



Adaptation of Islamic Law in the Dutch Colonial Era: *Fiqh al-aqalliyāt, Maqasid Al-Shariah*, and Its Legacy for Modern Indonesian Islamic Legal Institutions

Ahmad Zaini^{1*}, M. Zainor Ridho², E. Zaenal Muttaqin³, Hilmy Baihaqy Yussof⁴

^{1,3}Universitas Islam Negeri Sultan Maulana Hasanuddin Banten, Indonesia

²Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia

⁴Universiti Islam Sultan Sharif Ali, Brunei Darussalam

*Corresponding E-mail: ahmad.zaini@uinbanten.ac.id

ABSTRACT

This study examines the dynamics of Islamic jurisprudence (*Fiqh al-aqalliyāt*) during the Dutch colonial period in Indonesia, with a focus on the role of *Maqasid al-Shariah* (Islamic principles) in guiding the adaptation of Islamic law amidst the dominance of colonial law. In a situation where Muslims were in a minority position politically and in power, Islamic law underwent a process of negotiation and adjustment, both through religious court institutions and social-religious practices in society. This study employs a historical-comparative approach to examine the interaction between Islamic law and colonial law, and to investigate its long-term implications for the structure and functioning of contemporary Islamic legal institutions in Indonesia. The results show that the adaptation of Islamic law in the colonial era was driven not only by the need to maintain the identity and continuity of sharia but also by considerations of benefit in line with the principles of *Maqasid al-Shariah*. This historical legacy has had a profound influence on the modern Islamic legal framework, both in its institutional aspects and in the legal substance that remains applicable to this day.

How to cite:

Zaini, A., Ridho, M. Z., Muttaqin, E. Z., & Yussof, H. B. (2025). Adaptation of Islamic Law in the Dutch Colonial Era: *Fiqh al-aqalliyāt, Maqasid Al-Shariah*, and Its Legacy for Modern Indonesian Islamic Legal Institutions. *Jurnal Ilmiah Al-Syir'ah*, 23(2), 265–278. <https://doi.org/10.30984/jis.v23i2.2758>

ARTICLE INFO

Article History:

Submitted/Received 23 Nov 2023

First Revised 9 Mar 2024

Accepted 18 Dec 2025

First Available online 23 Dec 2025

Publication Date 23 Dec 2025

Keywords:

Fiqh al-aqalliyāt, Minority, Islamic Law, Adaptation.

© 2025 Ahmad Zaini, M. Zainor Ridho, E. Zaenal Muttaqin, Hilmy Baihaqy Yussof



All publications by Jurnal Ilmiah Al-Syir'ah are licensed under a Creative Commons Attribution 4.0 International license.

1. INTRODUCTION

The adaptation of Islamic law during the Dutch colonial era in Indonesia represents a historically significant episode in the interaction between religious jurisprudence, colonial governance, and socio-political realities (Hoogervorst, 2021; Van Dijck, 1984). Under Dutch rule, Islamic law (*shari‘ah*) did not completely disappear; instead, it was selectively recognized and incorporated into the colonial legal framework, particularly in the domains of marriage, divorce, inheritance, and endowments (waqf) (Buskens, 2016). This arrangement reflected the policy of *receptio in-complexu*, under which Islamic law was applied to Muslims insofar as it was accepted by local customs, before being later replaced by the *receptio* theory, which subordinated Islamic law to customary law (adat) (Ilyas et al., 2023; Rifqi, 2021).

Although early foundational works on the relationship between Islamic law and colonial administration such as by Daniel S. Lev (1978) laid the groundwork for understanding religious courts and legal pluralism under Dutch rule, and while broader regional studies like M. B. Hooker's (1978) work have mapped diverse legal practices across Southeast Asia, and more recent ethnographic studies, for example R. M. Feener's (2013, 2021) research on state-directed Sharī‘a in Aceh these remain largely historical-descriptive or institutional analyses, seldom engaging with normative-theoretical frameworks such as *fiqh al-aqalliyāt* or *maqāṣid al-shari‘ah*. Meanwhile, a growing body of contemporary scholarship, including analyses on the implementation of *maqāṣid* in minority-*fiqh* contexts (Hussain, 2023; Shavit, 2015), the role of *maqāṣid* in reformulating *ijtihad* and renewing *fiqh* tradition (Kamali, 2012; Yusuf et al., 2024), and studies on how *fiqh* and *maqāṣid* inform Islamic legal policy in Indonesia by Busriyanti et al. (2025), highlight the potential of these lenses to articulate adaptive legal reasoning appropriate to changing socio-cultural contexts. However, none of these have thoroughly traced the historical genealogies of adaptive jurisprudence from the colonial period to present-day institutional structures. This article fills that gap by re-reading colonial-era Islamic legal practices through the combined lenses of *fiqh al-aqalliyāt* and *maqāṣid al-shari‘ah*, examining concrete adaptation mechanisms (e.g., *qādī* decisions, accommodations with adat, negotiation between Islamic and colonial law), and tracing how those adaptive strategies contributed to the formation and evolution of modern Indonesian Islamic legal institutions such as the Religious Courts (Peradilan Agama), codification efforts, and contemporary jurisprudential discourse. In doing so, this paper not only enriches historical reconstruction but also bridges colonial-era jurisprudential adaptation with contemporary normative and institutional challenges.

The Dutch colonial legal pluralism sought to maintain political stability and administrative efficiency by co-opting religious authority. In colonial Indonesia, authorities implemented Islamic law (*shari‘ah*) through the establishment of religious courts (Priesterraad) and the codification of specific Islamic legal provisions, which, however, were subject to the overarching authority of colonial judges (Hooker, 1978; Lev, 1978). Consequently, the application of Islamic law underwent a process of adaptation, reformulation, and at times restriction, reshaping its doctrinal and procedural contours. From a jurisprudential perspective, this historical adaptation can be analytically framed through *fiqh al-aqalliyāt* (the jurisprudence of Muslim minorities) and *maqāṣid al-shari‘ah* (the objectives of Islamic law). Although these frameworks emerged and developed more explicitly in the late 20th century (Al-Qardhawi, 1998; Auda, 2008), their methodological principles, legal flexibility, and prioritization of public welfare (maslahah) can be retroactively identified in the strategies Muslim jurists employed under colonial constraints. The Muslim

community in colonial Indonesia shared structural similarities with minority contexts: they were politically subordinated, legally constrained, and administratively dependent on a non-Muslim ruling authority (Cribb et al., 2019; Kamali, 2008).

The enduring legacy of these adaptive strategies is evident in the structure of contemporary Islamic legal institutions in Indonesia. The coexistence of the Religious Courts (Peradilan Agama) alongside the National Court System reflects a continuity from the colonial period (Buskens, 2016; Van Dijck, 1984). Furthermore, debates surrounding the scope of Islamic law in modern Indonesia ranging from family law reform to Islamic finance and the legal autonomy granted to regions such as Aceh are deeply influenced by precedents established under Dutch governance (Butt & Lindsey, 2018; Feener, 2021).

By situating the Dutch colonial experience within the frameworks of *fiqh al-aqalliyāt* and *maqāṣid al-shari‘ah*, this study contributes to comparative Islamic legal scholarship and the broader discourse on legal pluralism. It demonstrates how Islamic law, when confronted with non-Muslim political authority, can adopt strategies of adaptation without losing its normative integrity. Moreover, it sheds light on the historical underpinnings of Indonesia's contemporary dual legal system, offering insights for both scholars and policymakers regarding the trajectory of Islamic legal development in plural societies. *Fiqh al-aqalliyāt* (jurisprudence of Muslim minorities) is a contemporary legal framework developed to address the needs of Muslim communities living under non-Muslim political authority (Cribb et al., 2019; Hassan, 2019).

It emphasizes legal flexibility (*taysīr*), prioritization of public welfare (maslahah), and contextualized application of Islamic rulings. While the term itself emerged in the late 20th century, the methodological principles underlying *fiqh al-aqalliyāt*, particularly the permissibility of adapting legal provisions to preserve religious identity and social harmony, can be retrospectively identified in the strategies employed by Indonesian Muslim jurists during the Dutch colonial era. *Maqāṣid al-shari‘ah* (objectives of Islamic law) offers a higher-order normative framework that informs the purpose and spirit of legal rulings (Auda, 2007; Kamali, 2012).

Classical scholars, such as al-Ghazālī and al-Shāṭibī in Yusuf et al. (2024), categorized these objectives into the preservation of religion (*hifz al-dīn*), life (*hifz al-nafs*), intellect (*hifz al-‘aql*), lineage (*hifz al-nasl*), and property (*hifz al-māl*). During the colonial period, these objectives guided the interpretation of Islamic law in ways that safeguarded communal integrity while minimizing conflict with colonial authorities. For instance, the preservation of marriage law under religious court jurisdiction reflected *hifz al-nasl* and *hifz al-dīn*, even as authorities modified procedural elements. To comply with colonial regulations. By applying *maqāṣid* as a lens, this study reveals how legal adaptation served to maintain core Islamic values despite structural constraints. The Dutch colonial legal system institutionalized a form of legal pluralism, whereby different legal regimes European law, customary law (adat), and Islamic law operated concurrently but hierarchically (Hooker, 1978; Lev, 1978).

Several studies have been conducted on the existence of Islamic law during the Dutch colonial period, including Karel Steenbrink's (2006) book, "Dutch Colonialism and Indonesian Islam". This book explains the early interactions between Muslims and the Dutch colonial government. Steenbrink's study is particularly relevant and helpful for this research, as it provides insight into

the background of these interactions and the colonial government's future political goals towards Islam. Ratno Lukito (2012) can see contemporary research on Islam and colonial policy in his book, *Legal Pluralism in Indonesia*. His study is comprehensive and complete regarding Islam and its legal policy. However, he does not explain the specific policies of voluntary submission and coercion through legislation (*vrijwillige onderwepping* and *Toepasselijk Verklaring*). Euis Nurlaelawati (2010), in her book "Modernization, tradition and identity: The Kompilasi Hukum Islam and legal practice in the Indonesian religious courts," explained several topics about Islam during the colonial period, but she focused primarily on KHI.

Regarding Islamic politics during the Dutch colonial period, there are several primary sources, such as Suminto et al. (2011) research results, titled "Islamic Politics of the Dutch East Indies." This book was the result of the author's research, which discussed the politics of the Dutch East Indies government towards Islam in the mid-19th and early 20th centuries. He explained the relationship and political fire between the colonial government and Muslims. Then he placed the state institution, *Het Kantoor voor Inlandsche Zaken* (the Office of Internal Affairs), in the middle, where one of its functions was to regulate Islamic affairs.

Fiqh al-aqalliyāt (jurisprudence of Muslim minorities) is a contemporary legal framework developed to address the needs of Muslim communities living under non-Muslim political authority (Yūsuf al-Qaraḍāwī, 2001; Al-Alwani, 2003). It emphasizes legal flexibility (*tayṣīr*), prioritization of public welfare (*maṣlahah*), and contextualized application of Islamic rulings. While the term itself emerged in the late 20th century, the methodological principles underlying *fiqh al-aqalliyāt* particularly the permissibility of adapting legal provisions to preserve religious identity and social harmony can be discerned in the strategies of Indonesian Muslim jurists during the Dutch colonial era. The colonial context functioned as a de facto minority situation, wherein Muslims operated within a non-Islamic legal order, necessitating pragmatic yet principled adaptations. *Maqāṣid al-shari‘ah* (objectives of Islamic law) offers a higher-order normative framework that informs the purpose and spirit of legal rulings (Auda, 2007; Yusuf et al., 2024).

By integrating legal pluralism into the theoretical framework, this study situates the adaptation of Islamic law within broader socio-legal dynamics, emphasizing the interplay between religious authority, state power, and community agency. The integration of *fiqh al-aqalliyāt* and *maqāṣid al-shari‘ah* within a legal pluralism framework enables a multidimensional analysis of the colonial-era adaptation of Islamic law. *Fiqh al-aqalliyāt* explains the pragmatic methodologies of legal adaptation, while *maqāṣid al-shari‘ah* ensures that adaptation remains faithful to Islamic normative objectives. Legal pluralism situates these processes within the structural realities of the colonial and postcolonial legal order. This combined framework allows for a nuanced understanding of how Islamic law in Indonesia navigated the tension between normative integrity and political subordination, producing a legacy that continues to influence contemporary legal institutions.

Despite the growing body of literature on Islamic law under Dutch colonial rule, a clear analytical gap remains in the absence of a normative-jurisprudential framework for interpreting how Muslim actors navigated, negotiated, and pragmatically adapted Islamic legal norms under structural subordination. Existing studies tend to focus on institutional change, administrative policy, and socio-legal pluralism without theorizing the adaptive strategies that emerged from Islamic legal reasoning itself. As a result, the more profound jurisprudential logic behind these historical adaptations, particularly how Muslim communities operationalized principles that

resemble what Muslims now conceptualize as *fiqh al-aqalliyāt* and *maqasid al-shariah* has not been systematically examined. Moreover, little attention has been given to how such adaptive patterns generated long-term imprints on the formation and evolution of modern Indonesian Islamic legal institutions.

To address this gap, this article proposes a new analytical framework that combines *fiqh al-aqalliyāt* and *maqasid al-shari'ah* as interpretive lenses for re-examining colonial-era legal archives, court decisions, and administrative records. The study advances three interrelated objectives: (1) to reinterpret key episodes of Islamic legal practice during the Dutch colonial era as expressions of adaptive jurisprudence; (2) to demonstrate how Indonesian Muslim jurists developed mechanisms of accommodation, negotiation, and selective compliance through the dual lenses of minority-*fiqh* reasoning and *maqasid*-oriented legal objectives; and (3) to trace the genealogical continuity between colonial-era adaptations and the emergence of contemporary Indonesian Islamic legal institutions, including the Religious Courts, codification projects, and modern *fiqh*-policy debates. By bridging historical analysis with contemporary jurisprudential theory, this article contributes a fresh conceptual approach to understanding the evolution of Islamic law in Indonesia. It provides a framework that may inform broader discussions on legal adaptation, minority contexts, and the dynamics of Islamic legal modernity.

2. METHODS

This study employs a qualitative historical-legal research design, integrating historical analysis with normative legal examination (Bhat, 2019). The historical dimension traces the adaptation of Islamic law during the Dutch colonial era. At the same time, the normative legal approach examines the conceptual frameworks of *Fiqh al-Aqalliyāt* and *Maqāsid al-Shari'ah*. The integration of these methods allows for an in-depth understanding of how Muslim jurists reinterpreted Islamic legal thought under colonial constraints (Creswell & Poth, 2018). Under colonial governance, and how such reinterpretations have influenced contemporary Indonesian Islamic legal institutions.

The sources of data and information in this research included literature, the internet, and journals. Primary data are drawn from archival records, including: Colonial legal documents, court rulings, and administrative regulations from the *Rechtsorde* archives; studies on the transformation of Islamic legal institutions in Indonesia; Fatwas and Islamic legal treatises issued during the Dutch colonial period; and Minutes and reports from Islamic judicial institutions (Priesterraad, Pengadilan Agama) during the era. Secondary data include scholarly works, journal articles, and historiographical analyses related to the evolution of Islamic legal thought in Southeast Asia, theoretical expositions on *Fiqh al-Aqalliyāt* and *Maqāsid al-Shari'ah*, and Studies on the transformation of Islamic legal institutions in Indonesia.

3. RESULTS AND DISCUSSION

Colonial Legal Pluralism and the Position of Islamic Law

The Dutch colonial legal structure institutionalized a form of colonial legal pluralism designed to manage the heterogeneous populations of the archipelago. Islamic law occupied an ambivalent position: it was acknowledged as part of the living law of Muslim communities, yet it was constrained to prevent the emergence of a religiously grounded legal authority that could rival the

colonial state (Peletz, 2003). The Dutch colonial policy that restricted the *qādī's* jurisdiction to matters of marriage, divorce, and inheritance while simultaneously subordinating Islamic courts to colonial appellate structures constitutes a clear historical example of *taysīr* (facilitation) and *ruf' al-haraj* (removal of hardship) as understood in *fiqh al-aqalliyāt* (Layish, 2014; Quadri, 2021). Rather than viewing this policy merely as a political imposition, archival evidence demonstrates that Muslim judges strategically utilized the narrower jurisdiction to maintain minimal judicial autonomy and ensure the continuity of Islamic adjudication under adverse conditions. These adaptive strategies reflect what contemporary scholars describe as the pragmatic logic of minority jurisprudence: prioritizing the preservation of essential religious functions when Muslims lack full political sovereignty (Akram, 2019; al-Hudawi et al., 2024). Thus, the colonial-era jurisdictional compromise can be interpreted not simply as a legal limitation, but as a historically grounded manifestation of *fiqh al-aqalliyāt* in practice.

Throughout the eighteenth and nineteenth centuries, from the Compendium Freijer 1760 to the Regeeringsreglement of 1854 and the Indische Staatsregeling of 1925, Islamic law was primarily recognized as personal status law, particularly in matters of marriage, divorce, inheritance, and waqf (Habi, 2022). This recognition, however, was conditional, as Islamic law applied only "insofar as it was accepted as custom" (voor zover... als gewoonte erkend), a doctrine deliberately crafted to subordinate Islamic law under adat and to maintain colonial legal supremacy (Hooker, 1978).

The frequent integration of customary norms within *qādī* rulings, particularly in West Sumatra and South Sulawesi, demonstrates the application of *maṣlahah* (public benefit) and the protection of *darūriyyāt* (essential objectives) within the *maqāṣid al-shari'ah* paradigm (Nordin et al., 2025; Pairin et al., 2024). Rather than signaling dilution of Islamic authority, these negotiated outcomes reveal deliberate juristic reasoning aimed at maintaining social cohesion and preventing communal conflict during periods of deep political asymmetry. This flexible jurisprudence aligns with contemporary *maqāṣid*-based approaches, which view legal adaptation as essential for safeguarding communal stability, justice, and the continuity of the Islamic moral order (Fatarib et al., 2025). In this sense, Colonial authorities did not merely impose colonial-era legal pluralism. From above, Muslim jurists actively shaped it as they sought to align Islamic legal values with the socio-political realities of Dutch rule.

This colonial configuration forced ulama and Muslim communities to develop adaptive strategies that ensured the continued relevance of Islamic jurisprudence while avoiding confrontation with the Dutch bureaucracy (Suminto et al., 2011; Van Dijck, 1984). The use of *Fiqh al-aqalliyāt* and *Maqāṣid al-Shari'ah* represents such strategies, enabling Islamic norms to operate through communal and religious institutions rather than through the colonial judiciary (Hussain, 2023).

The effects of colonial legal pluralism extend into the contemporary period. *First*, it facilitated the rise of non-state Islamic legal institutions, such as community-based religious courts. *Second*, it shaped the Indonesian legal landscape into a system defined by institutional pluralism, where Islamic law, adat, and state law coexist in a negotiated and often contested framework (Lukito, 2012).

The selective documentation of Islamic court decisions in colonial archives further reveals the implicit use of *tahqīq al-maṇāṭ* contextual legal assessment by Muslim judges who strategically

minimized explicit conflicts with colonial expectations in written rulings (Hussain, 2023). This practice reflects contemporary discussions on how minority Muslim communities navigate legal transparency, political vulnerability, and the imperative to ensure community well-being (Lindsay, 2025; Thobroni & Yusuf, 2025). Reading these archives through this theoretical lens highlights qādī agency rather than colonial dominance as the primary determinant of legal adaptation.

These adaptive patterns jurisdictional negotiation, selective incorporation of *adat*, and calibrated legal reasoning constitute the historical foundations of several features of Indonesia's contemporary Islamic legal institutions. The Religious Courts' selective codification of *fiqh*, procedural accommodation toward national civil law, and emphasis on *maslahah* in judicial reasoning closely resemble the adaptive strategies formulated during the colonial era. Recent scholarship on Indonesian Islamic law confirms that modern judicial reforms continue to reflect *maqasid*-based pragmatism and minority-context reasoning, even though Muslims are no longer a demographic minority but instead navigate the institutional constraints of a secular-national legal structure (Akram, 2019; Cribb et al., 2019; Layish, 2014; Van Dijck, 1984).

Adaptive Strategies as *Fiqh al-aqalliyāt*

This section applies the framework of *fiqh al-aqalliyāt* to concrete empirical domains marriage, inheritance, and *waqf* without reiterating conceptual definitions. The analysis reads adaptive legal practices as expressions of *taysir*, *raf' al-ḥaraj*, and *maṣlahah* operating within minority Muslim contexts. The discussion is guided by the *maqāṣid*-oriented understanding of Islamic law, emphasizing functionality and normativity. Empirical observations indicate that Muslim minorities frequently employ a dual-track marriage mechanism: a *Shari'a*-compliant *nikah* (marriage) conducted before a local imam or community authority, followed by civil registration under state law. This practice exemplifies *taysir*, as it enables compliance with Islamic legal requirements while ensuring legal recognition and protection under national family law regimes. Failure to register marriages often results in tangible legal harm, particularly concerning spousal rights, child legitimacy, and inheritance claims accordingly, civil registration functions as a mechanism of *raf' al-ḥaraj* rather than a deviation from *Shari'a* norms.

In cases where the physical presence of parties or guardians is not feasible, the use of *wakālah* (legal representation) or mediated contracts through digital communication platforms has emerged as a practical solution (Aldmour et al., 2024). Provided that the essential elements of *ijāb* and *qabūl* are fulfilled, such adaptations remain normatively valid (Busriyanti et al., 2025). These practices demonstrate that technological mediation operates not as legal innovation per se, but as an extension of classical doctrines under conditions of necessity.

Inheritance practices among Muslim minorities reveal significant interaction between Islamic legal norms and state-imposed inheritance systems. Mandatory civil procedures, taxation regimes, and joint property regulations often complicate the rigid application of Qur'anic shares. In response, Muslim families frequently resort to *waṣīyyah* as an adaptive mechanism, allocating up to one-third of the estate for socially beneficial purposes while preserving mandatory shares. This practice reflects the operationalization of *maṣlahah* within clearly defined textual boundaries (Ayoob & Lussier, 2020).

Another adaptive strategy involves transforming assets into a waqf prior to death, particularly when the fragmentation of property would undermine long-term communal benefits (Fatarib et al., 2025). Family settlements (*sulh bayna al-warathah*) are also employed to mitigate disputes and avoid costly litigation, provided that such agreements do not negate *Shari'a*-mandated entitlements (al-Hudawi et al., 2024). These mechanisms illustrate how *raf' al-haraj* functions to reduce social conflict and legal uncertainty without suspending normative inheritance principles.

In minority settings, classical waqf structures often lack formal recognition within national legal systems, rendering waqf assets vulnerable to misappropriation or dissolution (Jafar et al., 2025). Empirical findings show that Muslim communities increasingly register waqf properties under legally recognized entities such as foundations or charitable trusts while explicitly documenting the waqf intention (*niyyah*) (Kunhibava et al., 2024). This institutional adaptation represents a form of structural *taysir*, enabling the continuity of Islamic charitable objectives within secular legal frameworks.

Flexibility is also evident in cases involving joint ownership or contributions from non-Muslims, where contractual arrangements are employed to protect both legal rights and *Shari'a* objectives (March, 2009). Temporary functional adjustments such as redirecting waqf revenues to alternative social services during administrative delays are justified through *raf' al-haraj*, provided that the core purpose of the waqf remains intact.

When read against the backdrop of the Indonesian colonial experience, the adaptive strategies identified above resonate strongly with historical patterns of Islamic legal practice under Dutch rule. In colonial Indonesia, Muslims were not numerical minorities, yet they occupied a structurally subordinate position within a plural legal order dominated by colonial authority (Cammack & Feener, 2012; Salim, 2015). This condition produced a functional similarity to minority contexts, wherein Islamic law operated under external constraints and administrative supervision.

In the domain of marriage, colonial regulations restricted the jurisdiction of Islamic courts (*Priesterraad* and later *Raad Agama*) primarily to matters of personal status. At the same time, civil consequences were often mediated through colonial legal frameworks (Yongbao, 2024). Muslim communities responded by maintaining *Shari'a*-compliant marriage practices at the communal level, while selectively engaging with colonial administrative requirements to secure legal recognition. It mirrors contemporary minority strategies, where civil registration functions as *raf' al-haraj* by protecting family rights without negating the validity of the marriage (Ilyas et al., 2023; Thobroni & Yusuf, 2025). In this sense, colonial-era marriage practices exemplify institutional *taysir* rather than legal compromise.

Inheritance practices under colonial administration further demonstrate the operation of *maṣlahah*-oriented adaptation (Makka et al., 2024). Although Islamic inheritance law remained normatively authoritative among Muslims, colonial courts often encouraged the use of customary (adat) or civil mechanisms to resolve disputes, particularly where economic efficiency or administrative convenience was at issue (Rasyid et al., 2024). Muslim families frequently employed pre-emptive arrangements such as informal settlements, partial bequests, or charitable endowments to preserve family cohesion and protect assets. These practices align with the contemporary use of *waṣiyyah* and family agreements as mechanisms of *raf' al-haraj*, revealing a historical continuity in adaptive legal reasoning (Hussain, 2023).

Waqf governance during the colonial period provides perhaps the clearest illustration of structural *maṣlahah*. Dutch authorities subjected waqf properties to registration, supervision, and, in some cases, reclassification under colonial land law. In response, Muslim communities adopted institutional strategies to document waqf intentions, appoint legally recognizable trustees, and adapt management structures to colonial bureaucratic expectations. Far from undermining the religious character of waqf, these adaptations ensured its survival and functionality (Jafar et al., 2025; Kunhibava et al., 2024). The contemporary practice of registering waqf assets under foundations or trusts in minority contexts thus reflects a historically grounded pattern of Islamic legal resilience.

Taken together, the Indonesian colonial case demonstrates that *fiqh al-aqalliyāt* should not be understood narrowly as jurisprudence for numerical minorities. Instead, it represents a broader mode of Islamic legal reasoning applicable wherever Muslims operate under asymmetric power relations and plural legal systems. The continuity between colonial Indonesian practices and present-day minority adaptations reinforces the argument that *taysir*, *raf' al-haraj*, and *maṣlahah* have long functioned as core instruments of Islamic legal dynamism.

***Maqāṣid al-Shari'ah* as a Normative Anchor**

Within adaptive Islamic legal practices, particularly in minority or structurally constrained contexts, *maqāṣid al-shari'ah* functions as a normative anchor that stabilizes legal reasoning amid contextual flexibility. Rather than serving as an abstract ethical framework, *maqāṣid* operates as an evaluative criterion through which adaptive strategies such as institutional accommodation, legal substitution, and procedural modification are assessed for their normative legitimacy. In this sense, *maqāṣid* delineates the boundary between justified adaptation and impermissible legal dilution.

Empirical practices in marriage, inheritance, and waqf demonstrate that adaptive mechanisms grounded in *taysir* and *raf' al-haraj* remain normatively valid only insofar as they preserve the core objectives of Islamic law, particularly the protection of lineage (*hifż al-nasl*), property (*hifż al-māl*), and legal order (*hifż al-nizām*). For instance, civil registration of Islamic marriages or the institutionalization of waqf under secular legal entities does not constitute a departure from *Shari'a* norms, provided that these measures secure rights, prevent harm, and ensure continuity of religious obligations (Kamali, 2008, 2012). Here, *maqāṣid* acts as a stabilizing reference point, preventing adaptive reasoning from collapsing into pragmatic legal pluralism.

In the Indonesian colonial context, *maqāṣid al-shari'ah* similarly functioned as an implicit normative compass guiding Muslim legal responses to colonial legal domination. Although the Dutch colonial administration administratively subordinated Islamic law to colonial courts and regulations, Muslim communities consistently oriented their adaptive practices toward preserving essential religious and social interests. The selective engagement with colonial legal mechanisms such as registering waqf assets or accommodating procedural constraints in family law can thus be read as *maqāṣid*-based compliance rather than acquiescence. This historical pattern reinforces the argument that *maqāṣid* provides continuity across time, linking colonial adaptations with contemporary *fiqh al-aqalliyāt*.

Continuities and Transformations in Postcolonial Indonesia

The transition from Dutch colonial rule to postcolonial Indonesian statehood did not constitute a rupture in the adaptive character of Islamic law. Instead, it marked a reconfiguration of long-standing legal accommodation strategies within a new institutional framework. Adaptive practices developed under colonial constraints procedural flexibility, selective engagement with external authority, and *maqāṣid*-oriented reasoning were absorbed into modern Indonesian Islamic legal institutions (Layish, 2014).

A key continuity lies in the persistence of institutional dualism. During the colonial period, Islamic courts operated within a plural legal order dominated by colonial authority. In postcolonial Indonesia, this arrangement was reorganized rather than dismantled through the formal incorporation of Religious Courts (Pengadilan Agama) into the national judiciary (Nurlaelawati, 2010; Rifqi, 2021). The codification of Islamic family law, particularly through the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), reflects an adaptive jurisprudence that balances *Shari'a* norms with statutory governance (Mursyid et al., 2024). This development mirrors colonial-era strategies in which Islamic law preserved its normative core while accommodating external legal constraints.

At the same time, postcolonial Indonesia exhibits a significant transformation in the normative justification of adaptation. Whereas colonial accommodations were essentially pragmatic and implicit, post-independence legal reforms increasingly articulate their legitimacy through *maqāṣid al-shari'ah*. Legal regulations on marriage registration, inheritance administration, and waqf governance are framed as instruments for safeguarding lineage, property, and legal order within a modern nation-state. In this respect, *maqāṣid* functions as an explicit normative anchor, ensuring continuity between classical doctrine and contemporary institutional practice.

The enduring relevance of *fiqh al-aqalliyāt* is evident in the structural position of Islamic law within Indonesia's plural constitutional order. Although Muslims constitute a demographic majority, Islamic law continues to operate under jurisdictional and statutory limitations comparable to minority conditions. Adaptive reasoning thus remains central, positioning *fiqh al-aqalliyāt* as a jurisprudence of structural constraint rather than numerical marginality (Hassan, 2019).

The findings of this study carry important policy implications for Indonesian Islamic legal institutions. *First*, regulatory reforms should explicitly acknowledge *maqāṣid al-shari'ah* as a guiding framework for legal development, ensuring that codification and procedural reforms remain grounded in normative principles. *Second*, Religious Courts and waqf authorities should be empowered to exercise contextual discretion (*taysīr*) within clearly defined statutory boundaries, particularly in cases involving administrative complexity or legal pluralism. *Third*, continued professional training for judges and legal administrators is essential to sustain a *maqāṣid*-oriented approach that balances doctrinal integrity with social functionality. By institutionalizing adaptive reasoning rather than suppressing it, Indonesian Islamic legal institutions can strengthen both legal certainty and public legitimacy.

4. CONCLUSION

This study demonstrates that the adaptation of Islamic law during the Dutch colonial era established a jurisprudential legacy that continues to shape modern Indonesian Islamic legal institutions. Through the principled application of *fiqh al-aqalliyāt* and the anchoring function of

maqāṣid al-sharī'ah, Islamic law has maintained normative coherence while navigating plural legal environments. The Indonesian case illustrates that adaptive legal strategies do not signify doctrinal erosion, but rather a historically grounded mode of Islamic legal resilience that remains relevant for contemporary governance.

Employing *fiqh al-aqalliyāt* as an analytical lens, the research reveals that adaptive strategies such as procedural modifications, jurisdictional prioritization, and selective compliance with colonial administrative requirements are aligned with the principles of facilitation (*taysīr*), avoidance of hardship (*raf' al-ḥarāj*), and public interest (*maṣlahah*). The maqāṣid al-sharī'ah framework served as the normative anchor, ensuring that such adaptations preserved the fundamental values of religion, life, lineage, intellect, and property. The persistence of legal pluralism from the colonial period into post-independence Indonesia underscores the institutional legacy of this adaptive process. The coexistence of Religious Courts with the National Court System, along with ongoing debates on Islamic legal reform, reflects both continuity and transformation. This historical trajectory offers critical insights into the capacity of Islamic law to engage constructively with plural legal environments while safeguarding its normative integrity.

It is particularly relevant in areas such as Islamic finance regulation, family law reform, and regional *shari'ah* bylaws. Judicial training in the Religious Courts should integrate historical and theoretical understandings of adaptive jurisprudence. It would equip judges with the methodological tools to navigate contemporary challenges in a manner consistent with both *fiqh al-aqalliyāt* and *maqāṣid al-sharī'ah*. In colonial Indonesia, the Dutch colonial administration did not altogether abolish Islamic law (*sharī'ah*) in broader comparative studies of Islamic law in minority and plural contexts. Its long-term institutional outcomes provide a valuable empirical basis for theorizing the relationship between legal adaptation, normative preservation, and state authority. Further archival research on colonial court records, fatwa compilations, and vernacular legal texts is needed to reconstruct the micro-level practices of adaptation. Comparative studies with other colonial Muslim contexts such as British Malaya, India, and French North Africa could enrich the theoretical application of *fiqh al-aqalliyāt* and maqāṣid in historical and contemporary settings.

5. ACKNOWLEDGMENT

The author would like to express sincere gratitude to colleagues and academic peers who provided valuable insights and constructive feedback during the development of this article. Appreciation is also extended to the anonymous reviewers for their critical comments and suggestions, which significantly improved the quality and clarity of the manuscript. Any remaining errors or interpretations are solely the responsibility of the author.

6. REFERENCES

- Akram, M. (2019). Issues of Muslim minorities in non-Muslim societies. *Islamic Studies*, 58(1), 107–126. <https://www.jstor.org/stable/26758948>
- al-Hudawi, M. J. A., Poljarević, E., & Ahmad, K. (2024). A Critical Examination of the Theoretical Foundations of Wasaṭī Minority Jurisprudence. *Sociology of Islam*, 10(3–4), 258–279.
- Al-Qardhawi, Y. (1998). *Min Fiqh al-Daulah al-Islam*. Cairo: Maktabah Wahbah.
- Aldmour, R., Hijazi, D., Alzubi, E., Omran, M., & Elawad, I. (2024). Regulations and Legal Implications of Contracts through Instant Messaging Platforms in Saudi Arabia. *Pakistan Journal of Life \& Social Sciences*, 22(2), 12968–12983. <https://doi.org/10.57239/PJLSS-2024-0001>

22.2.00927

- Auda, J. (2007). *Maqasid al-Syari'ah as Philosophy as Islamic Law: A System Approach*. The International Institut of Islamic Thought.
- Auda, J. (2008). *Maqasid Al-Shariah A Beginner's Guide*. The International Institut of Islamic Thought.
- Ayoob, M., & Lussier, D. N. (2020). *The Many faces of political Islam: Religion and politics in Muslim societies*. University of Michigan Press.
- Bhat, P. I. (2019). *Idea and methods of legal research*. Oxford University Press.
- Buskens, L. (2016). Sharia and the colonial state. In *The Ashgate research companion to Islamic law* (pp. 209–221). Routledge. <https://doi.org/10.4324/9781315613093-18>
- Busriyanti, B., Pujiono, P., Chamdan, U., & others. (2025). Marriage Law Reform in Indonesia A Maqasid Al-Ussrah Perspective on Legal Adaptation. *Al-Istimbath: Jurnal Hukum Islam*, 10(2), 631–649. <https://doi.org/10.29240/jhi.v10i2.12739>
- Butt, S., & Lindsey, T. (2018). *Indonesian law*. Oxford University Press.
- Cammack, M. E., & Feener, R. M. (2012). The Islamic legal system in Indonesia. *Pac. Rim L. & Pol'y J.*, 21, 13. <https://digitalcommons.law.uw.edu/wilj/vol21/iss1/5>
- Creswell, J. W., & Poth, C. N. (2018). *Qualitative inquiry and research design: Choosing among five approaches* (4th ed.). Sage publications.
- Cribb, R., Fealy, G., & Ricci, R. (2019). Minorities in Indonesian history: From Ambiguous advantage to cantonisation. In *Contentious belonging: The place of minorities in Indonesia* (pp. 19–35). ISEAS Singapore.
- Fatarib, H., Ali, Z. Z., Arifin, N. A., Najib, A., & Fathoni, M. N. (2025). Progressive Legal Reasoning in Contemporary Islamic Legal Reform: Negotiating the Maqāṣid and Hermeneutic Approaches. *JURIS (Jurnal Ilmiah Syariah)*, 24(2), 277–294.
- Feener, R. M. (2013). *Shari'a and social engineering: The implementation of Islamic law in contemporary Aceh, Indonesia*. OUP Oxford.
- Feener, R. M. (2021). Engineering transformations in the “religion-development nexus”: Islamic law, reform, and reconstruction in Aceh. *Religion, 51*(1), 40–57. <https://doi.org/10.1080/0048721X.2020.1792051>
- Habi, N. F. (2022). *Hukum waris dan keadilan gender dalam Seloko adat Jambi pada hukum pucuk induk undang nan limo*. Publica Indonesia Utama.
- Hassan, S. F. (2019). Fiqh al-aqalliyyāt and Muslim minorities in the West. In *Routledge Handbook of Islamic Law* (pp. 313–323). Routledge. <https://doi.org/10.4324/9781315753881-20>
- Hoogervorst, T. (2021). Legal diglossia, lexical borrowing and mixed juridical systems in early Islamic Java and Sumatra. In *Islamic Law in the Indian Ocean World* (pp. 39–63). Routledge. <https://doi.org/10.4324/9781003185741-3>
- Hooker, M. B. (1978). Towards a legal history of Southeast Asia. *Journal of the Malaysian Branch of the Royal Asiatic Society*, 51(1 (233)), 110–121. <https://www.jstor.org/stable/41492190>
- Hussain, K. (2023). *The Congruity of Islamic Modernist Legal Thought: The Case of Muslim Minority Fiqh* [University of London]. <https://soasrepository.worktribe.com/file/375771/1/Hussain3.pdf>
- Ilyas, I., A.Rani, F., Bahri, S., & Sufyan, S. (2023). The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(2), 897–919. <https://doi.org/10.22373/sjhk.v7i2.15650>
- Jafar, A., Ibrahim, H., & Malik, R. (2025). Waqf: from classical charitable system to modern financial tool. *International Journal of Ethics and Systems*. <https://doi.org/10.1108/IJOES-10-2024-0354>
- Kamali, M. H. (2008). *Shari'ah law: An introduction*. Simon and Schuster.
- Kamali, M. H. (2012). *Maqasid Al-Shari'ah, Ijtihad and Civilization Renewal*. International Institute of Islamic Thought (IIIT).
- Kunhibava, S., Muneeza, A., Khalid, M. B., Mustapha, Z., & Sen, T. M. (2024). Legal Framework

- for Waqf. In *Islamic Social Finance: Law and Practice in Malaysia* (pp. 45–68). Springer. https://doi.org/10.1007/978-981-97-1410-0_3
- Layish, A. (2014). Islamic Law in the Modern World: Nationalization, Islamization, Reinstatement. *Islamic Law and Society*, 21(3), 276–307. https://brill.com/view/journals/ils/21/3/article-p276_4.xml
- Lev, D. S. (1978). Judicial authority and the struggle for an Indonesian Rechtsstaat. *Law & Society Review*, 13(1), 37–71. <https://doi.org/10.2307/3053242>
- Lindsay, A. (2025). *Navigating Economic Growth and Equity in the Muslim World*. Muslim World Report.
- Lukito, R. (2012). *Legal pluralism in Indonesia: Bridging the unbridgeable*. Routledge.
- Makka, M. M., Saleh, M., Mamonto, F., Yusuf, N., & Bilalu, N. (2024). Analysis of Inheritance Restrictions in Islamic Law: Slander in the Perspective of Qiyyas Musawi and Legal Istinbath. *Antmind Review: Journal of Sharia and Legal Ethics*, 1(1), 1–11. <https://doi.org/10.63077/66jg0f10>
- March, A. (2009). Sources of Moral Obligation to non-Muslims in the " Jurisprudence of Muslim Minorities" (Fiqh al-aqalliyat) Discourse. *Islamic Law and Society*, 16(1), 34–94. https://brill.com/view/journals/ils/16/1/article-p34_2.xml
- Mursyid, S., Bilalu, N., & Subeitan, S. M. (2024). Navigating Custody: The Impact of Religious Court Judges on Interfaith Family Dynamics. *Al-Mujahid: Journal of Islamic Family Law*, 4(1), 34–45. <https://doi.org/10.30984/ajifl.v4i1.3039>
- Nordin, Z. S., Ruslan, I., Yusriadi, Y., Hamzah, N., & Darmadi, D. (2025). Integrating Islamic Law and Customary Law: Codification and Religious Identity in the Malay Buyan Community of Kapuas Hulu. *Journal of Islamic Law*, 6(1), 89–111. <https://doi.org/10.24260/jil.v6i1.3410>
- Nurlaelawati, E. (2010). *Modernization, tradition and identity: The Kompilasi Hukum Islam and legal practice in the Indonesian religious courts*. Amsterdam University Press.
- Pairin, P., Syahrul, S., Badarwan, B., & Samrin, S. (2024). The Integration of the Islamic and Customary Law in Tolaki Society, Southeast Sulawesi: Islamic History and Education Perspectives. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(3), 1669–1690. <https://doi.org/10.22373/sjhk.v8i3.24055>
- Peletz, M. G. (2003). *Reinscribing "Asian (Family) Values": Nation Building, Subject Making, and Judicial Process in Malaysia's Islamic Courts*. Erasmus Institute.
- Quadri, J. (2021). *Transformations of tradition: Islamic law in colonial modernity*. Oxford University Press.
- Rasyid, A., Lubis, R. F., & Saleh, I. (2024). Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective. *Al-Ahkam*, 34(2), 419–448. <https://doi.org/10.21580/ahkam.2024.34.2.20843>
- Rifqi, M. J. (2021). The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory. *Millah: Journal of Religious Studies*, 21(1), 217–252. <https://doi.org/10.20885/millah.vol21.iss1.art8>
- Salim, A. (2015). *Contemporary Islamic law in Indonesia: Sharia and legal pluralism*. Edinburgh University Press.
- Shavit, U. (2015). *Shari'a and Muslim Minorities: The wasati and salafi approaches to fiqh al-aqalliyat al-Muslima*. Oxford University Press.
- Steenbrink, K. A. (2006). *Dutch colonialism and Indonesian Islam: contacts and conflicts, 1596-1950*. Rodopi.
- Suminto, H. A., Hanafi, Mulyati, S., & Masyhadi. (2011). *Islamic Politics of the Dutch East Indies: Het Kantoor Voor Inlandsche Zaken*. Puslitbang Lektur dan Khazanah Keagamaan.
- Thobroni, A. Y., & Yusuf, N. (2025). Interfaith Families and the Law in Indonesia: Islamic Law, National Policy, and Human Rights after Supreme Court Circular Number 2 of 2023. *Antmind Review: Journal of Sharia and Legal Ethics*, 2(2), 77–90. [">https://doi.org/10.63077/ax78aw](https://doi.org/10.63077/ax78aw)
- Van Dijck, C. (1984). Islam and socio-political conflicts in Indonesian history. *Social Compass*, 31(1), 5–25. <https://doi.org/10.1177/003776868403100101>

- Yongbao, W. (2024). The Impact of Colonialism And Nationalism on The Marginalization of Islamic Law in The Muslim World. *Malaysian J. Syariah & L.*, 12, 375–387. <https://doi.org/10.33102/mjsl.vol12no2.653>
- Yusuf, N., Harun, N., Syarifuddin, & Mursyid, S. (2024). Examining the Basis of Maqashid Sharia in Renewal of Islamic Law in Indonesia. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 9(1), 357–375. <https://doi.org/10.22373/petita.v9i1.258>