounded in classical *fiqh*, emphasize the permissible age for aborting a pregnancy resulting from rape, rather than addressing the profound traumatic experiences and criminalization faced by many female victims. *Fatwas* issued by formal institutions primarily focus on the permissibility of abortion within 40 days of conception or the act of rape, thereby neglecting the complex realities and challenges faced by these women.⁶³ However, due to the profound mental trauma experienced by rape victims, many women may not even become aware of their pregnancies until well beyond this 40-day window.⁶⁴ In response to this gap, particularly the absence of women's experiences in religious *fatwas* concerning rape victims, women in Indonesia – including ulama, scholars, activists, and victims' advocates – organized a series of meetings informed by their respective studies. These efforts culminated in the second KUPI Religious Conference (MK) in Jepara in 2022, which issued a *fatwa* aimed at protecting pregnant rape victims, grounded in the lived experiences of women.⁶⁵

MUI's *fatwa* 4/2005 categorizes rape as a secondary necessity (*al-hajah*), in contrast to severe medical conditions like advanced cancer, which are regarded as primary emergencies (*al-darūra*). In these two situations, according to the MUI, pregnancy may be terminated within 40 days of conception to protect the mother's well-being. Specifically, in cases of rape, the decision to terminate the pregnancy must involve consultation with the family, medical professionals, and religious scholars. Unfortunately, because the *fatwa* does not take into account

⁶² KUPI, 116.

⁶³ Ibnu Fadli, "Legalitas Aborsi Bagi Korban Perkosaan (Tinjauan Menurut Hukum Positif Dan Hukum Islam)," *Jurnal Lex Renaissance* 7, no. 3 (2022): 559–70, <https://doi.org/10.20885/jlr.vol7.iss3.art8>.

⁶⁴ Maidina Rahmawati, Arinta Dea Dini Singgi, and A.T. Erasmus Napitupulu, *Penyelenggaraan Kebijakan Aborsi Aman, Bermutu, Dan Bertanggung Jawab Sesuai Dengan UU Kesehatan Di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2021), pp. 43–5.

⁶⁵ KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, pp. 164–210.

women's experiences, the consent of women who have been raped is not considered in the decision to permit abortion. This *fatwa* is grounded in several Qur'anic verses and Hadith texts that do not explicitly address rape or abortion. Additionally, it draws upon quotations from classical *fiqh* scholars concerning *Maqāṣid* principles, such as the obligation to eliminate harm, the permissibility of otherwise prohibited actions in emergencies, and other related considerations.

Unlike the MUI's *fatwa*, the KUPI's *fatwa* (2022) on "Protection of Women's Lives from the Danger of Pregnancy as a Result of Rape" focuses its considerations on the physical, psychological, and social conditions of the female victim when determining the permissibility of terminating a pregnancy or the obligation to continue it.⁶⁶ This KUPI's *fatwa* is grounded in the *Maqāṣid cum-Mubādalāh* approach, employing two key strategies: the principle of equality between men and women, and the recognition of women's unique biological and social experiences. These *Maqāṣid cum-Mubādalāh* postulates are integrated throughout the *fatwa*'s structure, addressing the specific challenges faced by women who are victims of rape. In the *Taṣawwūr* section, the *fatwa* highlights three central aspects that resonate with the *Maqāṣid cum-Mubādalāh* framework: the harmful effects of rape that must be avoided, the necessity of protecting individuals—especially women—from these adverse consequences, and the crucial need to safeguard the lives of women who become pregnant as a result of rape. The data presented in this section is closely aligned with the core concepts of *Maqāṣid*.⁶⁷

In the *Adillāh* section, there are themes which are closely aligned with the principles of *Maqāṣid*, derived from the Qur'an, Hadith, and *Aqwāl al-'Ulamā'*. There are 17 Qur'anic verses, 13 Hadith texts, and 8 quotes from *Aqwāl al-'Ulamā'* referenced in the KUPI's *fatwa*. The Qur'anic verses address key themes such as the inherent dignity of human beings, the mission of Islam to promote mercy, prohibitions against harming others, self-condemnation, safeguarding the vulnerable, refraining from blaming those who are coerced, and extending forgiveness to victims of sexual coercion. The Hadith texts

⁶⁶ KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, pp. 194-5.

⁶⁷ KUPI, pp. 164-70.

further reinforce these themes, emphasizing the prohibition of tyranny, the avoidance of harm to oneself and others, the importance of supporting the weak, alleviating the difficulties of others, treating women with kindness, aiding those who have been wronged, and urging leaders to facilitate ease for the people. Excerpts from *Aqwāl al-'Ulamā'* in KUPI's *fatwa* address several critical themes: the objectives of Islamic law (*Maqāṣid al-Sharī'ah*), the imperative to eliminate harm (*daf'u al-ḍarar*), the principle that emergencies can justify prohibitions (*al-ḍarūrāt tubīḥ al-maḥzūrāt*), the recognition of rape as a crime against women, the prioritization of the mother's life over that of the unborn child in critical circumstances, and the government's duty to prioritize the welfare of the people (*maṣlaḥa al-ummah*).⁶⁸

The themes of *Maqāṣid* in the *Adillah* section are explicitly focused on women as victims who are entitled to protection, forgiveness, and support. In the analysis (*Istidlāl*) section, then, these themes are methodically reorganized into a cohesive framework that reinforces several key arguments: the inherent injustice of rape, the attribution of wrongdoing solely to the perpetrator, and the assertion that women who have been raped are not only innocent but are also in need of assistance, support, and companionship. These arguments lay the foundation for raising awareness about the critical importance of addressing the needs of women who are victims of rape, particularly emphasizing their need for protection in the aftermath of rape and the consequences of pregnancy resulting from such traumatic events.⁶⁹

The five principles of *Maqāṣid* – protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-māl*), and lineage or offspring (*ḥifẓ al-nasl*) – are also invoked by KUPI with particular emphasis on the lived experiences of women who are victims of rape. Here, KUPI defines protection of religion (*ḥifẓ al-dīn*) and life (*ḥifẓ al-nafs*) within the *Maqāṣid cum-Mubādalāh* Methodology, by saying that:

“Rape victims facing pregnancy may encounter challenges in practicing *ḥifẓ ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to

⁶⁸ KUPI, pp. 170-85.

⁶⁹ KUPI, pp. 187-94.

question Islam's stance. The lives of women who are victims of rape and experience pregnancy are highly susceptible to ongoing stigmatization, discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *ḥifẓ an-nafs*, which emphasizes the protection of human lives in Islamic law".⁷⁰

KUPI also argues that exposing rape survivors to the risks of pregnancy violates the principle of *ḥifẓ al-'aql*, which prioritizes the preservation of mental integrity within the framework of Islamic law. This conclusion stems from evidence indicating that women who become pregnant due to rape often endure long-term psychological and cognitive disturbances, face substantial barriers to education, and struggle to sustain clear and rational thought processes critical to their well-being. Such conditions may further result in feelings of self-worth deterioration and an increased risk of self-harm.

According to KUPI, allowing women who are victims of rape to remain vulnerable to the risks of pregnancy also contravenes the principle of *ḥifẓ al-māl*, which emphasizes the protection of property within Islamic law. This is because women who become pregnant as a result of rape and experience cognitive impairments may struggle to manage their assets effectively, face the risk of job loss or dismissal, and encounter barriers to economic participation. Additionally, the financial burden of recovery from the physical and psychological trauma of rape, coupled with the costs of maintaining a healthy pregnancy and providing for the child over their lifetime, is substantial and cannot be overlooked.

Furthermore, KUPI argues that subjecting women to the risks of pregnancy under these circumstances violates the principle of *ḥifẓ an-nasl*, which underscores the protection of lineage and family in Islamic law. The logic is that women who become pregnant due to rape may experience self-directed resentment and harbor negative feelings toward the fetus, potentially leading to self-harm or neglect of their own and the fetus's well-being, including inadequate nutrition. Such

⁷⁰ KUPI, pp. 188-9.

conditions risk the birth of a vulnerable generation, as warned in the Quran (QS. An-Nisa, 4:9), potentially alienated from familial bonds, lacking essential support, and facing significant life challenges.

Based on the *Maqāṣid cum-Mubādalah* norms grounded in women's experiences, as elaborated above, MK KUPI issued *fatwa* on protection of women from the danger of pregnancy due to rape, consisting of three decisions: (1) the protection of women's lives from the dangers of pregnancy resulting from rape is obligatory at any stage of pregnancy, whether by continuing or terminating the pregnancy; (2) all relevant parties bear the responsibility to protect women's lives from the dangers associated with pregnancy resulting from rape; and (3) parties who have the responsibility and ability in providing protection to women's lives from the dangers of pregnancy resulting from rape are prohibited to abandon their responsibility.

These three points of KUPI's *fatwa* on pregnancy resulting from rape differ not only from similar *fatwas* issued by official institutions in Indonesia, such as MUI, but also from scholarly works that have employed the *Maqāṣid* methodology in addressing related issues. Azizah, Shahnan, and Panjaitan's (2024) study on the legality of abortion from a *Maqāṣid* perspective allows abortion for rape victims based on principles of justice, balance, and humanity but does not incorporate women's experiences or involvement in the decision-making process.⁷¹ KUPI's *fatwa* stands out particularly because it actively involves women in the deliberation process and grounds its methodology in the lived experiences of women, especially those who are victims of rape.

Conclusions.

The explanation of the *Maqāṣid cum-Mubādalah* Methodology as implemented by KUPI in addressing the issues of child marriage and pregnancy resulting from rape, addresses at least three key challenges identified by scholars and gender justice activists. First, women are actively involved in all stages of the *fatwa* process, including data collection, discussions, the *fatwa* meetings, and the final formulation of

⁷¹ Nur Azizah and Budi Sastra Panjaitan, "The Legality of Abortion by Medical Personnel for Rape Victims in Indonesia: A Perspective from Maqashid Sharia by Al-Syatibi and Al-Tufi," *Madania* 28, no. 1 (2024): 35–44.

the *fatwa*. Second, women's lived experiences are deeply integrated into the fatwa's methodological framework and are crucial in shaping the final *fatwa* decisions. Third, KUPI has successfully formulated and implemented a contemporary *fiqh* methodology that promotes gender justice.

In contrast to traditional approaches that often sideline women's experiences, KUPI validates their authority in religious discourse by incorporating their viewpoints. This inclusivity is vital for promoting gender justice within Islamic legal frameworks, ensuring that gender considerations are thoroughly integrated into the interpretation and application of Islamic law. By actively involving female ulama in the *fatwa* process and valuing their expertise, KUPI ensures a comprehensive understanding of gender issues. However, further research is needed to explore how KUPI *fatwas* function within civil society movements for social change. This could involve observing female ulama's daily activities to understand how they apply their knowledge and networks in advocating for gender equality.

Among the gaps that have not been explored in this article, and which could serve as an agenda for future research, is the application of gender-just *fiqh* methodologies to male-specific issues or those where men require special consideration due to their biological or social conditions. Thus far, the *Maqāṣid cum-Mubādalāh* methodology has primarily been applied by KUPI to issues affecting women. However, as the gender just-*fiqh* aims to ensure fairness for both men and women, it should also be equipped to address issues specific to men or those in which men require affirmation due to their distinct biological or social conditions.

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Women's Experiences in Islamic Law: Exploring KUPI's Methodology beyond *Fatwas* on Child Marriage and Abortion in Cases of Rape

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Abstract:

The production of *fatwas* in Indonesia has traditionally been dominated by male scholars and rooted in conventional methodologies that prioritize textual sources, often neglecting the lived experiences of women. This article examines innovative methodology proposed by the Indonesian Congress of Women Ulama (*Kongres Ulama Perempuan Indonesia*, or KUPI) to develop a gender-just approach to Islamic jurisprudence (*fiqh*). KUPI's framework integrates *maqāṣid al-sharī'ah* (the objectives of Islamic law) with *mubādalah*—a perspective emphasizing equality and reciprocity between men and women. Termed *maqāṣid cum-mubādalah*, this methodology recognizes lived experiences of women as one of the sources to formulate religious opinions, or *fatwa*, in Islamic legal tradition. Drawing on participant observation of KUPI's fatwa-making processes and literature analysis, this study explores two key questions: (1) To what extent does KUPI's *maqāṣid cum-Mubādalah* methodology foster gender-just *fiqh*? (2) How does KUPI apply this methodology, incorporating both women's experiential perspectives and literal Islamic texts, in issuing its *fatwas* on child marriage and abortion in cases of rape? The analysis highlights how KUPI's *maqāṣid cum-mubādalah* approach challenges traditional jurisprudence, showcasing its transformative potential. This article underscores the importance of integrating women's experiential perspectives into Islamic legal discourse, offering new insights into evolving interpretations of *fiqh* that prioritize justice and equality.

Keywords:

Fatwa, Gender-Just *Fiqh*, *Maqāṣid cum-Mubādalah*, and KUPI.

Introduction

The basis of religious legal opinion, known as *fatwa*, issued by religious institutions, such as the Indonesian Ulama Council (MUI) is *fiqh*, an Islamic jurisprudence which reflects scholars endeavor to address real-life challenges by referring to foundational texts—the

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Qur'an and Hadith.¹ Although these source texts remain unchanged, the interpretation of their content has naturally evolved, resulting in ongoing developments in *fiqh*, particularly regarding women's issues in family law.² This evolution in *fiqh* requires a comprehensive and holistic methodology,³ in which women's participation becomes a "means of ensuring just and lasting reforms".⁴

Reforms on women's right in family and society include diverse methodologies and approaches aimed at formulating gender-just *fiqh*.⁵ According to Ziba Mir-Hosseini, these reforms have undergone three significant phases. The first phase is the codification moment, during which Muslim countries throughout the twentieth century transformed classical *fiqh* into codified family laws. However, it did not include any critique of the patriarchal structures inherent in classical *fiqh*. The second phase is marked by the rise of political Islam, beginning in the 1970s, with its peak in 1979 in countries like Iran, Egypt, and Pakistan, where there was a movement to return to Islamic sharia, which is really classical *fiqh*. The third phase is characterized by the emergence of Islamic feminism, pioneered by scholars such as Azizah al-Hibri, Riffat Hassan, and Amina Wadud. These scholars began to reclaim Islam's egalitarian message from its original sources and challenged the patriarchal dimensions of Islamic tradition.⁶

In this third phase, the Indonesian Congress of Women Ulama (KUPI), established in 2017, uniquely integrates Islamic sources with women's knowledge and experiences. This approach, according to

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¹ Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975–1998)," *Journal of Islamic Studies* 15, no. 2 (May 1, 2004): 147–79, <https://doi.org/10.1093/jis/15.2.147>.

² Ziba Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," *Hawwa* 1 (2003): 1–28, <https://api.semanticscholar.org/CorpusID:73552279>.

³ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer," *UNISIA* XXX, no. 66 (2007): 329–41.

⁴ John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (New York: Syracuse University Press, 2001), p. 162.

⁵ Ziba Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," in *Men in Charge?: Rethinking Authority in Muslim Legal Tradition*, ed. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumming (London: Oneworld Publications, 2015), 13–43.

⁶ Mir-Hosseini., p. 25.

Kloos and Ismah, expands the global Islamic feminist project from a primarily scholarly and intellectual movement into a locally resonant and potentially impactful social movement.⁷ KUPI, held twice, first in 2017 at the Islamic boarding school, or *Pesantren* Kebon Jambu al-Islami Cirebon West Java, and second in 2022 at *Pesantren* Hasyim Asy'ari Bangsri Jepara Central Java, featured a core activity called the religious deliberation (*Musyawarah Keagamaan* or MK) to discuss and decide KUPI's religious opinions.

Numerous studies on KUPI have underscored its importance in highlighting the presence and influence of women in clerical roles, especially in *fatwa* making, in which they participate in all of its processes.⁸ This distinguishes KUPI from other *fatwa*-issuing institutions, such as the MUI, and serves as a response to the challenge posed by various scholars and activists advocating for women's involvement in the issuance of religious *fatwas*. Furthermore, the body within KUPI responsible for issuing *fatwas*, operates through community-level stages, promotes collective decision-making, integrates women's perspectives, and catalyzes social, cultural, and spiritual movements.

While previous studies have defined Islamic knowledge within KUPI's movement, they lack analysis of how KUPI applies *maqāṣid* to develop gender-just *fiqh*. This article addresses this gap by examining *maqāṣid al-Sharī'ah* as reinterpreted by KUPI through the *mubādalah*

⁷ David Kloos and Nor Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority," *History and Anthropology* 34, no. 5 (October 20, 2023): 818–43, <https://doi.org/10.1080/02757206.2023.2249495>.

⁸ Some of them are: Inayah Rohmaniyah, Samia Kotele, and Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia," *Academic Journal of Interdisciplinary Studies* 11, no. 3 (May 1, 2022): 60–70, <https://doi.org/10.36941/ajis-2022-0068>; Arifah Millati Agustina and Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>; Zainul Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law," *AHKAM: Jurnal Ilmu Syariah* 24, no. 1 (2024): 135–52, <https://doi.org/10.15408/ajis.v24i1.34744>.

(reciprocity) approach.⁹ KUPI adopts *mubādalah* as both perspective and method, enabling gender-sensitive reinterpretation of Islamic texts, emphasizing reciprocal gender roles, fostering cooperative relationships, and accommodating evolving contexts.

This article highlights the need to revisit *maqāṣid* to address modern challenges.¹⁰ In Indonesia, while the Indonesian Ulama Council (MUI) integrates *maqāṣid* principles into its fatwas,¹¹ they are extensively applied to economic and health matters,¹² neglecting women's issues and resulting in patriarchal *fatwas*.¹³ Notably, MUI has used *maqāṣid* to justify practices like female circumcision,¹⁴ criticized for harming women and violating their sexual rights.¹⁵

In contrast, KUPI's *maqāṣid cum-mubādalah* methodology stands out for its inclusive approach, involving female ulama throughout the *fatwa*-making process—a critical aspect absent in other *fatwa* organizations in Indonesia and beyond. This article analyzes KUPI fatwas on child marriage and protecting women's lives from pregnancy risks due to rape to elucidate *maqāṣid* as the foundational principle of the *mubādalah* framework, known as *maqāṣid cum-mubādalah*. It explores how this methodology fosters gender-just fiqh by integrating women's experiential perspectives with literal Islamic texts.

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⁹ For the meaning and historical usage of the term *mubādalah*, see Siti Nurjanah et al., "Al-Mubādalah Fī Maḥūmi Fiqhi Al-Mar'ah Al-Mu'āshirah Bī Indūnisiyā," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 1 (2022): 189–215, <https://doi.org/10.19105/al-Ihkam.v17i1.6140>.

¹⁰ Wael B Hallaq, "Maqasid and the Challenges of Modernity," *Al-Jami'ah* 49, no. 1 (2011): 1–32.

¹¹ Muhammad Sholihin and Fuad Zein, "Maslahah Reasoning behind Fatwa of the Indonesian Ulema Council: Between Ijtihad's Method and Pragmatism," *Ijtihad* 36, no. 2 (2020): 1–10.

¹² Nurhayati and Muhammad Syukri Albani Nasution, "Maqāṣid Al-Sharīa in the Fatwa of the Indonesian Ulama Council Regarding Congregational Worship During the COVID-19 Pandemic," *ASy-Syir'ah* 54, no. 2 (2020): 251–75.

¹³ Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law."

¹⁴ M. Asrorun Ni'am Sholeh, "Fatwa MUI Tentang Khitan Perempuan," *AHKAM: Jurnal Ilmu Syariah* 12, no. 2 (2012): 35–46, <https://doi.org/10.15408/ajis.v12i2.964>.

¹⁵ Jauharotul Farida et al., "Sunat Pada Anak Perempuan (Khifadz) Dan Perlindungan Anak Perempuan Di Indonesia: Studi Kasus Di Kabupaten Demak," *Sawwa: Jurnal Studi Gender* 12, no. 3 (2018): 371, <https://doi.org/10.21580/sa.v12i3.2086>.

Methods

The primary data for this article were gathered through the author's participation and observation during KUPI's fatwa-making processes at the first Congress in Cirebon (2017) and the second Congress in Jepara (2022). This was complemented by literature analysis, including documents and writings related to the *Mubādalāh* concept and its application in formulating KUPI fatwas. The data were analyzed using a hermeneutic framework, focusing on epistemological foundations, the evolution of thought, and the development, conceptualization, and dissemination of women's experiences within the *Maqāṣid cum-Mubādalāh* approach in the context of the KUPI movement in Indonesia.

To highlight the significance of women's experiences as a key element in fatwa formulation, two KUPI *fatwas* were selected for analysis: the fatwa on child marriage and the fatwa on protecting women's lives from pregnancy risks due to rape, commonly associated with abortion in such cases. This analysis examines the steps taken by the KUPI Religious Deliberation (*Musyawarah Keagamaan*) to integrate women's perspectives into the methodology, process, and outcomes of its *fatwas*. These topics were chosen as they represent key discussions from the first and second KUPI congresses, which have sparked scholarly debate due to differing perspectives and methodologies in fatwa production.

Result and Discussion

Fostering Gender-Just Fiqh: KUPI's Maqāṣid cum-Mubādalāh Approach

As the foundation for contemporary *fatwas*, *fiqh* represents the scholars' understanding of Islamic source texts—the Qur'an and Hadith—to address various life challenges, thereby serving as a source of benefit for humanity in both this world and the hereafter. In modern times, beginning with Ibn Ashur (d. 1973), scholars have increasingly viewed the use of *maqāṣid* as essential when other methods in *Uṣūl al-Fiqh* (the methodology of Islamic jurisprudence) prove inadequate to

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address the diverse challenges of contemporary life.¹⁶ This *maqāṣid* has evolved "from a secondary methodology to a primary methodology and ultimately to a multidisciplinary science" in order "to encompass a broader scope of *ijtihād*" across all aspects of modern life.¹⁷

The definition of *maqāṣid* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Among the most prominent conceptualizations of *maqāṣid al-sharī'ah* is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 1111), who identified five core objectives of Islamic law: the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-māl*), and lineage or offspring (*ḥifẓ al-nasl*). Contemporary scholars have expanded the scope of *maqāṣid* to encompass a broader range of issues, including socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, and the protection of nature, among others.¹⁸

The principle of *maqāṣid* has been mobilized by a wide range of ulema in the Islamic world, in a wide range of domains. Rashid Rida (d. 1935) offers a socio-political reform and championed the fulfillment of women's rights as themes of *maqāṣid*.¹⁹ Ibn Ashur expanded the themes of *maqāṣid* by incorporating principles of freedom, equality, and tolerance.²⁰ Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.²¹ Zaynab al-'Ulwani took a specific

¹⁶ Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam* (Bandung: Mizan, 2013), pp. 164-8; Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda* (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), pp. 32-41.

¹⁷ Tazul Islam, "Expansion of Maqasid Thought Beyond Maqasid Al-Shariah: Maqasid Al-Qur'an as a New Paradigm," *Hamdard Islamicus* 45, no. 4 (2022): 79-95, <https://doi.org/10.57144/hi.v45i4.514>.

¹⁸ Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, pp. 164-168.

¹⁹ Zaprul Khan, *Rekonstruksi Paradigma Maqāshid Asy-Syari'ah: Kajian Kritis Dan Komprehensif* (Yogyakarta: IRCISOD, 2020), pp. 177-8.

²⁰ Muḥammad at-Ṭāhir Ibn 'Ashūr, *Maqāṣid Ash-Shari'ah Al-Islāmiyyah* (Cairo: Dar al-Salam, 2006), pp. 449-63.

²¹ Yusuf Al-Qaradāwī, *Madkhal Li-Dirasāt Ash-Shari'ah Al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1997), p. 75.

focus, including *sakinah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid al-sharī'ah fī al-usrah*).²²

Here, contemporary scholars generally agree that *maqāṣid* embodies universal values like social justice, public good, and economic welfare, which are applicable to both men and women.²³ However, they have not sufficiently elaborated on how the *maqāṣid* methodology can be specifically applied to gender issues.²⁴ Some studies on Islamic law in the Indonesian context, even those employing the *maqāṣid* approach, have yet to fully engage with conceptions of *maqāṣid* that involve women and incorporate their life experiences.²⁵

Recognizing women's perspectives and experiences is crucial for producing authentic religious knowledge, and KUPI has made this a cornerstone of its use of *maqāṣid* in formulating gender-just *fiqh*. The Religious Deliberation (*Musyawarah Keagamaan*) of KUPI, held in Cirebon (2017) and Jepara (2022) adopted the *maqāṣid* methodology, but its distinctiveness is found in its integration of *maqāṣid* with women's perspectives and experiences. The validation of women's perspectives and experiences is demonstrated through the active involvement of female ulema in all KUPI's *fatwa* processes, the acknowledgment of

²² Zaynab Ṭahā Al-'Ulwani, *Al-Ussrah Fi Maqāṣid Ash-Sharī'Ah: Qirā'Ah Fi Qaḍāyā Az-Zawāj Wa At-Ṭalāq Fi Amirikā* (Herndon: IIT, 2012), pp. 90-97.

²³ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣid Asy-Syarī'ah: Kajian Kritis Dan Komprehensif*, pp. 174-95.

²⁴ Some initiatives which apply *Maqāṣid* for gender issues are: Adis Duderija, "Maqāṣid Al-Sharī'a, Gender Non-Patriarchal Qur'ān-Sunna Hermeneutics, and the Reformation of Muslim Family Law," in *Maqāṣid Al-Sharī'a and Contemporary Reformist Muslim Thought*, ed. Adis Duderija, 2014, 193-218; Basma I. Abdelgafar, "Re-Envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam," in *Gulf Studies*, vol. 11 (Springer, 2024), 55-73, https://doi.org/10.1007/978-981-99-6006-4_3.

²⁵ Edi Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari'ah Review," *Al-Risalah* 20, no. 1 (May 28, 2020): 1, <https://doi.org/10.30631/al-risalah.v20i1.565>; Anthin Lathifah et al., "The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāṣid Hifz Al-Dīn," *Samarah* 6, no. 1 (2022): 369-90, <https://doi.org/10.22373/sjhk.v6i1.10957>.

women's experiences as a legitimate source of knowledge, and the resulting *fatwas* that promote gender justice.²⁶

In the KUPI's perspective, men and women are seen as complete individuals and full participants in life, with their experiences valued as authoritative knowledge. Women actively contribute to formulating religious *fatwas*, ensuring their experiences are recognized and their interests protected. This approach emphasizes cooperation and mutual exchange, positioning both genders as equal participants in life. It ensures equal consideration of men's and women's experiences, preventing their marginalization in life's challenges. Recognizing men and women as complete individuals involves acknowledging their diverse dimensions—physical, psychological, social, and spiritual—beyond traditional gender roles.²⁷

Musyawarah Keagamaan, the body that issues *fatwas* in KUPI, embraces this perspective and employs two strategies in conceptualizing, referring, and implementing the *maqāṣid* methodology. First, women together with men should actively participate in all *fatwa* processes, acting as both contributors and recipients of its outcomes. The second strategy focuses on acknowledging the unique experiences of women that differentiate them from men. This includes biological aspects such as menstruation, pregnancy, childbirth, postpartum experience, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. These unique biological and social experiences for women become integrated into the human experience, and serve as sources of knowledge, including religious opinions, such as *fiqh* and *fatwa*.²⁸

²⁶ Nor Ismah, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia* (Leiden: Unpublished Dissertation in Leiden University, 2023), pp. 179-189.

²⁷ Nur Rofiah, "Reading the Qur'an Through Women's Experience," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hosseini et al. (London: Oneworld, 2022), 57-84; Faqiuddin Abdul Kodir, "Qir'a Mubadala: Reciprocal Reading of Hadith on Marital Relationship," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hosseini et al. (London: Oneworld, 2022), 181-209.

²⁸ Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, pp. 13-14.

The protection of offspring (*ḥifẓ al-nasl*), one of five core principles in the *maqāṣid* methodology, has been expanded by contemporary scholars to encompass the protection of the integrity and welfare of family life. This principle has been reconceptualized by KUPI through two primary strategies. First, the principle of *ḥifẓ al-nasl* is understood to encompass and prioritize the welfare of both men and women within the context of family life, integrating the experiences of both genders into its framework. Second, KUPI incorporates considerations related to women's reproductive health, both biological and social, into the formulation of *ḥifẓ al-nasl* in various *fatwas*. For example, the potential harm to the wombs of underage girls caused by pregnancy—a risk that is exclusive to female reproductive organs—has led KUPI to prohibit the marriage of children. Additionally, the social consequences uniquely faced by girls who marry young, such as restrictions on their access to education and social activities, are factored into the application of the *ḥifẓ al-nasl* principle in efforts to protect the welfare of families.²⁹

The other four principles of *maqāṣid*—the protection of the soul, mind, property, and religion—are also conceptualized through these two strategies, ensuring that the equal needs of men and women as human beings are addressed while simultaneously accommodating the specific biological and social needs of women. This approach is evident in the structure of KUPI's *fatwas*, from the initial description of the issue (*taṣawwūr*), to the formulation of themes based on *fatwa* sources (*adillah*), and particularly in the preparation of arguments during the analysis of evidence (*istidlāl*).

In the *taṣawwūr* section, KUPI presents data on the adverse effects experienced by women in the cases under review for *fatwa*, emphasizing the necessity for women to avoid these harms in accordance with the principles of justice and benefit as outlined in Islamic teachings. In the *adillah* section, KUPI compiles themes based on universal values, drawing sources from the Qur'an, Hadith, and *fiqh*. These themes include teachings that apply broadly to both men and

²⁹ Tim KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia* (Cirebon: KUPI, 2017), pp. 111-5; Tim Perumus MK KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2* (Jakarta: KUPI, 2023), pp. 145-8; Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, pp. 11-14.

women—such as those promoting human dignity, justice, compassion, and general kindness toward humans and nature—as well as those that specifically address women, such as the command to treat women well, the prohibition against causing harm to women, and the emphasis on compassion for women during pregnancy, childbirth, and breastfeeding. In the *istidlāl* section, KUPI connects the experiences of women highlighted in the *taṣawwur* with the universal themes outlined in the *adillah*, ensuring that the resulting arguments are relevant and aligned with the principles of the *Maqāṣid* methodology.

Overall, KUPI has adopted the *maqāṣid cum-mubādalāh* framework, as outlined above, to deliberate on religious perspectives concerning various life issues, resulting in the issuance of their gender just *fatwas*. This article specifically examines the application of this framework in two particular *fatwas*: child marriage (issued in Cirebon, 2017) and pregnancy resulting from rape (issued in Jepara, 2022).

Issuing Fatwas on Child Marriage and Pregnancy from Rape: A *Maqāṣid cum-Mubādalāh* Approach

a) *Fatwa on Child Marriage*

Traditional *fiqh* commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.³⁰ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for children, especially the girls, in which the *maqāṣid* methodology is invoked in the discussion.³¹ MUI does not yet have a *fatwa* on child

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³⁰ Wahbah Az-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhū* (Damascus: Dar al-Fikr, 1989), vol. 7, p. 179.

³¹ Kurniawan et al., “Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari’ah Review”; Muhammad Shofwan Taufiq and M Fahrudin, “The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage,” *Muhammadiyah Law Reform* 7, no. 2 (2023): 1–23, <https://doi.org/10.24127/mlr.v7i2.2764>; Agus Purnomo et al., “Dimensions Maqāṣid Al-Shari’ah and Human Rights in The Constitutional Court’s Decision on Marriage Age Difference in Indonesia,” *Samarah* 7, no. 3 (2023): 1397–1421, <https://doi.org/10.22373/sjhk.v7i3.13283>; Arbanur Rasyid et al., “Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari’ah,” *Jurnal Ilmiah Peuradeun: The Indonesian Journal of the Social Sciences* 12, no. 2 (2024).

marriage, while NU's *fatwa* represents traditional *fiqh* which allows child marriage.³² Although Muhammadiyah's *fatwa* disregards under-aged marriage, its explanation on *maqāṣid* methodology is very minimal, as it mostly discusses related hadiths.³³

Therefore, KUPI's distinctive approach in incorporating *maqāṣid* into its formulation adds a significant and nuanced dimension to the discourse on child marriage, contributing to the development of gender-just *fiqh*. The *taṣawwur* of KUPI's fatwa (2017) incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *taṣawwur*, numerous expressions derived from this data are correlated with the themes of *maqāṣid* advocated by contemporary scholars. Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' occur frequently, which are relevant to the themes of *maqāṣid*, emerging as conclusions drawn from qualitative data on child marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqāṣid* analysis of five principles, i.e. the expanded meaning of protection of life, mind, wealth, descent, and religion.

What distinguishes KUPI's *fatwa* is its grounding in and exploration of data on the lived experiences of **women as victims of child marriage**.³⁴ The *taṣawwur* section details the adverse impacts of child marriage, including its contributions to illiteracy rates, maternal and infant mortality rates, the difficulties faced by married girls and young mothers, their malnutrition, low educational attainment, high school dropout rates, and the challenges faced by young women who are divorced from early marriages. It also addresses the mental and emotional strain these girls endure as wives, their low levels of well-being, high dependency, and the prevalence of domestic violence. These postulates are systematically organized in the *Taṣawwur* section

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³² PBNU, *Keputusan Mukhtamar XXXII Nahdlatul Ulama*, ed. Abdul Mun'im DZ (Jakarta: Pengurus Besar Nahdlatul Ulama, 2010), pp. 206-8.

³³ Agung Danarto et al., *Tanfidz Keputusan Musyawarah Nasional Tarjih XXVIII* (Yogyakarta: Pimpinan Pusat Muhammadiyah, 2015), pp. 135-9.

³⁴ Some of these data about women's experiences on child marriage are presented and analyzed in: Qodariah Barkah et al., "Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 383–411, <https://doi.org/10.19105/al-Ihkam.v17i2.6725>.

to demonstrate how child marriage contradicts the values upheld by the principles of *maqāṣid*.³⁵

The textual references (*adillah*) employed by KUPI, following the *taṣawwur* section, also encompass themes that align with the structure of *maqāṣid* as universal values. Specifically, the *adillah* concerning child marriage include seven Quranic verses, five Hadith texts, and six statements from scholars (*aqwal al-'ulamā'*). These references are systematically aligned with *maqāṣid*-related themes, which include the objective of marriage as a means of attaining peace of mind, the prohibition against producing a weak generation, the directive to become the best among people, the proscription against self-destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the encouragement to seek knowledge. The hadith-derived *adillah* further reinforce these themes, emphasizing the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Additionally, the *adillah* drawn from the perspectives of scholars highlight the principle of forbidding harm and evil, as well as the five foundational principles of protection, which are central to the *Maqāṣid* methodology.³⁶

In the *istidlāl* section, all the themes identified in the *taṣawwur* and *adillah* serve as fundamental concepts for KUPI to argue that child marriage contradicts the principles of *maqāṣid* and that protecting children from early marriage is essential to the objectives of Islamic law. The focus of *istidlāl* is on elaborating the key concepts derived from the *adillah* themes, which align with the objectives of Islamic law. These objectives are then presented as strong, clear, and persuasive arguments affirming Islam's obligation to protect children from early marriage.

When contemporary scholars Jasser Audah extended the principle of preserving religion (*ḥifẓ al-dīn*) has evolved to encompass freedom of belief,³⁷ KUPI opines that it:

³⁵ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, pp. 101-104.

³⁶ KUPI, pp. 104-10.

³⁷ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, 248.

"entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their understanding of religion in general and to fulfill the specific marriage goals outlined by religion."³⁸

The principle of preserving the mind (*hifz al-'aql*), which has evolved to include the propagation of scientific thinking, the suppression of herd mentality, and the avoidance of brain drain,³⁹ is further explained by MK KUPI as encompassing the need to shield children from the possibility of hindering intellectual development resulting from the interruption of their education.

Similarly, while the preservation of offspring (*hifz an-nasl*), honor (*hifz al-'ird*), and wealth (*hifz al-māl*) have evolved to include the care of family, the protection of human dignity, and economic development respectively,⁴⁰ KUPI clarifies that:

"Preserving offspring (*hifz an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*hifz al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they are forced to work prematurely to support the family due to early marriage. Preserving wealth (*hifz al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage."⁴¹

Thus, KUPI grounds its *fatwa* in the logical framework of the *maqāṣid*, integrated with the perspective of *mubādalah*, acknowledging

³⁸ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, 114-5.

³⁹ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, 22.

⁴⁰ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, pp. 248-9.

⁴¹ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, 114-5.

the shared needs of men and women, and also addresses specific reproductive challenges experienced by married girls, that are not typically encountered by young married men. Within this conceptual framework, i.e. *maqāṣid cum-mubāḍalah*, the primary contention advanced by KUPI is that Islam advocates for the protection of children, particularly girls, from the harmful consequences of early marriages. This protection should be provided by parents, families, society, and, most importantly, by the government and state. KUPI also mandates that these entities ensure the rights of children, even those who are married, to education, health, care, and protection from all forms of violence, exploitation, and discrimination.⁴²

b) Fatwa on Pregnancy Due to Rape

Contemporary *fatwas* in Indonesia, as grounded in classical *fiqh*, emphasize the permissible age for aborting a pregnancy resulting from rape rather than addressing the profound traumatic experiences and criminalization faced by many female victims.⁴³ *Fatwas* issued by formal institutions primarily focus on the permissibility of abortion within 40 days of conception or the act of rape, thereby neglecting the complex realities and challenges faced by these women.⁴⁴ However, due to the profound mental trauma experienced by rape victims, many women may not even become aware of their pregnancies until well beyond this 40-day window.⁴⁵ In response to this gap, particularly the absence of women's experiences in religious *fatwas* concerning rape victims, women in Indonesia – including ulama, scholars, activists, and victims' advocates – organized a series of meetings informed by their respective studies. These efforts culminated in the second KUPI Religious Conference (MK) in Jepara in 2022, which issued a *fatwa*

⁴² KUPI, 116.

⁴³ Khoirul Bariyyah and Khairul Muttaqin, "Legalisasi Aborsi Dalam Perspektif Medis Dan Yuridis," 2016, <https://doi.org/10.19105/al-ihkam.v1i1i1.755>.

⁴⁴ Ibnu Fadli, "Legalitas Aborsi Bagi Korban Perkosaan (Tinjauan Menurut Hukum Positif Dan Hukum Islam)," *Jurnal Lex Renaissance* 7, no. 3 (2022): 559–70, <https://doi.org/10.20885/jlr.vol7.iss3.art8>.

⁴⁵ Maidina Rahmawati, Arinta Dea Dini Singgi, and A.T. Erasmus Napitupulu, *Penyelenggaraan Kebijakan Aborsi Aman, Bermutu, Dan Bertanggung Jawab Sesuai Dengan UU Kesehatan Di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2021), pp. 43–5.

aimed at protecting pregnant rape victims, grounded in the lived experiences of women.⁴⁶

For allowing abortion, MUI's *fatwa* 4/2005 categorizes rape as a secondary necessity (*al-hajah*), in contrast to severe medical conditions like advanced cancer, which are regarded as primary emergencies (*al-ḍarūra*). In these two situations, according to the MUI, pregnancy may be terminated within 40 days of conception to protect the mother's well-being. Specifically, in cases of rape, the decision to terminate the pregnancy must involve consultation with the family, medical professionals, and religious scholars. Unfortunately, because the *fatwa* does not take into account women's experiences, the consent of women who have been raped is not considered in the decision to permit abortion. This *fatwa* is grounded in several Qur'anic verses and Hadith texts that do not explicitly address rape or abortion. Additionally, it draws upon quotations from classical *fiqh* scholars concerning *maqāṣid* principles, such as the obligation to eliminate harm, the permissibility of otherwise prohibited actions in emergencies, and other related considerations.

Unlike the MUI's *fatwa*, the KUPI's *fatwa* (2022) focuses its considerations on physical, psychological, and social conditions of the female victim when determining the permissibility of terminating a pregnancy or the obligation to continue it.⁴⁷ It is grounded in the *maqāṣid cum-mubādalah* approach, acknowledging the principle of equality between men and women, and the recognition of women's unique biological and social experiences. This approach is integrated throughout the *fatwa*'s structure. In the *taṣawwur* section, the *fatwa* highlights three central aspects: the harmful effects of rape that must be avoided, the necessity of protecting individuals – especially women – from these adverse consequences, and the crucial need to safeguard the lives of women who become pregnant as a result of rape. The data presented in this section is closely aligned with the core concepts of *maqāṣid*.⁴⁸

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⁴⁶ KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, pp. 164-210.

⁴⁷ KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, pp. 194-5.

⁴⁸ KUPI, pp. 164-70.

In the *adillah* section, there are themes of *maqāṣid*, derived from the Qur'an, Hadith, and *aqwāl al-'ulamā'*. There are 17 Qur'anic verses, 13 Hadith texts, and 8 quotes from *aqwāl al-'ulamā'*. The Qur'anic verses address key themes such as the inherent dignity of human beings, the mission of Islam to promote mercy, prohibitions against harming others, self-condemnation, safeguarding the vulnerable, refraining from blaming those who are coerced, and extending forgiveness to victims of sexual coercion. The Hadith texts further reinforce these themes, emphasizing the prohibition of tyranny, the avoidance of harm to oneself and others, the importance of supporting the weak, alleviating the difficulties of others, treating women with kindness, aiding those who have been wronged, and urging leaders to facilitate ease for the people. Excerpts from *aqwāl al-'ulamā'* address several themes: the imperative to eliminate harm (*daf'u al-ḍarar*), the principle that emergencies can justify prohibitions (*al-ḍarūrāt tubīḥ al-maḥzūrāt*), the recognition of rape as a crime against women, the prioritization of the mother's life over that of the unborn child in critical circumstances, and the government's duty to prioritize the welfare of the people (*maṣlaḥa al-ummah*).⁴⁹

The themes of *maqāṣid* in the *adillah* section are explicitly focused on women as victims who are entitled to protection, forgiveness, and support. In the analysis (*Istidlāl*) section, then, these themes are methodically reorganized into a cohesive framework that reinforces several key arguments: the inherent injustice of rape, the attribution of wrongdoing solely to the perpetrator, and the assertion that women who have been raped are not only innocent but are also in need of assistance, support, and companionship. These arguments lay the foundation for raising awareness about critical importance of addressing the needs of women who are victims of rape, particularly emphasizing their need for protection in the aftermath of rape and the consequences of pregnancy resulting from such traumatic events.⁵⁰

KUPI defines protection of religion (*hiḍ al-dīn*) and life (*hiḍ al-naḥs*) within the *maqāṣid cum-mubādalah* methodology, by saying that:

⁴⁹ KUPI, pp. 170-85.

⁵⁰ KUPI, pp. 187-94.

"Rape victims facing pregnancy may encounter challenges in practicing *ḥifẓ ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to question Islam's stance. The lives of women who are victims of rape and experience pregnancy are highly susceptible to ongoing stigmatization, discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *ḥifẓ an-nafs*, which emphasizes the protection of human lives in Islamic law".⁵¹

KUPI also argues that exposing rape survivors to the risks of pregnancy violates the principle of *ḥifẓ al-'aql*, which prioritizes the preservation of mental integrity within the framework of Islamic law. This conclusion stems from evidence indicating that women who become pregnant due to rape often endure long-term psychological and cognitive disturbances, face substantial barriers to education, and struggle to sustain clear and rational thought processes critical to their well-being. Such conditions may further result in feelings of self-worth deterioration and an increased risk of self-harm.

According to KUPI, allowing women who are victims of rape to remain vulnerable to the risks of pregnancy also contravenes the principle of *ḥifẓ al-māl*, which emphasizes the protection of property within Islamic law. This is because women who become pregnant as a result of rape and experience cognitive impairments may struggle to manage their assets effectively, face the risk of job loss or dismissal, and encounter barriers to economic participation. Additionally, the financial burden of recovery from the physical and psychological trauma of rape, coupled with the costs of maintaining a healthy pregnancy and providing for the child over their lifetime, is substantial and cannot be overlooked.

Furthermore, KUPI argues that subjecting women to the risks of pregnancy under these circumstances violates the principle of *ḥifẓ an-nasl*, which underscores the protection of lineage and family in Islamic

⁵¹ KUPI, pp. 188-9.

law. The logic is that women who become pregnant due to rape may experience self-directed resentment and harbor negative feelings toward the fetus, potentially leading to self-harm or neglect of their own and the fetus's well-being, including inadequate nutrition. Such conditions risk the birth of a vulnerable generation, as warned in the Quran (QS. An-Nisa, 4:9), potentially alienated from familial bonds, lacking essential support, and facing significant life challenges.

Based on the *maqāṣid cum-mubādalah* norms grounded in women's experiences, as elaborated above, KUPI issued *fatwa* on protection of women from the danger of pregnancy due to rape, consisting of three decisions: (1) the protection of women's lives from the dangers of pregnancy resulting from rape is obligatory at any stage of pregnancy, whether by continuing or terminating the pregnancy; (2) all relevant parties bear the responsibility to protect women's lives from the dangers associated with pregnancy resulting from rape; and (3) parties who have the responsibility and ability in providing protection to women's lives from the dangers of pregnancy resulting from rape are prohibited to abandon their responsibility.

These three points of KUPI's *fatwa* on pregnancy resulting from rape differ not only from similar *fatwas* issued by official institutions in Indonesia, such as MUI, but also from scholarly works that have employed the *Maqāṣid* methodology in addressing related issues.⁵² KUPI's *fatwa* stands out particularly because it actively involves women in the deliberation process and grounds its methodology in the lived experiences of women, especially those who are victims of rape.

The explanation above on fatwas regarding child marriage and pregnancy resulting from rape is summarized in the following table:

Aspect	Fatwa on Child Marriage	Fatwa on Pregnancy Due to Rape
	• Data on child marriage's impacts gathered through quantitative and qualitative methods.	• Focus on physical, psychological, and social consequences for rape victims.

⁵² See the difference result of *Maqāṣid* in: Nur Azizah and Budi Sastra Panjaitan, "The Legality of Abortion by Medical Personnel for Rape Victims in Indonesia: A Perspective from Maqashid Sharia by Al-Syatibi and Al-Tufi," *Madania* 28, no. 1 (2024): 35–44.

<i>Tashawwur</i> (Description and Conceptualization)	<ul style="list-style-type: none"> • Concepts linked to <i>maqāṣid</i> like child welfare and adverse consequences for young girls. • Identifies the negative impacts of child marriage. 	<ul style="list-style-type: none"> • Concepts derived from <i>maqāṣid</i> related to protecting women's dignity, mental health, and well-being. • Emphasizes the harmful effects of rape and the necessity to protect women from further harm through pregnancy.
<i>Adillah</i> (Textual References)	<ul style="list-style-type: none"> • 7 Qur'anic verses, 5 Hadiths, and 6 scholar opinions supporting <i>maqāṣid</i> principles. • Key themes: prohibition of harm, protection of life, mind, wealth, and offspring. 	<ul style="list-style-type: none"> • 17 Qur'anic verses, 13 Hadiths, and 8 scholar opinions supporting <i>maqāṣid</i> principles. • Key themes: protection of women's dignity, mercy, prohibition of harm, and government responsibility.
<i>Istidlal</i> (Analysis and Legal Reasoning)	<ul style="list-style-type: none"> • Emphasizes the contradiction between child marriage and <i>maqāṣid</i> principles • Argues for the protection of children, particularly girls, from the harmful effects of early marriage, aligning with Islamic law's objectives. 	<ul style="list-style-type: none"> • Reorganizes themes from <i>adillah</i> to argue that subjecting rape victims to pregnancy violates <i>maqāṣid</i> principles • Advocates for the protection of women's lives and mental health, emphasizing that rape victims should not be forced to carry a pregnancy.

Conclusions

The *Maqāṣid cum-Mubādalah* Methodology, as implemented by KUPI in addressing child marriage and pregnancy resulting from rape, tackles three key challenges identified by scholars and gender justice activists. First, women are actively involved at all stages of the fatwa process, from data collection to formulation. Second, women's lived experiences are integrated into the fatwa's methodological framework, shaping the final decisions. Third, KUPI has developed a contemporary *fiqh* methodology that promotes gender justice. Unlike traditional approaches that often marginalize women's experiences, KUPI validates their authority in religious discourse, promoting gender justice within Islamic law. By involving female ulama in the fatwa process and valuing their expertise, KUPI ensures a comprehensive

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understanding of gender issues. However, further research is needed to examine how KUPI fatwas function within civil society movements for social change and how female ulama apply their knowledge in advocating for gender equality. Additionally, future research could explore the application of gender-just *fiqh* methodologies to male-specific issues or those requiring special consideration for men due to their biological or social conditions. While KUPI has primarily applied the *Maqāṣid cum-Mubādalāh* methodology to women's issues, gender-just *fiqh* should also address fairness for men in contexts where they require affirmation or unique consideration.

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Maqāṣid cum-Mubādalah* Methodology of KUPI: Centering Women's Experiences in Islamic Law for Gender-Just *Fiqh

Article history: Received:

Abstract:

The production of *fatwas* in Indonesia has traditionally been dominated by male scholars and rooted in conventional methodologies that prioritize textual sources, often neglecting the lived experiences of women. This article examines innovative methodology proposed by the Indonesian Congress of Women Ulama (*Kongres Ulama Perempuan Indonesia*, or KUPI) to develop a gender-just approach to Islamic jurisprudence (*fiqh*). Drawing on participant observation of KUPI's fatwa-making processes in two events occurring respectively in 2017 and 2022 and literature analysis, this study explores two key questions: (1) To what extent does KUPI's *maqāṣid cum-mubādalah* methodology foster gender-just *fiqh*? (2) How does KUPI apply this methodology, incorporating both women's experiential perspectives and literal Islamic texts, in issuing its *fatwas* on child marriage and abortion in cases of rape? The analysis highlights how KUPI's *maqāṣid cum-mubādalah* approach challenges traditional jurisprudence, showcasing its transformative potential. KUPI's framework integrates *maqāṣid al-sharī'ah* (the objectives of Islamic law) with *mubādalah*—a perspective emphasizing equality and reciprocity between men and women. Termed *maqāṣid cum-mubādalah*, this methodology recognizes lived experiences of women as one of the sources to formulate religious opinions, or *fatwa*, in Islamic legal tradition. This article underscores the importance of integrating women's experiential perspectives into Islamic legal discourse, offering new insights into evolving interpretations of *fiqh* that prioritize justice and equality.

Keywords:

Fatwa, Gender-Just *Fiqh*, KUPI, *maqāṣid cum-mubādalah*.

Introduction

The basis of religious legal opinion, known as *fatwa*, issued by religious institutions, such as the Indonesian Ulama Council (MUI) is *fiqh*, an Islamic jurisprudence which reflects scholars endeavor to address real-life challenges by referring to foundational texts—the

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Qur'an and Hadith.¹ Although these source texts remain unchanged, the interpretation of their content has naturally evolved, resulting in ongoing developments in *fiqh*, particularly regarding women's issues in family law.² This evolution in *fiqh* requires a comprehensive and holistic methodology,³ in which women's participation becomes a "means of ensuring just and lasting reforms".⁴

Reforms on women's right in family and society include diverse methodologies and approaches aimed at formulating gender-just *fiqh*.⁵ According to Ziba Mir-Hosseini, these reforms have undergone three significant phases. The first phase is the codification moment, during which Muslim countries throughout the twentieth century transformed classical *fiqh* into codified family laws. However, it did not include any critique of the patriarchal structures inherent in classical *fiqh*. The second phase is marked by the rise of political Islam, beginning in the 1970s, with its peak in 1979 in countries like Iran, Egypt, and Pakistan, where there was a movement to return to Islamic sharia, which is really classical *fiqh*. The third phase is characterized by the emergence of Islamic feminism, pioneered by scholars such as Azizah al-Hibri, Riffat Hassan, and Amina Wadud. These scholars began to reclaim Islam's egalitarian message from its original sources and challenged the patriarchal dimensions of Islamic tradition.⁶

In this third phase, the Indonesian Congress of Women Ulama (KUPI), established in 2017, uniquely integrates Islamic sources with women's knowledge and experiences. This approach, according to

¹ Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975–1998)," *Journal of Islamic Studies* 15, no. 2 (May 1, 2004): 147–79, <https://doi.org/10.1093/jis/15.2.147>.

² Ziba Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," *Hawwa* 1 (2003): 1–28, <https://api.semanticscholar.org/CorpusID:73552279>.

³ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer," *UNISIA* XXX, no. 66 (2007): 329–41.

⁴ John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (New York: Syracuse University Press, 2001), p. 162.

⁵ Ziba Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," in *Men in Charge?: Rethinking Authority in Muslim Legal Tradition*, ed. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumming (London: Oneworld Publications, 2015), 13–43.

⁶ Mir-Hosseini, p. 25.

Kloos and Ismah, expands the global Islamic feminist project from a primarily scholarly and intellectual movement into a locally resonant and potentially impactful social movement.⁷ KUPI, held twice, first in 2017 at the Islamic boarding school, or *Pesantren* Kebon Jambu al-Islami Cirebon West Java, and second in 2022 at *Pesantren* Hasyim Asy'ari Bangsri Jepara Central Java, featured a core activity called the religious deliberation (*Musyawarah Keagamaan* or MK) to discuss and decide KUPI's religious opinions. Since the first Congress in Cirebon, KUPI has become a movement that brings together women clerics, scholars, activists, and organizations in Indonesia to advocate gender justice from an Islamic perspective.

Numerous studies on KUPI have underscored its importance in highlighting the presence and influence of women in clerical roles, especially in *fatwa* making, in which they participate in all of its processes.⁸ This distinguishes KUPI from other *fatwa*-issuing institutions, such as the MUI, and serves as a response to the challenge posed by various scholars and activists advocating for women's involvement in the issuance of religious *fatwas*. Furthermore, the body within KUPI responsible for issuing *fatwas*, operates through community-level stages, promotes collective decision-making, integrates women's perspectives, and catalyzes social, cultural, and spiritual movements.

⁷ David Kloos and Nor Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority," *History and Anthropology* 34, no. 5 (October 20, 2023): 818–43, <https://doi.org/10.1080/02757206.2023.2249495>.

⁸ Some of them are: Inayah Rohmaniyah, Samia Kotele, and Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia," *Academic Journal of Interdisciplinary Studies* 11, no. 3 (May 1, 2022): 60–70, <https://doi.org/10.36941/ajis-2022-0068>; Arifah Millati Agustina and Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>; Zainul Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law," *AHKAM: Jurnal Ilmu Syariah* 24, no. 1 (2024): 135–52, <https://doi.org/10.15408/ajis.v24i1.34744>.

While previous studies have defined Islamic knowledge within KUPI's movement, they lack analysis of how KUPI applies *maqāṣid* to develop gender-just *fiqh*. This article addresses this gap by examining *maqāṣid al-sharī'ah* as reinterpreted by KUPI through the *mubādalāh* (reciprocity) approach.⁹ KUPI adopts *mubādalāh* as both perspective and method, enabling gender-sensitive reinterpretation of Islamic texts, emphasizing reciprocal gender roles, fostering cooperative relationships, and accommodating evolving contexts.

This article highlights the need to revisit *maqāṣid* to address modern challenges.¹⁰ In Indonesia, while the Indonesian Ulama Council (MUI) integrates *maqāṣid* principles into its fatwas,¹¹ they are extensively applied to economic and health matters,¹² neglecting women's issues and resulting in patriarchal *fatwas*.¹³ Notably, MUI has used *maqāṣid* to justify practices like female circumcision,¹⁴ criticized for harming women and violating their sexual rights.¹⁵

In contrast, KUPI's *maqāṣid cum-mubādalāh* methodology stands out for its inclusive approach, involving female ulema throughout the *fatwa*-making process—a critical aspect absent in other *fatwa* organizations in Indonesia and beyond. The involvement of the ulema, who can be both male and females, does mean the consideration of women's experience. This article analyzes how KUPI through fatwas

⁹ For the meaning and historical usage of the term *mubādalāh*, see Siti Nurjanah et al., "Al-Mubādalāh Fī Mafhūmi Fiqhi Al-Mar'ah Al-Mu'āshirah Bī Indūnisiyā," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 1 (2022): 189–215, <https://doi.org/10.19105/al-Ihkam.v17i1.6140>.

¹⁰ Wael B Hallaq, "Maqasid and the Challenges of Modernity," *Al-Jami'ah* 49, no. 1 (2011): 1–32.

¹¹ Muhammad Sholihin and Fuad Zein, "Maslahah Reasoning behind Fatwa of the Indonesian Ulema Council: Between Ijtihad's Method and Pragmatism," *Ijtihad* 36, no. 2 (2020): 1–10.

¹² Nurhayati and Muhammad Syukri Albani Nasution, "Maqāṣid Al-Sharīa in the Fatwa of the Indonesian Ulama Council Regarding Congregational Worship During the COVID-19 Pandemic," *ASy-Syir'ah* 54, no. 2 (2020): 251–75.

¹³ Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law."

¹⁴ M. Asrorun Ni'am Sholeh, "Fatwa MUI Tentang Khitan Perempuan," *AHKAM: Jurnal Ilmu Syariah* 12, no. 2 (2012): 35–46, <https://doi.org/10.15408/ajis.v12i2.964>.

¹⁵ Jauharotul Farida et al., "Sunat Pada Anak Perempuan (Khifadz) Dan Perlindungan Anak Perempuan Di Indonesia: Studi Kasus Di Kabupaten Demak," *Sawwa: Jurnal Studi Gender* 12, no. 3 (2018): 371, <https://doi.org/10.21580/sa.v12i3.2086>.

on child marriage and protecting women's lives from pregnancy risks due to rape, theoretically and practically elucidate *maqāṣid* as the foundational principle of the *mubādalah* framework, known as *maqāṣid cum-mubādalah*, fosters gender-just *fiqh*.

Methods

The primary data for this article were gathered through author's participation and observation during KUPI's fatwa-making processes at the first Congress in Cirebon (2017) and the second Congress in Jepara (2022). This was complemented by literature analysis, including documents and writings related to the *Mubādalah* concept and its application in formulating KUPI fatwas. The main sources include *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia* (Official Document of Process and Result of Indonesian Congress of Women's Ulama, 2017), *Metodologi Fatwa KUPI: Pokok-pokok Pikiran Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia* (Fatwa Methodology of KUPI: Main Thoughts of Religious Deliberation of Indonesian Congress of Women's Ulama, 2022), and *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) ke-2* (The Result of Religious Deliberation of Indonesian Congress of Women's Ulama, 2023).

The data were analyzed using a hermeneutic framework, focusing on epistemological foundations, the evolution of thought, and the development, conceptualization, and dissemination of women's experiences within the *maqāṣid cum-mubādalah* approach. To highlight the significance of women's experiences as a key element in fatwa formulation, two KUPI *fatwas* were selected for analysis: the fatwa on child marriage (issued in Cirebon, 2017) and the fatwa on protecting women's lives from pregnancy risks due to rape (issued in Jepara, 2022), commonly associated with abortion in such cases. This analysis examines the steps taken by the KUPI Religious Deliberation (*Musyawarah Keagamaan*) to integrate women's perspectives into the methodology, process, and outcomes of its *fatwas*. These topics were chosen as they represent key discussions from the first and second KUPI congresses, which have sparked scholarly debate due to differing perspectives and methodologies in fatwa production.

Result and Discussion

Fostering Gender-Just Fiqh: KUPI's Maqāṣid cum-Mubādalāh Approach

As the foundation for contemporary fatwas, *fiqh* represents the scholars' understanding of Islamic source texts—the Qur'an and Hadith—to address various life challenges, thereby serving as a source of benefit for humanity in both this world and the hereafter. In modern times, beginning with Ibn Ashur (d. 1973), scholars have increasingly viewed the use of *maqāṣid* as essential when other methods in *Uṣūl al-Fiqh* (the methodology of Islamic jurisprudence) prove inadequate to address the diverse challenges of contemporary life.¹⁶ This *maqāṣid* has evolved "from a secondary methodology to a primary methodology and ultimately to a multidisciplinary science" in order "to encompass a broader scope of *ijtihād*" across all aspects of modern life.¹⁷

The definition of *maqāṣid* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Among the most prominent conceptualizations of *maqāṣid al-sharī'ah* is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 1111), who identified five core objectives of Islamic law: the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-māl*), and lineage or offspring (*ḥifẓ al-nasl*). Contemporary scholars have expanded the scope of *maqāṣid* to encompass a broader range of issues, including socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, and the protection of nature, among others.¹⁸

The principle of *maqāṣid* has been mobilized by a wide range of ulema in the Islamic world, in a wide range of domains. Rashid Rida (d. 1935) offers a socio-political reform and championed the fulfillment

¹⁶ Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam* (Bandung: Mizan, 2013), pp. 164-8; Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda* (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), pp. 32-41.

¹⁷ Tazul Islam, "Expansion of Maqasid Thought Beyond Maqasid Al-Shariah: Maqasid Al-Qur'an as a New Paradigm," *Hamdard Islamicus* 45, no. 4 (2022): 79-95, <https://doi.org/10.57144/hi.v45i4.514>.

¹⁸ Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, pp. 164-168.

of women's rights as themes of *maqāṣid*.¹⁹ Ibn Ashur expanded the themes of *maqāṣid* by incorporating principles of freedom, equality, and tolerance.²⁰ Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.²¹ Zaynab al-'Ulwani took a specific focus, including *sakīnah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid al-sharī'ah fi al-usrah*).²²

Here, contemporary scholars generally agree that *maqāṣid* embodies universal values like social justice, public good, and economic welfare, which are applicable to both men and women.²³ However, they have not sufficiently elaborated on how the *maqāṣid* methodology can be specifically applied to gender issues.²⁴ Some studies on Islamic law in the Indonesian context, even those employing the *maqāṣid* approach, have yet to fully engage with conceptions of *maqāṣid* that involve women and incorporate their life experiences.²⁵

¹⁹ Zaprulkhan, *Rekonstruksi Paradigma Maqāṣid Asy-Syarī'ah: Kajian Kritis Dan Komprehensif* (Yogyakarta: IRCISOD, 2020), pp. 177-8.

²⁰ Muḥammad at-Ṭāhīr Ibn 'Ashūr, *Maqāṣid Ash-Sharī'ah Al-Islāmiyyah* (Cairo: Dar al-Salam, 2006), pp. 449-63.

²¹ Yusuf Al-Qaradāwī, *Madkhal Li-Dirasāt Ash-Sharī'ah Al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1997), p. 75.

²² Zaynab Ṭahā Al-'Ulwani, *Al-Usrah Fi Maqāṣid Ash-Sharī'ah: Qirā'ah Fi Qaḍāyā Az-Zawāj Wa At-Ṭalāq Fi Amirikā* (Herndon: IIIT, 2012), pp. 90-97.

²³ Zaprulkhan, *Rekonstruksi Paradigma Maqāṣid Asy-Syarī'ah: Kajian Kritis Dan Komprehensif*, pp. 174-95.

²⁴ Some initiatives which apply *Maqāṣid* for gender issues are: Adis Duderija, "Maqāṣid Al-Sharī'a, Gender Non-Patriarchal Qur'ān-Sunna Hermeneutics, and the Reformation of Muslim Family Law," in *Maqāṣid Al-Sharī'a and Contemporary Reformist Muslim Thought*, ed. Adis Duderija, 2014, 193-218; Basma I. Abdelgafar, "Re-Envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam," in *Gulf Studies*, vol. 11 (Springer, 2024), 55-73, https://doi.org/10.1007/978-981-99-6006-4_3.

²⁵ Edi Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Sharī'ah Review," *Al-Risalah* 20, no. 1 (May 28, 2020): 1, <https://doi.org/10.30631/al-risalah.v20i1.565>; Anthin Lathifah et al., "The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāṣid Hifz Al-Dīn," *Samarah* 6, no. 1 (2022): 369-90, <https://doi.org/10.22373/sjhk.v6i1.10957>.

Recognizing women's perspectives and experiences is crucial for producing authentic religious knowledge, and KUPI has made this a cornerstone of its use of *maqāṣid* in formulating gender-just *fiqh*. The Religious Deliberation (*Musyawarah Keagamaan*) of KUPI, held in Cirebon (2017) and Jepara (2022) adopted the *maqāṣid* methodology, but its distinctiveness is found in its integration of *maqāṣid* with women's perspectives and experiences. The validation of women's perspectives and experiences is demonstrated through the active involvement of female ulema in all KUPI's *fatwa* processes, the acknowledgment of women's experiences as a legitimate source of knowledge, and the resulting *fatwas* that promote gender justice.²⁶

In the KUPI's perspective, men and women are seen as complete individuals and full participants in life, with their experiences valued as authoritative knowledge. Women actively contribute to formulating religious *fatwas*, ensuring their experiences are recognized and their interests protected. This approach emphasizes cooperation and mutual exchange, positioning both genders as equal participants in life. It ensures equal consideration of men's and women's experiences, preventing their marginalization in life's challenges. Recognizing men and women as complete individuals involves acknowledging their diverse dimensions—physical, psychological, social, and spiritual—beyond traditional gender roles.²⁷

KUPI embraces this perspective and employs two strategies in conceptualizing, referring, and implementing the *maqāṣid* methodology. First, women together with men should actively participate in all *fatwa* processes, acting as both contributors and recipients of its outcomes. The second strategy focuses on acknowledging the unique experiences of women that differentiate them from men. This includes biological aspects such as menstruation,

²⁶ Nor Ismah, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia* (Leiden: Unpublished Dissertation in Leiden University, 2023), pp. 179-189.

²⁷ Nur Rofiah, "Reading the Qur'an Through Women's Experience," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hosseini et al. (London: Oneworld, 2022), 57-84; Faqihuddin Abdul Kodir, "Qirā'a Mubadala: Reciprocal Reading of Hadith on Marital Relationship," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hosseini et al. (London: Oneworld, 2022), 181-209.

pregnancy, childbirth, postpartum experience, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. These unique biological and social experiences for women become integrated into the human experience, and serve as sources of knowledge, including religious opinions, such as *fiqh* and *fatwa*.²⁸

The protection of offspring (*hifz al-nasl*), one of five core principles in the *maqāṣid* methodology, has been expanded by contemporary scholars to encompass the protection of the integrity and welfare of family life. This principle has been reconceptualized by KUPI through two primary strategies. First, the principle is understood to encompass and prioritize the welfare of both men and women within the context of family life, integrating the experiences of both genders into its framework. Second, KUPI incorporates considerations related to women's reproductive health, both biological and social, into the formulation of *hifz al-nasl* in various *fatwas*. For example, the potential harm to the wombs of underage girls caused by pregnancy – a risk that is exclusive to female reproductive organs – has led KUPI to prohibit the marriage of children. Additionally, the social consequences uniquely faced by girls who marry young, such as restrictions on their access to education and social activities, are factored into the application of the *hifz al-nasl* principle in efforts to protect the welfare of families.²⁹

The other four principles of *maqāṣid* – the protection of the soul, mind, property, and religion – are also conceptualized through these two strategies, ensuring that the equal needs of men and women as human beings are addressed while simultaneously accommodating the specific biological and social needs of women. This approach is evident in the structure of KUPI's *fatwas*, from the initial conceptualization

²⁸ Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, pp. 13-14.

²⁹ Tim KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia* (Cirebon: KUPI, 2017), pp. 111-5; Tim Perumus MK KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2* (Jakarta: KUPI, 2023), pp. 145-8; Abdul Kodir and Rofiah, *Summary The Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, pp. 11-14.

(*taṣawwur*), to the formulation of themes based on textual references (*adillah*), and particularly in process of reasoning (*istidlāl*).

In the *taṣawwur* section, KUPI presents data on the adverse effects experienced by women in the cases under review for *fatwa*, emphasizing the necessity for women to avoid these harms in accordance with the principles of justice and benefit as outlined in Islamic teachings. In the *adillah* section, KUPI compiles themes based on universal values, drawing sources from the Qur'an, Hadith, and *fiqh*. These themes include teachings that apply broadly to both men and women—such as those promoting human dignity, justice, compassion, and general kindness toward humans and nature—as well as those that specifically address women, such as the command to treat women well, the prohibition against causing harm to women, and the emphasis on compassion for women during pregnancy, childbirth, and breastfeeding. In the *istidlāl* section, KUPI connects the experiences of women highlighted in the *taṣawwur* with the universal themes outlined in the *adillah*, ensuring that the resulting arguments are relevant and aligned with the principles of the *Maqāṣid* methodology.

Issuing Fatwas on Child Marriage and Pregnancy from Rape: A *Maqāṣid cum-Mubādalāh* Approach

Traditional *fiqh* commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.³⁰ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for children, especially the girls, in which the *maqāṣid* methodology is invoked in the discussion.³¹ MUI does not yet have a *fatwa* on child

³⁰ Wahbah Az-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhū* (Damascus: Dar al-Fikr, 1989), vol. 7, p. 179.

³¹ Kurniawan et al., “Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari’ah Review”; Muhammad Shofwan Taufiq and M Fahrudin, “The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage,” *Muhammadiyah Law Reform* 7, no. 2 (2023): 1–23, <https://doi.org/10.24127/mlr.v7i2.2764>; Agus Purnomo et al., “Dimensions Maqāṣid Al-Shari’ah and Human Rights in The Constitutional Court’s Decision on Marriage Age Difference in Indonesia,” *Samarah* 7, no. 3 (2023): 1397–1421, <https://doi.org/10.22373/sjhk.v7i3.13283>; Arbanur Rasyid et al., “Dynamics of

marriage, while NU's *fatwa* represents traditional *fiqh* which allows child marriage.³² Although Muhammadiyah's *fatwa* disregards under-aged marriage, its explanation on *maqāṣid* methodology is very minimal, as it mostly discusses related hadiths.³³

Therefore, KUPI's distinctive approach in incorporating *maqāṣid* into its formulation adds a significant and nuanced dimension to the discourse on child marriage, contributing to the development of gender-just *fiqh*. The *taṣawwur* of KUPI's fatwa incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *taṣawwur*, numerous expressions derived from this data are correlated with the themes of *maqāṣid* advocated by contemporary scholars. Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' occur frequently, which are relevant to the themes of *maqāṣid*, emerging as conclusions drawn from qualitative data on child marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqāṣid* analysis of five principles, i.e. the expanded meaning of protection of life, mind, wealth, descent, and religion.

What distinguishes KUPI's *fatwa* is its grounding in and exploration of data on the lived experiences of women as victims of child marriage.³⁴ The *taṣawwur* section details the adverse impacts of child marriage, including its contributions to illiteracy rates, maternal and infant mortality rates, the difficulties faced by married girls and young mothers, their malnutrition, low educational attainment, high school dropout rates, and the challenges faced by young women who are divorced from early marriages. It also addresses the mental and

Childless Marriage Through the Lens of Maqasid Al-Shari' a," *Jurnal Ilmiah Peuradeun: The Indonesian Journal of the Social Sciences* 12, no. 2 (2024).

³² PBN, *Keputusan Mukhtar XXXII Nahdlatul Ulama*, ed. Abdul Mun'im DZ (Jakarta: Pengurus Besar Nahdlatul Ulama, 2010), pp. 206-8.

³³ Agung Danarto et al., *Tanfidz Keputusan Musyawarah Nasional Tarjih XXVIII* (Yogyakarta: Pimpinan Pusat Muhammadiyah, 2015), pp. 135-9.

³⁴ Some of these data about women's experiences on child marriage are presented and analyzed in: Qodariah Barkah et al., "Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 383-411, <https://doi.org/10.19105/al-Ihkam.v17i2.6725>.

emotional strain these girls endure as wives, their low levels of well-being, high dependency, and the prevalence of domestic violence..³⁵

The textual references (*adillah*) employed by KUPI, following the *taṣawwūr* section, also encompass themes that align with the structure of *maqāṣid* as universal values. Specifically, the *adillah* concerning child marriage include seven Quranic verses, five Hadith texts, and six statements from scholars (*aqwal al-'ulamā'*). These references are systematically aligned with *maqāṣid*-related themes, which include the objective of marriage as a means of attaining peace of mind, the prohibition against producing a weak generation, the directive to become the best among people, the proscription against self-destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the encouragement to seek knowledge. The hadith-derived *adillah* further reinforce these themes, emphasizing the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Additionally, the *adillah* drawn from the perspectives of scholars highlight the principle of forbidding harm and evil, as well as the five foundational principles of protection, which are central to the *Maqāṣid* methodology.³⁶

In the *istidlāl* section, all the themes identified in the *taṣawwūr* and *adillah* serve as fundamental concepts for KUPI to argue that child marriage contradicts the principles of *maqāṣid* and that protecting children from early marriage is essential to the objectives of Islamic law. The focus of *istidlāl* is on elaborating the key concepts derived from the *adillah* themes, which align with the objectives of Islamic law. These objectives are then presented as strong, clear, and persuasive arguments affirming Islam's obligation to protect children from early marriage.

When contemporary scholars Jasser Audah extended the principle of preserving religion (*ḥifẓ al-dīn*) has evolved to encompass freedom of belief,³⁷ KUPI opines that it:

³⁵ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, pp. 101-104.

³⁶ KUPI, pp. 104-10.

³⁷ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, 248.

"entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their understanding of religion in general and to fulfill the specific marriage goals outlined by religion."³⁸

The principle of preserving the mind (*hifz al-'aql*), which has evolved to include the propagation of scientific thinking, the suppression of herd mentality, and the avoidance of brain drain,³⁹ is further explained by MK KUPI as encompassing the need to shield children from the possibility of hindering intellectual development resulting from the interruption of their education.

Similarly, while the preservation of offspring (*hifz an-nasl*), honor (*hifz al-'ird*), and wealth (*hifz al-māl*) have evolved to include the care of family, the protection of human dignity, and economic development respectively,⁴⁰ KUPI clarifies that:

"Preserving offspring (*hifz an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*hifz al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they are forced to work prematurely to support the family due to early marriage. Preserving wealth (*hifz al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage."⁴¹

Thus, KUPI grounds its *fatwa* in the logical framework of the *maqāṣid cum- mubādalah*, acknowledging the shared needs of men and

³⁸ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, 114-5.

³⁹ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, 22.

⁴⁰ Audah, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System of Approach*, pp. 248-9.

⁴¹ KUPI, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia*, 114-5.

women, and also addressing specific reproductive challenges experienced by married girls, that are not typically encountered by young married men. Within this conceptual framework, the primary contention advanced by KUPI is that Islam advocates for the protection of children, particularly girls, from the harmful consequences of early marriages. This protection should be provided by parents, families, society, and, most importantly, by the government and state. KUPI also mandates that these entities ensure the rights of children, even those who are married, to education, health, care, and protection from all forms of violence, exploitation, and discrimination.⁴²

Contemporary *fatwas* in Indonesia, as grounded in classical *fiqh*, emphasize the permissible age for aborting a pregnancy resulting from rape rather than addressing the profound traumatic experiences and criminalization faced by many female victims.⁴³ *Fatwas* issued by formal institutions primarily focus on the permissibility of abortion within 40 days of conception or the act of rape, thereby neglecting the complex realities and challenges faced by these women.⁴⁴ However, due to the profound mental trauma experienced by rape victims, many women may not even become aware of their pregnancies until well beyond this 40-day window.⁴⁵ In response to this gap, particularly the absence of women's experiences in religious *fatwas* concerning rape victims, women in Indonesia – including ulama, scholars, activists, and victims' advocates – organized a series of meetings informed by their respective studies. These efforts culminated in the second KUPI Religious Conference (MK) in Jepara in 2022, which issued a *fatwa*

⁴² KUPI, 116.

⁴³ Khoirul Bariyyah and Khairul Muttaqin, "Legalisasi Aborsi Dalam Perspektif Medis Dan Yuridis," 2016, <https://doi.org/10.19105/al-ihkam.v11i1.755>.

⁴⁴ Ibnu Fadli, "Legalitas Aborsi Bagi Korban Perkosaan (Tinjauan Menurut Hukum Positif Dan Hukum Islam)," *Jurnal Lex Renaissance* 7, no. 3 (2022): 559–70, <https://doi.org/10.20885/jlr.vol7.iss3.art8>.

⁴⁵ Maidina Rahmawati, Arinta Dea Dini Singgi, and A.T. Erasmus Napitupulu, *Penyelenggaraan Kebijakan Aborsi Aman, Bermutu, Dan Bertanggung Jawab Sesuai Dengan UU Kesehatan Di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2021), pp. 43–5.

aimed at protecting pregnant rape victims, grounded in the lived experiences of women.⁴⁶

For allowing abortion, MUI's *fatwa* 4/2005 categorizes rape as a secondary necessity (*al-hajah*), in contrast to severe medical conditions like advanced cancer, which are regarded as primary emergencies (*al-darūra*). In these two situations, according to the MUI, pregnancy may be terminated within 40 days of conception to protect the mother's well-being. Specifically, in cases of rape, the decision to terminate the pregnancy must involve consultation with the family, medical professionals, and religious scholars. Unfortunately, because the *fatwa* does not take into account women's experiences, the consent of women who have been raped is not considered in the decision to permit abortion. This *fatwa* is grounded in several Qur'anic verses, Hadith texts, and some quotations of *maqāṣid* principles, such as the obligation to eliminate harm, the permissibility of otherwise prohibited actions in emergencies, and other related considerations.

Unlike the MUI's *fatwa*, the KUPI's *fatwa* focuses its considerations on physical, psychological, and social conditions of the female victim when determining the permissibility of terminating a pregnancy or the obligation to continue it.⁴⁷ It is grounded in the *maqāṣid cum-mubādalah* approach, acknowledging the principle of equality between men and women, and the recognition of women's unique biological and social experiences. This approach is integrated throughout the *fatwa*'s structure. In the *taṣawwur* section, the *fatwa* highlights three central aspects: the harmful effects of rape that must be avoided, the necessity of protecting individuals – especially women – from these adverse consequences, and the crucial need to safeguard the lives of women who become pregnant as a result of rape. The data presented in this section is closely aligned with the core concepts of *maqāṣid*.⁴⁸

In the *adillah* section, there are themes of *maqāṣid*, derived from the Qur'an (17 verses), Hadith (13 texts), and *aqwāl al-'ulamā'* (8 quotations). The Qur'anic verses address key themes such as the

⁴⁶ KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, pp. 164-210.

⁴⁷ KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, pp. 194-5.

⁴⁸ KUPI, pp. 164-70.

inherent dignity of human beings, the mission of Islam to promote mercy, prohibitions against harming others, self-condemnation, safeguarding the vulnerable, refraining from blaming those who are coerced, and extending forgiveness to victims of sexual coercion. The Hadith texts further reinforce emphasizing the prohibition of tyranny, the avoidance of harm to oneself and others, the importance of supporting the weak, alleviating the difficulties of others, treating women with kindness, aiding those who have been wronged, and urging leaders to facilitate ease for the people. Excerpts from *aqwāl al-'ulamā'* address the imperative to eliminate harm (*daf'u al-ḍarar*), the principle that emergencies can justify prohibitions (*al-ḍarūrāt tubīḥ al-maḥzūrāt*), the recognition of rape as a crime against women, the prioritization of the mother's life over that of the unborn child in critical circumstances, and the government's duty to prioritize the welfare of the people.⁴⁹

The themes of *maqāṣid* in the *adillāh* section are explicitly focused on women as victims who are entitled to protection, forgiveness, and support. In the analysis (*Istidlāl*) section, then, these themes are methodically reorganized into a cohesive framework that reinforces several key arguments: the inherent injustice of rape, the attribution of wrongdoing solely to the perpetrator, and the assertion that women who have been raped are not only innocent but are also in need of assistance, support, and companionship. These arguments lay the foundation for raising awareness about critical importance of addressing the needs of women who are victims of rape, particularly emphasizing their need for protection in the aftermath of rape and the consequences of pregnancy resulting from such traumatic events.⁵⁰

KUPI defines protection of religion (*ḥifẓ al-dīn*) and life (*ḥifẓ al-nafs*) within the *maqāṣid cum-mubādalāh* methodology, by saying that:

“Rape victims facing pregnancy may encounter challenges in practicing *ḥifẓ ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to question Islam's stance. The lives of women who are victims of

⁴⁹ KUPI, pp. 170-85.

⁵⁰ KUPI, pp. 187-94.

rape and experience pregnancy are highly susceptible to ongoing stigmatization, discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *hifz an-nafs*, which emphasizes the protection of human lives in Islamic law".⁵¹

KUPI also argues that exposing rape survivors to the risks of pregnancy violates the principle of *hifz al-'aql*, which prioritizes the preservation of mental integrity within the framework of Islamic law. This conclusion stems from evidence indicating that women who become pregnant due to rape often endure long-term psychological and cognitive disturbances, face substantial barriers to education, and struggle to sustain clear and rational thought processes critical to their well-being. Such conditions may further result in feelings of self-worth deterioration and an increased risk of self-harm.

According to KUPI, allowing women who are victims of rape to remain vulnerable to the risks of pregnancy also contravenes the principle of *hifz al-māl*, which emphasizes the protection of property within Islamic law. This is because women who become pregnant as a result of rape and experience cognitive impairments may struggle to manage their assets effectively, face the risk of job loss or dismissal, and encounter barriers to economic participation. Additionally, the financial burden of recovery from the physical and psychological trauma of rape, coupled with the costs of maintaining a healthy pregnancy and providing for the child over their lifetime, is substantial and cannot be overlooked.

Furthermore, KUPI argues that subjecting women to the risks of pregnancy under these circumstances violates the principle of *hifz al-nasl*, which underscores the protection of lineage and family in Islamic law. The logic is that women who become pregnant due to rape may experience self-directed resentment and harbor negative feelings toward the fetus, potentially leading to self-harm or neglect of their own and the fetus's well-being, including inadequate nutrition. Such conditions risk the birth of a vulnerable generation, as warned in the

⁵¹ KUPI, pp. 188-9.

Quran (QS. An-Nisa, 4:9), potentially alienated from familial bonds, lacking essential support, and facing significant life challenges.

Based on the *maqāshid cum-mubādalah* norms grounded in women's experiences, as elaborated above, KUPI issued *fatwa* on protection of women from the danger of pregnancy due to rape, consisting of three decisions: (1) the protection of women's lives from the dangers of pregnancy resulting from rape is obligatory at any stage of pregnancy, whether by continuing or terminating the pregnancy; (2) all relevant parties bear the responsibility to protect women's lives from the dangers associated with pregnancy resulting from rape; and (3) parties who have the responsibility and ability in providing protection to women's lives from the dangers of pregnancy resulting from rape are prohibited to abandon their responsibility. These three points of KUPI's *fatwa* differ not only from similar *fatwas* issued by official institutions in Indonesia, but also from scholarly works that have employed the *Maqāshid* methodology in addressing related issues.⁵² KUPI's *fatwa* stands out particularly because it actively involves women in the deliberation process and grounds its methodology in the lived experiences of women, especially those who are victims of rape.

The explanation above on fatwas regarding child marriage and pregnancy resulting from rape is summarized Table 1

Table 1. Application of *maqashid cum mubadalah* methodology in three steps.

Aspect	Fatwa on Child Marriage	Fatwa on Pregnancy Due to Rape
<i>Tashawwur</i> (Description and Conceptualization)	<ul style="list-style-type: none">• Data on child marriage's impacts gathered through quantitative and qualitative methods.• Concepts linked to <i>maqāshid</i> like child welfare and adverse consequences for young girls.	<ul style="list-style-type: none">• Focus on physical, psychological, and social consequences for rape victims.• Concepts derived from <i>maqāshid</i> related to protecting women's dignity, mental health, and well-being.• Emphasizing the harmful effects of rape and the necessity to protect

⁵² See the difference result of *Maqāshid* in: Nur Azizah and Budi Sastra Panjaitan, "The Legality of Abortion by Medical Personnel for Rape Victims in Indonesia: A Perspective from Maqashid Sharia by Al-Syatibi and Al-Tufi," *Madania* 28, no. 1 (2024): 35–44.

Aspect	Fatwa on Child Marriage	Fatwa on Pregnancy Due to Rape
Adillah (Textual References)	<ul style="list-style-type: none"> Identifying negative impacts of child marriage. 7 Qur'anic verses, 5 Hadiths, and 6 scholar opinions supporting <i>maqāṣid</i> principles. Key themes: prohibition of harm, protection of life, mind, wealth, and offspring. 	<ul style="list-style-type: none"> women from further harm through pregnancy. 17 Qur'anic verses, 13 Hadiths, and 8 scholar opinions supporting <i>maqāṣid</i> principles. Key themes: protection of women's dignity, mercy, prohibition of harm, and government responsibility.
	<ul style="list-style-type: none"> Emphasizing contradiction between child marriage and <i>maqāṣid</i> principles Arguing for the protection of children, particularly girls, from the harmful effects of early marriage, aligning with Islamic law's objectives. 	<ul style="list-style-type: none"> Reorganizing themes from <i>adillah</i> to argue that subjecting rape victims to pregnancy violates <i>maqāṣid</i> principles Advocating for the protection of women's lives and mental health, emphasizing that rape victims should not be forced to carry a pregnancy.

Table 1 shows how the three steps are consistently applied in issuing the fatwa. It begins from observing the situation in the field relying on updated data on relevant issues then followed by analyzing relevant textual sources. It further implies the use of both contextual and textual references to be able to comprehensively portray the issues and put them proportionally through determining the key themes. The last step will be about deciding whether the social fact aligns or contradict to what the textual sources urge to realize. This decision will determine what next steps to take or advocate, namely in formulating the fatwa to issue.

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Conclusions

The *maqāṣid cum-mubādalāh* methodology, as implemented by KUPI in addressing child marriage and pregnancy resulting from rape, tackles three key challenges identified by scholars and gender justice activists. First, women are actively involved at all stages of the fatwa process, from data collection to formulation. Second, women's lived experiences are integrated into the fatwa's methodological framework,

shaping the final decisions. Third, KUPI has developed a contemporary *fiqh* methodology that promotes gender justice. Unlike traditional approaches that often marginalize women's experiences, KUPI validates their authority in religious discourse, promoting gender justice within Islamic law. By involving female ulama in the fatwa process and valuing their expertise, KUPI ensures a comprehensive understanding of gender issues. However, further research is required to investigate how KUPI fatwas operate within civil society movements for social change and how female ulama utilize their knowledge to advocate for gender equality. Conducting in-depth interviews with female ulama would be a valuable approach for future research, addressing a gap in this article.

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Thanks for your suggestion.

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Maqāṣid cum-Mubādalah Methodology of KUPI: Centering Women's Experiences in Islamic Law for Gender-Just Fiqh

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Abstract

The production of fatwā in Indonesia has traditionally been dominated by male scholars and rooted in conventional methodologies that prioritize textual sources, often neglecting the lived experiences of women. This article examines innovative methodology proposed by the Indonesian Congress of Women Ulama (*Kongres Ulama Perempuan Indonesia*, or KUPI) to develop a gender-just approach to Islamic jurisprudence (fiqh). Drawing on participant observation of KUPI's fatwa-making processes in two events occurring respectively in 2017 and 2022 and literature analysis, this study explores two key questions: (1) To what extent does KUPI's maqāṣid cum-mubādalah methodology foster gender-just fiqh? (2) How does KUPI apply this methodology, incorporating both women's experiential perspectives and literal Islamic texts, in issuing its fatwā on child marriage and abortion in cases of rape? The analysis highlights how KUPI's maqāṣid cum-mubādalah approach challenges traditional jurisprudence, showcasing its transformative potential. KUPI's framework integrates maqāṣid asy-syarī'ah (the objectives of Islamic law) with mubādalah a perspective emphasizing equality and reciprocity between men and women. Termed maqāṣid cum-mubādalah, this methodology recognizes lived experiences of women as one of the sources to formulate religious opinions, or fatwā, in Islamic legal tradition. This article underscores the importance of integrating women's experiential perspectives into Islamic legal discourse, offering

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new insights into evolving interpretations of *fiqh* that prioritize justice and equality.

Keywords:

Fatwā; Gender-Just *Fiqh*; KUPI; *Maqāṣid cum-mubādalah*

Introduction

The basis of religious legal opinion, known as *fatwā*, issued by religious institutions, such as the Indonesian Ulama Council (MUI) is *fiqh*, an Islamic jurisprudence which reflects scholars endeavor to address real-life challenges by referring to foundational texts—the Qur'an and Hadith.¹ Although these source texts remain unchanged, the interpretation of their content has naturally evolved, resulting in ongoing developments in *fiqh*, particularly regarding women's issues in family law.² This evolution in *fiqh* requires a comprehensive and holistic methodology,³ in which women's participation becomes a "means of ensuring just and lasting reforms".⁴

Reforms on women's right in family and society include diverse methodologies and approaches aimed at formulating gender-just *fiqh*.⁵ According to Ziba Mir-Hosseini, these reforms have undergone three significant phases. The first phase is the codification

¹ N. Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975-1998)," *Journal of Islamic Studies* 15, no. 2 (2004): 147-79, <https://doi.org/10.1093/jis/15.2.147>.

² Ziba Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," *Hawwa* 1, no. 1 (2003): 1-28, <https://doi.org/10.1163/156920803100420252>.

³ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer," *Unisia* 30, no. 66 (2007): 329-41, <https://doi.org/10.20885/unisia.vol30.iss66.art1>.

⁴ John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (New York: Syracuse University Press, 2001), 162.

⁵ Ziba Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," in *Men in Charge?: Rethinking Authority in Muslim Legal Tradition*, ed. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger (London: Oneworld Publications, 2015), 13-43; Michael N Nwoko and Clement Chimezie Igbokwe, "Biblical Gender Equality and Women's Participation in Leadership," *IJoReSH: Indonesian Journal of Religion, Spirituality, and Humanity* 2, no. 2 (2023): 210-32, <https://doi.org/10.18326/ijores.v2i2.210-232>.

moment, during which Muslim countries throughout the twentieth century transformed classical *fiqh* into codified family laws. However, it did not include any critique of the patriarchal structures inherent in classical *fiqh*. The second phase is marked by the rise of political Islam, beginning in the 1970s, with its peak in 1979 in countries like Iran, Egypt, and Pakistan, where there was a movement to return to Islamic sharia, which is really classical *fiqh*. The third phase is characterized by the emergence of Islamic feminism, pioneered by scholars such as Azizah al-Hibri, Riffat Hassan, and Amina Wadud. These scholars began to reclaim Islam's egalitarian message from its original sources and challenged the patriarchal dimensions of Islamic tradition.⁶

In this third phase, the Indonesian Congress of Women Ulama (KUPI), established in 2017, uniquely integrates Islamic sources with women's knowledge and experiences. This approach, according to Kloos and Ismah, expands the global Islamic feminist project from a primarily scholarly and intellectual movement into a locally resonant and potentially impactful social movement.⁷ KUPI, held twice, first in 2017 at the Islamic boarding school, or *Pesantren* Kebon Jambu al-Islami Cirebon West Java, and second in 2022 at *Pesantren* Hasyim Asy'ari Bangsri Jepara Central Java, featured a core activity called the religious deliberation (*Musyawarah Keagamaan* or MK) to discuss and decide KUPI's religious opinions. Since the first Congress in Cirebon, KUPI has become a movement that brings together women clerics, scholars, activists, and organizations in Indonesia to advocate gender justice from an Islamic perspective.

Numerous studies on KUPI have underscored its importance in highlighting the presence and influence of women in clerical roles, especially in *fatwā* making, in which they participate in all of its processes.⁸ This distinguishes KUPI from other *fatwā*-issuing

⁶ Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," 25.

⁷ David Kloos and Nor Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority," *History and Anthropology* 34, no. 5 (October 2023): 818–43, <https://doi.org/10.1080/02757206.2023.2249495>.

⁸ Inayah Rohmaniyah, Samia Kotele, and Rr Siti Kurnia Widiastuti, "Reclaiming an Authority: Women's Ulama Congress Network (KUPI) and a New Trend of Religious Discourse in Indonesia," *Academic Journal of Interdisciplinary Studies* 11, no. 3 (May 2022): 60–70, <https://doi.org/10.36941/ajis-2022-0068>; Arifah Millati

institutions, such as the MUI, and serves as a response to the challenge posed by various scholars and activists advocating for women's involvement in the issuance of religious *fatwā*. Furthermore, the body within KUPI responsible for issuing *fatwā*, operates through community-level stages, promotes collective decision-making, integrates women's perspectives, and catalyzes social, cultural, and spiritual movements.

While previous studies have defined Islamic knowledge within KUPI's movement, they lack analysis of how KUPI applies *maqāṣid* to develop gender-just *fiqh*. This article addresses this gap by examining *maqāṣid asy-syari'ah* as reinterpreted by KUPI through the *mubādalah* (reciprocity) approach.⁹ KUPI adopts *mubādalah* as both perspective and method, enabling gender-sensitive reinterpretation of Islamic texts, emphasizing reciprocal gender roles, fostering cooperative relationships, and accommodating evolving contexts.

This article highlights the need to revisit *maqāṣid* to address modern challenges.¹⁰ In Indonesia, while the Indonesian Ulama Council (MUI) integrates *maqāṣid* principles into its *fatwā*,¹¹ they are extensively applied to economic and health matters,¹² neglecting

Agustina and Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>; Zainul Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law," *Ahkam: Jurnal Ilmu Syariah* 24, no. 1 (2024): 135–52, <https://doi.org/10.15408/ajis.v24i1.34744>; Umma Farida and Abdurrohman Kasdi, "The 2017 KUPI Congress and Indonesian Female 'Ulama,'" *Journal of Indonesian Islam* 12, no. 2 (2018): 135–58, <https://doi.org/10.15642/JIIS.2018.12.2.135-158>.

⁹ Siti Nurjanah et al., "*Al-Mubādalah fī Maḥūm Fiqh al-Mar'ah al-Mu'āṣirah bi Indūnisiyā*," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 1 (2022): 189–215, <https://doi.org/10.19105/al-Ihkam.v17i1.6140>.

¹⁰ Wael B. Hallaq, "Maqasid and the Challenges of Modernity," *Al-Jami'ah: Journal of Islamic Studies* 49, no. 1 (2011): 1–31, <https://doi.org/10.14421/ajis.2011.491.1-31>.

¹¹ Muhammad Sholihin and Fuad Zein, "Maslahah Reasoning behind Fatwa of the Indonesian Ulema Council: Between Ijtihad's Method and Pragmatism," *Ijtihad* 36, no. 2 (2020): 1–10, <https://journals.fasya.uinib.org/index.php/ijtihad/article/view/36>.

¹² Nurhayati Nurhayati and Muhammad Syukri Albani Nasution, "*Maqāṣid Al-Sharīa* in the Fatwa of the Indonesian Ulama Council Regarding Congregational

women's issues and resulting in patriarchal *fatwā*.¹³ Notably, MUI has used *maqāṣid* to justify practices like female circumcision,¹⁴ criticized for harming women and violating their sexual rights.¹⁵

In contrast, KUPI's *maqāṣid cum-mubādalāh* methodology stands out for its inclusive approach, involving female ulema throughout the *fatwā*-making process—a critical aspect absent in other *fatwā* organizations in Indonesia and beyond. The involvement of the ulema, who can be both male and females, does mean the consideration of women's experience. This article analyzes how KUPI through *fatwā* on child marriage and protecting women's lives from pregnancy risks due to rape, theoretically and practically elucidate *maqāṣid* as the foundational principle of the *mubādalāh* framework, known as *maqāṣid cum-mubādalāh*, fosters gender-just *fiqh*.

Methods

The primary data for this article were gathered through author's participation and observation during KUPI's *fatwā*-making processes at the first Congress in Cirebon (2017) and the second Congress in Jepara (2022). This was complemented by literature analysis, including documents and writings related to the *Mubādalāh* concept and its application in formulating KUPI *fatwā*. The main sources include *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia* (Official Document of Process and Result of Indonesian Congress of Women's Ulama, 2017), *Metodologi Fatwā KUPI: Pokok-pokok Pikiran Musyawarah Keagamaan Kongres Ulama*

Worship During the COVID-19 Pandemic," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 54, no. 2 (2020): 251, <https://doi.org/10.14421/ajish.v54i2.895>.

¹³ Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law."

¹⁴ M. Asrorun Ni'am Sholeh, "Fatwa MUI Tentang Khitan Perempuan," *Ahkam: Jurnal Ilmu Syariah* 12, no. 2 (2012): 35–46, <https://doi.org/10.15408/ajis.v12i2.964>.

¹⁵ Jauharotul Farida et al., "Sunat pada Anak Perempuan (Khifadz) dan Perlindungan Anak Perempuan di Indonesia: Studi Kasus di Kabupaten Demak," *Sawwa: Jurnal Studi Gender* 12, no. 3 (2018): 371, <https://doi.org/10.21580/sa.v12i3.2086>; Nisaul Fadillah, "Women's Majelis Taklim and the Gradual Move Toward Gender Equality: A Study in Jambi Province," *Journal of Indonesian Islam* 17, no. 1 (2023): 100–123, <https://doi.org/10.15642/JIIS.2023.17.1.100-123>.

Perempuan Indonesia (Fatwa Methodology of KUPI: Main Thoughts of Religious Deliberation of Indonesian Congress of Women's Ulama, 2022), and *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) ke-2* (The Result of Religious Deliberation of Indonesian Congress of Women's Ulama, 2023).

The data were analyzed using a hermeneutic framework, focusing on epistemological foundations, the evolution of thought, and the development, conceptualization, and dissemination of women's experiences within the *maqāṣid cum-mubāḍalah* approach. To highlight the significance of women's experiences as a key element in fatwa formulation, two KUPI *fatwā* were selected for analysis: the fatwa on child marriage (issued in Cirebon, 2017) and the fatwa on protecting women's lives from pregnancy risks due to rape (issued in Jepara, 2022), commonly associated with abortion in such cases. This analysis examines the steps taken by the KUPI Religious Deliberation (*Musyawarah Keagamaan*) to integrate women's perspectives into the methodology, process, and outcomes of its *fatwā*. These topics were chosen as they represent key discussions from the first and second KUPI congresses, which have sparked scholarly debate due to differing perspectives and methodologies in fatwa production.

Result and Discussion

Fostering Gender-Just Fiqh: KUPI's Maqāṣid cum-Mubāḍalah Approach

As the foundation for contemporary *fatwā*, *fiqh* represents the scholars' understanding of Islamic source texts—the Qur'an and Hadith—to address various life challenges, thereby serving as a source of benefit for humanity in both this world and the hereafter. In modern times, beginning with Ibn Ashur (d. 1973), scholars have increasingly viewed the use of *maqāṣid* as essential when other methods in *Uṣūl al-Fiqh* (the methodology of Islamic jurisprudence) prove inadequate to address the diverse challenges of contemporary life.¹⁶ This *maqāṣid* has evolved "from a secondary methodology to a primary methodology and ultimately to a multidisciplinary science"

¹⁶ Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam* (Bandung: Mizan, 2013), 164–68; Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda* (Jakarta: Yayasan Pengkajian Hadits el-Bukhari, 2018), 32–41.

in order "to encompass a broader scope of *ijtihad*" across all aspects of modern life.¹⁷

The definition of *maqāṣid* lacks a standardized and singular interpretation, as scholars and intellectuals present diverse perspectives and formulations. Among the most prominent conceptualizations of *maqāṣid asy-syari'ah* is the classification introduced by the classical scholar Abū Ḥāmid al-Ghazālī (d. 1111), who identified five core objectives of Islamic law: the protection of religion (*ḥifẓ ad-dīn*), life (*ḥifẓ an-nafs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-māl*), and lineage or offspring (*ḥifẓ an-nasl*). Contemporary scholars have expanded the scope of *maqāṣid* to encompass a broader range of issues, including socio-political reform, women's rights, justice, freedom, brotherhood, social welfare, human dignity, nation-building, cooperation, and the protection of nature, among others.¹⁸

The principle of *maqāṣid* has been mobilized by a wide range of ulema in the Islamic world, in a wide range of domains. Rashid Rida (d. 1935) offers a socio-political reform and championed the fulfillment of women's rights as themes of *maqāṣid*.¹⁹ Ibn Ashur expanded the themes of *maqāṣid* by incorporating principles of freedom, equality, and tolerance.²⁰ Yusuf al-Qaradawi added themes on justice, freedom, brotherhood, social welfare, human dignity, nation-building, and cooperation between humans.²¹ Zaynab al-'Ulwani took a specific focus, including *sakīnah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid asy-syari'ah fi al-usrah*).²²

¹⁷ Tazul Islam, "Expansion of Maqāṣid Thought Beyond *Maqāṣid al-Shari'ah: Maqāṣid al-Qur'an* As a New Paradigm," *Hamdard Islamicus* 45, no. 4 (2022): 79–95, <https://doi.org/10.57144/hi.v45i4.514>.

¹⁸ Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*.

¹⁹ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣid asy-Syari'ah: Kajian Kritis dan Komprehensif* (Yogyakarta: IRCISOD, 2020), 177–78.

²⁰ Muḥammad aṭ-Ṭāhir Ibn 'Ashūr, *Maqāṣid asy-Syari'ah al-Islāmiyyah* (Cairo: Dar al-Salam, 2006), 449–63; Darul Faizin, "Kontribusi Muhammad Aṭ-Ṭāhir Ibnu 'Āsyūr Terhadap *Maqāṣid asy-Syari'ah*," *El-Mashlahah* 11, no. 1 (2021): 1–12, <https://doi.org/10.23971/elma.v11i1.2067>.

²¹ Yusuf Al-Qaradāwī, *Madkhal Li-Dirasāt asy-Syari'ah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1997), 75.

²² Zaynab Ṭahā Al-'Ulwani, *Al-Usrah fi Maqāṣid asy-Syari'ah: Qirā'ah fi Qaḍāyā az-Zawāj Wa Aṭ-Ṭalāq Fi Amirikā* (Herdon: IIIT, 2012), 90–97.

Here, contemporary scholars generally agree that *maqāṣid* embodies universal values like social justice, public good, and economic welfare, which are applicable to both men and women.²³ However, they have not sufficiently elaborated on how the *maqāṣid* methodology can be specifically applied to gender issues.²⁴ Some studies on Islamic law in the Indonesian context, even those employing the *maqāṣid* approach, have yet to fully engage with conceptions of *maqāṣid* that involve women and incorporate their life experiences.²⁵

Recognizing women's perspectives and experiences is crucial for producing authentic religious knowledge, and KUPI has made this a cornerstone of its use of *maqāṣid* in formulating gender-just *fiqh*. The Religious Deliberation (*Musyawarah Keagamaan*) of KUPI, held in Cirebon (2017) and Jepara (2022) adopted the *maqāṣid* methodology, but its distinctiveness is found in its integration of *maqāṣid* with women's perspectives and experiences. The validation of women's perspectives and experiences is demonstrated through the active involvement of female ulema in all KUPI's *fatwā* processes, the acknowledgment of women's experiences as a legitimate source of knowledge, and the resulting *fatwā* that promote gender justice.²⁶

²³ Zaprul Khan, *Rekonstruksi Paradigma Maqāṣid asy-Syari'ah: Kajian Kritis dan Komprehensif*, 174–79.

²⁴ Adis Duderija, "Maqāṣid Al-Shari'a, Gender Non-Patriarchal Qur'an-Sunna Hermeneutics, and the Reformation of Muslim Family Law," in *Maqāṣid Al-Shari'ah and Contemporary Reformist Muslim Thought*, ed. Adis Duderija, 2014, 193–218, https://doi.org/10.1057/9781137319418_9; Basma I. Abdelgafar, "Re-Envisioning Women's Empowerment: A Maqasid Approach to Understanding Women's Status and Rights in Islam," in *Women's Empowerment and Public Policy in the Arab Gulf States*, ed. Rabia Naquib, vol. 11 (Ottawa: Springer, 2024), 55–73, https://doi.org/https://doi.org/10.1007/978-981-99-6006-4_3.

²⁵ Edi Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqāṣid Al-Shari'a Review," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, no. 1 (2020): 1–15, <https://doi.org/10.30631/alrisalah.v20i1.565>; Anthin Lathifah et al., "The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāṣid Hifz Al-Dīn," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 1 (2022): 369–90, <https://doi.org/10.22373/sjhk.v6i1.10957>.

²⁶ Nor Ismah, *Women Issuing Fatwas: Female Islamic Scholars and Community-Based Authority in Java Indonesia* (Leiden: Unpublished Dissertation in Leiden University, 2023), 179–89.

In the KUPI's perspective, men and women are seen as complete individuals and full participants in life, with their experiences valued as authoritative knowledge. Women actively contribute to formulating religious *fatwā*, ensuring their experiences are recognized and their interests protected. This approach emphasizes cooperation and mutual exchange, positioning both genders as equal participants in life. It ensures equal consideration of men's and women's experiences, preventing their marginalization in life's challenges. Recognizing men and women as complete individuals involves acknowledging their diverse dimensions—physical, psychological, social, and spiritual—beyond traditional gender roles.²⁷

KUPI embraces this perspective and employs two strategies in conceptualizing, referring, and implementing the *maqāṣid* methodology. First, women together with men should actively participate in all *fatwā* processes, acting as both contributors and recipients of its outcomes. The second strategy focuses on acknowledging the unique experiences of women that differentiate them from men. This includes biological aspects such as menstruation, pregnancy, childbirth, postpartum experience, and breastfeeding. Socially, women often face vulnerabilities, including stigmatization, subordination, marginalization, violence, and double burdens, solely because of their gender. These unique biological and social experiences for women become integrated into the human experience, and serve as sources of knowledge, including religious opinions, such as *fiqh* and *fatwā*.²⁸

The protection of offspring (*ḥifẓ an-nasl*), one of five core principles in the *maqāṣid* methodology, has been expanded by contemporary scholars to encompass the protection of the integrity

²⁷ Nur Rofiah, "Reading the Qur'an Through Women's Experience," in *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws*, ed. Ziba Mir-Hossemi (London: Oneworld, 2022), 57–84; Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (2022): 537–57, <https://doi.org/10.22373/sjhk.v6i2.13882>.

²⁸ Faqihuddin Abdul Kodir and Nur Rofiah, *Summary the Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, ed. Samia Kotele (Jakarta: AMAN Indonesia, 2024), 13–14.

and welfare of family life. This principle has been reconceptualized by KUPI through two primary strategies. First, the principle is understood to encompass and prioritize the welfare of both men and women within the context of family life, integrating the experiences of both genders into its framework. Second, KUPI incorporates considerations related to women's reproductive health, both biological and social, into the formulation of *ḥifẓ an-nasl* in various *fatwā*. For example, the potential harm to the wombs of underage girls caused by pregnancy—a risk that is exclusive to female reproductive organs—has led KUPI to prohibit the marriage of children. Additionally, the social consequences uniquely faced by girls who marry young, such as restrictions on their access to education and social activities, are factored into the application of the *ḥifẓ an-nasl* principle in efforts to protect the welfare of families.²⁹

The other four principles of *maqāṣid*—the protection of the soul, mind, property, and religion—are also conceptualized through these two strategies, ensuring that the equal needs of men and women as human beings are addressed while simultaneously accommodating the specific biological and social needs of women. This approach is evident in the structure of KUPI's *fatwā*, from the initial conceptualization (*taṣawwur*), to the formulation of themes based on textual references (*adillah*), and particularly in process of reasoning (*istidlāl*).

In the *taṣawwur* section, KUPI presents data on the adverse effects experienced by women in the cases under review for *fatwā*, emphasizing the necessity for women to avoid these harms in accordance with the principles of justice and benefit as outlined in Islamic teachings. In the *adillah* section, KUPI compiles themes based on universal values, drawing sources from the Qur'an, Hadith, and *fiqh*. These themes include teachings that apply broadly to both men and women—such as those promoting human dignity, justice, compassion, and general kindness toward humans and nature—as

²⁹ Kongres Ulama Perempuan Indonesia, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2* (Jakarta: KUPI, 2022), 111–15; Tim Kongres Ulama Perempuan Indonesia, *Dokumen Resmi Proses Dan Hasil Kongres Ulama Perempuan Indonesia* (Cirebon: KUPI, 2017), 145–48; Abdul Kodir and Rofiah, *Summary the Result of the Religious Deliberation: The 2nd Congress of Indonesian Women Ulama (KUPI)*, 11–15.

well as those that specifically address women, such as the command to treat women well, the prohibition against causing harm to women, and the emphasis on compassion for women during pregnancy, childbirth, and breastfeeding. In the *istidlāl* section, KUPI connects the experiences of women highlighted in the *taṣawwur* with the universal themes outlined in the *adillah*, ensuring that the resulting arguments are relevant and aligned with the principles of the *Maqāṣid* methodology.

Issuing *Fatwā* on Child Marriage and Pregnancy from Rape: A *Maqāṣid cum-Mubādalah* Approach

Traditional *fiqh* commonly delves into the legal aspects of child marriage, examining its permissibility through the lens of textual arguments.³⁰ Conversely, modern scholars and intellectuals have shifted the discourse towards advocating for the imposition of a minimum age for marriage, emphasizing the positive outcomes for children, especially the girls, in which the *maqāṣid* methodology is invoked in the discussion.³¹ MUI does not yet have a *fatwā* on child marriage, while NU's *fatwā* represents traditional *fiqh* which allows child marriage.³² Although Muhammadiyah's *fatwā* disregards under-

³⁰ Wahbah Az-Zuhailī, *Al-Fiqh al-Islāmī wa Adillatuhū* (Damascus: Dar al-Fikr, 1989), 17.

³¹ Muhammad Shofwan Taufiq and M Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage," *Muhammadiyah Law Reform* 7, no. 2 (2023): 1–23, <https://doi.org/10.24127/mlr.v7i2.2764>; Agus Purnomo et al., "Dimensions *Maqāṣid al-Sharī'ah* and Human Rights in the Constitutional Court's Decision on Marriage Age Difference in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1397–1421, <https://doi.org/10.22373/sjkh.v7i3.13283>; Arbanur Rasyid et al., "Dynamics of Childless Marriage Through the Lens of *Maqasid Al-Shari'a*," *Jurnal Ilmiah Peuradeun* 12, no. 2 (2024): 763–86, <https://doi.org/10.26811/peuradeun.v12i2.1182>; Farida Ulvi Naimah et al., "Internalization of Local Traditions in Child Marriage from the Perspective of *Maqāṣid al-Ushrah*," *El-Mashlahah* 14, no. 2 (2024): 237–58, <https://doi.org/10.23971/el-mashlahah.v14i2.7942>.

³² Pengurus Besar Nahdlatul Ulama, *Keputusan Mukhtamar XXXII Nahdlatul Ulama* (Jakarta: Pengurus Besar Nahdlatul Ulama, 2010), 206–8.

aged marriage, its explanation on *maqāṣid* methodology is very minimal, as it mostly discusses related hadiths.³³

Therefore, KUPI's distinctive approach in incorporating *maqāṣid* into its formulation adds a significant and nuanced dimension to the discourse on child marriage, contributing to the development of gender-just *fiqh*. The *taṣawwur* of KUPI's fatwa incorporates quantitative and qualitative data related to child marriage across diverse regions in Indonesia. Within this *taṣawwur*, numerous expressions derived from this data are correlated with the themes of *maqāṣid* advocated by contemporary scholars. Phrases such as 'benefits for children,' 'child welfare,' and 'adverse impacts experienced by children' occur frequently, which are relevant to the themes of *maqāṣid*, emerging as conclusions drawn from qualitative data on child marriages. Negative impacts of child marriages encompass economic, physical, mental, and intellectual aspects, which are subsequently incorporated into *Maqāṣid* analysis of five principles, i.e. the expanded meaning of protection of life, mind, wealth, descent, and religion.

What distinguishes KUPI's *fatwā* is its grounding in and exploration of data on the lived experiences of women as victims of child marriage.³⁴ The *taṣawwur* section details the adverse impacts of child marriage, including its contributions to illiteracy rates, maternal and infant mortality rates, the difficulties faced by married girls and young mothers, their malnutrition, low educational attainment, high school dropout rates, and the challenges faced by young women who are divorced from early marriages. It also addresses the mental and

³³ Pimpinan Pusat Muhammadiyah, *Tanfidz Keputusan Musyawarah Nasional Tarjih XXVIII* (Yogyakarta: Pimpinan Pusat Muhammadiyah, 2015), 135–39.

³⁴ Qodariah Barkah et al., "Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022): 383–411, <https://doi.org/10.19105/al-Ihkam.v17i2.6725>; Syarifah Ema Rahmaniah and Egi Tanadi Taufik, "Our Husband and Children Are Not Acknowledge: Endogamy, Gendered Power, and Child Issues in the 'Alawiyyin Marriage in Indonesia," *Journal of Indonesia Islam* 18, no. 02 (2024): 374–402, <https://doi.org/10.15642/JIIS.2024.18.2.374-402>; Ardhina Shafa Sipayung and Mualimin Mochammad Sahid, "Awaking Women's Agency Through Organizations: Legal Attitude of Muslim Women Victims of Marital Rape," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 2 (2022): 257–74, <https://doi.org/10.14421/ahwal.2022.15206>.

emotional strain these girls endure as wives, their low levels of well-being, high dependency, and the prevalence of domestic violence.³⁵

The textual references (*adillah*) employed by KUPI, following the *taṣawwur* section, also encompass themes that align with the structure of *maqāṣid* as universal values. Specifically, the *adillah* concerning child marriage include seven Quranic verses, five Hadith texts, and six statements from scholars (*aqwal al-'ulamā'*). These references are systematically aligned with *maqāṣid*-related themes, which include the objective of marriage as a means of attaining peace of mind, the prohibition against producing a weak generation, the directive to become the best among people, the proscription against self-destruction, the mandate to exercise authority justly, the command to act equitably and virtuously, and the encouragement to seek knowledge. The hadith-derived *adillah* further reinforce these themes, emphasizing the prohibition against self-harm, the proscription against perpetrating injustice, the principle of love, the requirement of capability as a condition for marriage, and the importance of willingness in marriage. Additionally, the *adillah* drawn from the perspectives of scholars highlight the principle of forbidding harm and evil, as well as the five foundational principles of protection, which are central to the *Maqāṣid* methodology.³⁶

In the *istidlāl* section, all the themes identified in the *taṣawwur* and *adillah* serve as fundamental concepts for KUPI to argue that child marriage contradicts the principles of *maqāṣid* and that protecting children from early marriage is essential to the objectives of Islamic law. The focus of *istidlāl* is on elaborating the key concepts derived from the *adillah* themes, which align with the objectives of Islamic law. These objectives are then presented as strong, clear, and persuasive arguments affirming Islam's obligation to protect children from early marriage.

When contemporary scholars Jasser Audah extended the principle of preserving religion (*ḥifẓ ad-dīn*) has evolved to encompass freedom of belief,³⁷ KUPI opines that it:

³⁵ Tim Kongres Ulama Perempuan Indonesia, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia*, 101–4.

³⁶ Tim Kongres Ulama Perempuan Indonesia, 104–10.

³⁷ Jasser Audah, *Maqasid al-Shariah as Philosophy of Islamic Law: A System of Approach* (London: IIIT, 2007), 248.

"Entails shielding children from marriage, ensuring they have sufficient time to comprehend and faithfully practice religious teachings, aligning with the marriage goals delineated by religion. Contracting marriage at a young age deprives them of the opportunity to study and deepen their understanding of religion in general and to fulfill the specific marriage goals outlined by religion."³⁸

The principle of preserving the mind (*ḥifẓ al-'aql*), which has evolved to include the propagation of scientific thinking, the suppression of herd mentality, and the avoidance of brain drain,³⁹ is further explained by MK KUPI as encompassing the need to shield children from the possibility of hindering intellectual development resulting from the interruption of their education.

Similarly, while the preservation of offspring (*ḥifẓ an-nasl*), honor (*ḥifẓ al-'ird*), and wealth (*ḥifẓ al-māl*) have evolved to include the care of family, the protection of human dignity, and economic development respectively,⁴⁰ KUPI clarifies that:

"Preserving offspring (*ḥifẓ an-nasl*) signifies protecting children from the risk of producing inferior-quality descendants. Upholding honor (*ḥifẓ al-'ird*) involves shielding children from vulnerability to trafficking and exploitation, which may occur if they are forced to work prematurely to support the family due to early marriage. Preserving wealth (*ḥifẓ al-māl*) entails protecting children from the potential consequences of poverty and the inability to live prosperously due to insufficient knowledge and skills resulting from early marriage."⁴¹

³⁸ Tim Kongres Ulama Perempuan Indonesia, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia*, 114–15.

³⁹ Audah, *Maqasid al-Shariah as Philosophy of Islamic Law: A System of Approach*, 22.

⁴⁰ Audah, 248–49.

⁴¹ Tim Kongres Ulama Perempuan Indonesia, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia*, 114–15.

Thus, KUPI grounds its *fatwā* in the logical framework of the *maqāṣid cum- mubāḍalah*, acknowledging the shared needs of men and women, and also addressing specific reproductive challenges experienced by married girls, that are not typically encountered by young married men. Within this conceptual framework, the primary contention advanced by KUPI is that Islam advocates for the protection of children, particularly girls, from the harmful consequences of early marriages. This protection should be provided by parents, families, society, and, most importantly, by the government and state. KUPI also mandates that these entities ensure the rights of children, even those who are married, to education, health, care, and protection from all forms of violence, exploitation, and discrimination.⁴²

Contemporary *fatwā* in Indonesia, as grounded in classical *fiqh*, emphasize the permissible age for aborting a pregnancy resulting from rape rather than addressing the profound traumatic experiences and criminalization faced by many female victims.⁴³ *Fatwā* issued by formal institutions primarily focus on the permissibility of abortion within 40 days of conception or the act of rape, thereby neglecting the complex realities and challenges faced by these women.⁴⁴ However, due to the profound mental trauma experienced by rape victims, many women may not even become aware of their pregnancies until well beyond this 40-day window.⁴⁵

⁴² Tim Kongres Ulama Perempuan Indonesia, 116.

⁴³ Khoirul Bariyyah and Khairul Muttaqin, "Legalisasi Aborsi dalam Perspektif Medis dan Yuridis," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 11, no. 1 (2016): 120–47, <https://doi.org/http://dx.doi.org/10.19105/al-ihkam.v11i1.755>; Sabarudin Ahmad, "Hukum Aborsi Akibat Perkosaan (Analisis Hukum Islam Terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 tentang Kesehatan Reproduksi)," *El-Mashlahah* 8, no. 1 (2019): 162–83, <https://doi.org/10.23971/el-mas.v8i2.1321>.

⁴⁴ Ibnu Fadli, "Legalitas Aborsi Bagi Korban Perkosaan (Tinjauan Menurut Hukum Positif dan Hukum Islam)," *Jurnal Lex Renaissance* 7, no. 3 (2022): 559–70, <https://doi.org/10.20885/jlr.vol7.iss3.art8>.

⁴⁵ Maidina Rahmawati, Arinta Dea Dini Singgi, and Erasmus A.T. Napitupulu, *Penyelenggaraan Kebijakan Aborsi Aman, Bermutu, dan Bertanggung Jawab Sesuai dengan UU Kesehatan di Indonesia* (Jakarta: Institute for Criminal Justice Reform (ICJR) Jalan, 2021), 43–45; Sri Warjiyati, "Aborsi pada Masa Iddah Wanita Hamil untuk Mempercepat Perkawinan dalam Perspektif Hukum Islam," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 1 (2019): 46–55, <https://doi.org/10.14421/ahwal.2019.12104>.

In response to this gap, particularly the absence of women's experiences in religious *fatwā* concerning rape victims, women in Indonesia—including ulama, scholars, activists, and victims' advocates—organized a series of meetings informed by their respective studies. These efforts culminated in the second KUPI Religious Conference (MK) in Jepara in 2022, which issued a *fatwā* aimed at protecting pregnant rape victims, grounded in the lived experiences of women.⁴⁶ For allowing abortion, MUI's *fatwā* 4/2005 categorizes rape as a secondary necessity (*al-hajah*), in contrast to severe medical conditions like advanced cancer, which are regarded as primary emergencies (*ad-ḍarūrah*). In these two situations, according to the MUI, pregnancy may be terminated within 40 days of conception to protect the mother's well-being. Specifically, in cases of rape, the decision to terminate the pregnancy must involve consultation with the family, medical professionals, and religious scholars. Unfortunately, because the *fatwā* does not take into account women's experiences, the consent of women who have been raped is not considered in the decision to permit abortion. This *fatwā* is grounded in several Qur'anic verses, Hadith texts, and some quotations of *maqāṣid* principles, such as the obligation to eliminate harm, the permissibility of otherwise prohibited actions in emergencies, and other related considerations.

Unlike the MUI's *fatwā*, the KUPI's *fatwā* focuses its considerations on physical, psychological, and social conditions of the female victim when determining the permissibility of terminating a pregnancy or the obligation to continue it.⁴⁷ It is grounded in the *maqāṣid cum-mubādalāh* approach, acknowledging the principle of equality between men and women, and the recognition of women's unique biological and social experiences. This approach is integrated throughout the *fatwā*'s structure. In the *taṣawwur* section, the *fatwā* highlights three central aspects: the harmful effects of rape that must be avoided, the necessity of protecting individuals—especially women—from these adverse consequences, and the crucial need to safeguard the lives of women who become pregnant as a result of rape. The data

⁴⁶ Kongres Ulama Perempuan Indonesia, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, 164–210.

⁴⁷ Kongres Ulama Perempuan Indonesia, 194–95.

presented in this section is closely aligned with the core concepts of *maqāṣid*.⁴⁸

In the *adillah* section, there are themes of *maqāṣid*, derived from the Qur'an (17 verses), Hadith (13 texts), and *aqwāl al-'ulamā'* (8 quotations). The Qur'anic verses address key themes such as the inherent dignity of human beings, the mission of Islam to promote mercy, prohibitions against harming others, self-condemnation, safeguarding the vulnerable, refraining from blaming those who are coerced, and extending forgiveness to victims of sexual coercion. The Hadith texts further reinforce emphasizing the prohibition of tyranny, the avoidance of harm to oneself and others, the importance of supporting the weak, alleviating the difficulties of others, treating women with kindness, aiding those who have been wronged, and urging leaders to facilitate ease for the people. Excerpts from *aqwāl al-'ulamā'* address the imperative to eliminate harm (*daf'u ad-ḍarar*), the principle that emergencies can justify prohibitions (*ad-ḍarūrāt tubīḥ al-maḥẓūrāt*), the recognition of rape as a crime against women, the prioritization of the mother's life over that of the unborn child in critical circumstances, and the government's duty to prioritize the welfare of the people.⁴⁹

The themes of *maqāṣid* in the *adillah* section are explicitly focused on women as victims who are entitled to protection, forgiveness, and support. In the analysis (*Istidlāl*) section, then, these themes are methodically reorganized into a cohesive framework that reinforces several key arguments: the inherent injustice of rape, the attribution of wrongdoing solely to the perpetrator, and the assertion that women who have been raped are not only innocent but are also in need of assistance, support, and companionship. These arguments lay the foundation for raising awareness about critical importance of addressing the needs of women who are victims of rape, particularly emphasizing their need for protection in the aftermath of rape and the consequences of pregnancy resulting from such traumatic events.⁵⁰

⁴⁸ Kongres Ulama Perempuan Indonesia, 164–70.

⁴⁹ Kongres Ulama Perempuan Indonesia, 170–85.

⁵⁰ Kongres Ulama Perempuan Indonesia, 187–95.

KUPI defines protection of religion (*hifz ad-dīn*) and life (*hifz an-nafs*) within the *maqāṣid cum-mubādalah* methodology, by saying that:

“Rape victims facing pregnancy may encounter challenges in practicing *hifz ad-dīn*, as they may harbor feelings of blame towards fate and perceive Allah as unjust, especially when lacking support from the Muslim community, leading them to question Islam's stance. The lives of women who are victims of rape and experience pregnancy are highly susceptible to ongoing stigmatization, discrimination, blame, ostracism, and other forms of violence. Consequently, victims may engage in self-harming actions, and in severe cases, contemplate or commit suicide. Therefore, subjecting them to such conditions goes against the principle of *hifz an-nafs*, which emphasizes the protection of human lives in Islamic law”.⁵¹

KUPI also argues that exposing rape survivors to the risks of pregnancy violates the principle of *hifz al-'aql*, which prioritizes the preservation of mental integrity within the framework of Islamic law. This conclusion stems from evidence indicating that women who become pregnant due to rape often endure long-term psychological and cognitive disturbances, face substantial barriers to education, and struggle to sustain clear and rational thought processes critical to their well-being. Such conditions may further result in feelings of self-worth deterioration and an increased risk of self-harm.

According to KUPI, allowing women who are victims of rape to remain vulnerable to the risks of pregnancy also contravenes the principle of *hifz al-māl*, which emphasizes the protection of property within Islamic law. This is because women who become pregnant as a result of rape and experience cognitive impairments may struggle to manage their assets effectively, face the risk of job loss or dismissal, and encounter barriers to economic participation. Additionally, the financial burden of recovery from the physical and psychological

⁵¹ Kongres Ulama Perempuan Indonesia, 188–89.

trauma of rape, coupled with the costs of maintaining a healthy pregnancy and providing for the child over their lifetime, is substantial and cannot be overlooked.

Furthermore, KUPI argues that subjecting women to the risks of pregnancy under these circumstances violates the principle of *ḥifẓ an-nasl*, which underscores the protection of lineage and family in Islamic law. The logic is that women who become pregnant due to rape may experience self-directed resentment and harbor negative feelings toward the fetus, potentially leading to self-harm or neglect of their own and the fetus's well-being, including inadequate nutrition. Such conditions risk the birth of a vulnerable generation, as warned in the Quran (QS. An-Nisa, 4:9), potentially alienated from familial bonds, lacking essential support, and facing significant life challenges.

Based on the *maqāṣid cum-mubādalah* norms grounded in women's experiences, as elaborated above, KUPI issued *fatwā* on protection of women from the danger of pregnancy due to rape, consisting of three decisions: (1) the protection of women's lives from the dangers of pregnancy resulting from rape is obligatory at any stage of pregnancy, whether by continuing or terminating the pregnancy; (2) all relevant parties bear the responsibility to protect women's lives from the dangers associated with pregnancy resulting from rape; and (3) parties who have the responsibility and ability in providing protection to women's lives from the dangers of pregnancy resulting from rape are prohibited to abandon their responsibility. These three points of KUPI's *fatwā* differ not only from similar *fatwā* issued by official institutions in Indonesia, but also from scholarly works that have employed the *Maqāṣid* methodology in addressing related issues.⁵² KUPI's *fatwā* stands out particularly because it actively involves women in the deliberation process and grounds its methodology in the lived experiences of women, especially those who are victims of rape.

The explanation above on *fatwā* regarding child marriage and pregnancy resulting from rape is summarized Table 1

⁵² Nur Azizah, Mhd. Syahnan, and Budi Sastra Panjaitan, "The Legality of Abortion by Medical Personnel for Rape Victims in Indonesia: A Perspective from Maqashid Sharia by Al-Syatibi and Al-Tufi," *Madania: Jurnal Kajian Keislaman* 28, no. 1 (2024): 35, <https://doi.org/10.29300/madania.v28i1.3847>.

Table 1. Application of *maqashid cum mubadalah* methodology in three steps.

Aspect	Fatwa on Child Marriage	Fatwa on Pregnancy Due to Rape
<i>Tashawwur</i> (Description and Conceptualization)	<ul style="list-style-type: none"> • Data on child marriage's impacts gathered through quantitative and qualitative methods • Concepts linked to <i>maqāṣid</i> like child welfare and adverse consequences for young girls. • Identifying negative impacts of child marriage. 	<ul style="list-style-type: none"> • Focus on physical, psychological, and social consequences for rape victims. • Concepts derived from <i>maqāṣid</i> related to protecting women's dignity, mental health, and well-being. • Emphasizing the harmful effects of rape and the necessity to protect women from further harm through pregnancy.
<i>Adillah</i> (Textual References)	<ul style="list-style-type: none"> • 7 Qur'anic verses, 5 Hadiths, and 6 scholar opinions supporting <i>maqāṣid</i> principles. • Key themes: prohibition of harm, protection of life, mind, wealth, and offspring. 	<ul style="list-style-type: none"> • 17 Qur'anic verses, 13 Hadiths, and 8 scholar opinions supporting <i>maqāṣid</i> principles. • Key themes: protection of women's dignity, mercy, prohibition of harm, and government responsibility.
<i>Istidlal</i> (Analysis and Legal Reasoning)	<ul style="list-style-type: none"> • Emphasizing contradiction between child marriage and <i>maqāṣid</i> principles • Arguing for the protection of children, particularly girls, from the harmful effects of early marriage, aligning with Islamic law's objectives. 	<ul style="list-style-type: none"> • Reorganizing themes from <i>adillah</i> to argue that subjecting rape victims to pregnancy violates <i>maqāṣid</i> principles • Advocating for the protection of women's lives and mental health, emphasizing that rape victims should not be forced to carry a pregnancy.

Table 1 shows how the three steps are consistently applied in issuing the fatwa. It begins from observing the situation in the field relying on updated data on relevant issues then followed by analyzing relevant textual sources. It further implies the use of both

contextual and textual references to be able to comprehensively portray the issues and put them proportionally through determining the key themes. The last step will be about deciding whether the social fact aligns or contradict to what the textual sources urge to realize. This decision will determine what next steps to take or advocate, namely in formulating the *fatwa* to issue.

Conclusions

The *maqāṣid cum-mubādalāh* methodology, as implemented by KUPI in addressing child marriage and pregnancy resulting from rape, tackles three key challenges identified by scholars and gender justice activists. *First*, women are actively involved at all stages of the *fatwā* process, from data collection to formulation. *Second*, women's lived experiences are integrated into the fatwa's methodological framework, shaping the final decisions. *Third*, KUPI has developed a contemporary *fiqh* methodology that promotes gender justice. Unlike traditional approaches that often marginalize women's experiences, KUPI validates their authority in religious discourse, promoting gender justice within Islamic law. By involving female ulama in the fatwa process and valuing their expertise, KUPI ensures a comprehensive understanding of gender issues. However, further research is required to investigate how KUPI *fatwā* operate within civil society movements for social change and how female ulama utilize their knowledge to advocate for gender equality. Conducting in-depth interviews with female ulama would be a valuable approach for future research, addressing a gap in this article.

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