



al-Ihkam: Jurnal Hukum dan Pranata Sosial, 19 (2), 2024: 519-545
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <https://doi.org/10.19105/al-ihkam.v19i2.16617>

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

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Article history: Received: December 08, 2024, Accepted: January 13, 2025,
Published: January 25, 2025

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

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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 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

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>.

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 Kloos and Ismah, expands the global Islamic feminist project from a primarily scholarly and intellectual movement into a locally resonant

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>.

⁶ Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," 25.

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 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

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 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>.

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 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-mubādalah* 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

⁹ Siti Nurjanah et al., "Al-Mubādalah fī Maḥūm Fiqh al-Mar'ah al-Mu'āṣirah bi Indūnīsiyā," *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 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>.

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 *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 *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 *Mubādalah* 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 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 *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-Mubādalah 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" 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-syarī'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

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.

¹⁷ Tazul Islam, "Expansion of Maqāṣid Thought Beyond *Maqāṣid al-Sharī'ah: Maqāṣid al-Qur'ān* 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*.

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-'Ulwanī took a specific focus, including *sakīnah* (tranquility and happiness), as a goal within Islamic family law (*maqāṣid asy-syarī'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), 177–78.

²⁰ Muḥammad at-Ṭāhīr Ibn 'Ashūr, *Maqāṣid asy-Syarī'ah al-Islāmiyyah* (Cairo: Dar al-Salam, 2006), 449–63; Darul Faizin, "Kontribusi Muhammad Aṭ-Ṭāhīr Ibnu 'Āsyūr Terhadap *Maqāṣid asy-Syarī'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-Syarī'ah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1997), 75.

²² Zaynab Ṭahā Al-'Ulwanī, *Al-Ussrah fi Maqāṣid asy-Syarī'ah: Qirā'Ah fi Qadāyā az-Zawāj Wa Aṭ-Ṭalāq Fi Amirikā* (Herdon: IIIT, 2012), 90–97.

²³ Zaprulkhan, *Rekonstruksi Paradigma Maqāṣid asy-Syarī'ah: Kajian Kritis dan Komprehensif*, 174–79.

²⁴ Adis Duderija, "Maqāṣid Al-Sharī'a, Gender Non-Patriarchal Qur'an-Sunna Hermeneutics, and the Reformation of Muslim Family Law," in *Maqāṣid Al-Sharī'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-Sharī'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

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

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

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.

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-Hossenli (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>.

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 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

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.

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.

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 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

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

marriage, while NU's *fatwā* represents traditional *fiqh* which allows child marriage.³² Although Muhammadiyah's *fatwā* 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 *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

(2023): 1397–1421, <https://doi.org/10.22373/sjhc.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-Ussrah*," *El-Mashlahah* 14, no. 2 (2024): 237–58, <https://doi.org/10.23971/el-mashlahah.v14i2.7942>.

³² Pengurus Besar Nahdlatul Ulama, *Keputusan Muktamar XXXII Nahdlatul Ulama* (Jakarta: Pengurus Besar Nahdlatul Ulama, 2010), 206–8.

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

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.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

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>.

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.

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:

"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

³⁷ Jasser Audah, *Maqasid al-Shariah as Philosophy of Islamic Law: A System of Approach* (London: IIIT, 2007), 248.

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.

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

Thus, KUPI grounds its *fatwā* in the logical framework of the *maqāṣid cum- mubādalah*, 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,

⁴¹ Tim Kongres Ulama Perempuan Indonesia, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia*, 114–15.

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>.

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 *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-darūrah*). 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-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

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>.

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

⁴⁷ Kongres Ulama Perempuan Indonesia, 194–95.

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 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-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 *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

⁴⁸ Kongres Ulama Perempuan Indonesia, 164–70.

⁴⁹ Kongres Ulama Perempuan Indonesia, 170–85.

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 (*hifz ad-dīn*) and life (*hifz an-nafs*) within the *maqāsid 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,

⁵⁰ Kongres Ulama Perempuan Indonesia, 187-95.

⁵¹ Kongres Ulama Perempuan Indonesia, 188-89.

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 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.

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>.

The explanation above on *fatwā* 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)	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. Identifying negative impacts of child marriage.	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 women from further harm through pregnancy.
<i>Adillah</i> (Textual References)	7 Qur'anic verses, 5 Hadiths, and 6 scholar opinions supporting <i>maqāshid</i> principles. Key themes: prohibition of harm, protection of life, mind, wealth, and offspring.	17 Qur'anic verses, 13 Hadiths, and 8 scholar opinions supporting <i>maqāshid</i> principles. Key themes: protection of women's dignity, mercy, prohibition of harm, and government responsibility.
<i>Istidlal</i> (Analysis and Legal Reasoning)	Emphasizing contradiction between child marriage and <i>maqāshid</i> principles Arguing for the protection of children, particularly girls, from the harmful effects of early marriage, aligning with Islamic law's objectives.	Reorganizing themes from <i>adillah</i> to argue that subjecting rape victims to pregnancy violates <i>maqāshid</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-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 *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.

Acknowledgment

We would like to express our gratitude to the Institute for Research and Community Empowerment (LP2M) at UIN Siber Syekh Nurjati Cirebon (UIN SSC) for its invaluable support in facilitating the research and writing of this article. We appreciate deeply our colleagues—Nelly van-Dorn Harder and Amber Engelson—for their constructive feedback greatly enhanced the quality and readability of this work.

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