



Covering Shame, Sacrificing Rights: A Maqāṣid al-Sharī'ah Perspective on Child Protection in Incestuous Marriage Practices

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Abstract

This study examines the practice of marriage after incest to cover up family shame in Sendang 1, Gunungkidul, through the perspective of *maqāṣid al-syarī'ah* and child protection. This study aims to highlight how these practices, which are intended to maintain family dignity, violate the main principles of *maqāṣid al-syarī'ah*, particularly *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-nasl* (protection of offspring), and *ḥifẓ al-'ird* (protection of honour). Using a qualitative approach with descriptive-analytical methods, this study analyses the case of a 16-year-old girl who was forced to marry after becoming pregnant by her brother, highlighting the detrimental impact on her psychological and physical well-being. The results of the study show that such practices not only contradict Islamic teachings but also violate national and international child protection laws, including the principle of the best interests of the child. This study presents a new conceptual framework that integrates *maqāṣid al-sharī'ah* with child protection laws, advocating for reforms in Islamic family law to prioritise the protection and rights of children.

Keywords: Incest, Married and pregnant child protection, Maqāṣid al-Syarī'ah.

1. Introduction

In normative idealism, both Islamic law and positive law place marriage as *mitsāqan ghalīẓan*, a sacred bond that aims to preserve honour, lineage, and human dignity.¹ The Compilation of Islamic Law (KHI) and Marriage Law No. 1 of 1974 emphasise that marriage must be based on the principles of awareness, justice, and moral responsibility.² The principle of *maqāṣid al-syarī'ah* establishes five

¹ Mohammad Rafli et al., 'Perjanjian Pasca-Nikah (Postnuptial Agreement) Dalam Konteks Maqashid al-Syari'ah: Analisis Pandangan al-Syatibi', *Legitima: Jurnal Hukum Keluarga Islam* 5, no. 2 (2023): 363–74, <https://doi.org/10.33367/legitima.v5i2.4121>.

² Maimun Maimun, 'Pernikahan Dalam Kompilasi Hukum Islam Dan Perdata', *Jurnal Al-Mizan* 9, no. 1 (2022): 12–21, <https://doi.org/10.54621/jiam.v9i1.263>.

main objectives of sharia religion, life, intellect, lineage, and honour as the basis for comprehensive protection of human beings.³ However, empirical reality shows that this noble principle has been reduced to a social means of covering up shame. The case in Sendang 1, Gunungkidul, shows how a 16-year-old girl who became pregnant as a result of incest was married off to another man to restore her family's honour. The practice of "marrying off pregnant girls" in this context shifts the meaning of marriage from an instrument of protection to an instrument for covering up shame, so that the *maqāsid* principle, which is supposed to protect (*ḥifẓ al-nafs* and *ḥifẓ al-nasl*), is actually violated by actions that are claimed to be moral salvation.⁴

The reality of marriage and pregnancy as a result of incest raises serious legal and humanitarian issues. The culture of shame that is still strong in rural communities means that the good name of the family is more valuable than the safety and rights of the child.⁵ As a result, victims of intra-family sexual violence are not protected, but rather forced to bear the social burden as wives and prospective mothers.⁶ However, from a positive legal perspective, such practices contradict the principle of child protection as stipulated in Law No. 35 of 2014 concerning Child Protection, as well as Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, which explicitly criminalises incest. Furthermore, Indonesia, as a state party to the Convention on the Rights of the Child (CRC 1989), has an international obligation to guarantee children's rights to protection from violence, exploitation, and discrimination.⁷ Thus, the practice of marriage due to incest is not merely a moral or religious violation, but also a form of structural failure of the state and society in ensuring the best interests of the child as a universal principle of child protection.⁸

The urgency of this research lies in the need to reconstruct the paradigm of Islamic family law so that it does not stop at formal legality, but rather favours substantive justice for victims of sexual violence. The main objective of this study is to assess the practice of marriage due to incest through the *maqāsid al-sharī'ah* approach and child protection theory, to emphasise that actions intended to "cover up shame" actually violate the principles of *ḥifẓ al-nafs*, *ḥifẓ al-nasl*, and *ḥifẓ al-'ird*, and are contrary to the doctrine of the best interests of the child. This study is expected to produce two important contributions: first, to provide an integrative conceptual framework between *maqāsid* and child protection in assessing marriage practices involving victims; second, to expand the horizon of *maqāsid al-sharī'ah* from merely normative objectives to instruments of advocacy for children's rights. Thus, this study affirms that covering shame through marriage is never comparable to sacrificing children's rights.

³ Al-Imam Abu Ishaq Asy- Syatibi, *Al-Muwafaqat Fi Ushul as-Syari'ah* (Dar al-Kutub al-Ilmiyyah, 2003); Muhammad Royhan Assaiq, 'Aktualisasi Maqāsid Al-Syari'ah Dalam Peran Ganda Istri Di Dusun Ngrancang, Yogyakarta', *The Indonesian Journal of Islamic Law and Civil Law* 6, no. 2 (2025), <https://doi.org/10.51675/ijil%20and%20cil.v6i2.1111>.

⁴ Erma Wulandari et al., 'Pre-Marriage Pregnancy in Islamic Law Compilation', *International Journal of Contemporary Islamic Law and Society* 2, no. 2 (2020): 18-32, <https://doi.org/10.24239/ijcils.Vol2.Iss2.19>; Soni Zakaria, 'The Contextualization Of The Māqāsid Āl-Šyārīāh Jasser Auda Theory In The Concept And Practice Of Islamic Family Law', *Al-'Adl* 14, no. 2 (2021): 83, <https://doi.org/10.31332/aladl.v14i2.2396>.

⁵ Felix Mensah et al., 'Unpacking Norms Shaping Disclosure of Intrafamilial Child Sexual Abuse', *Discover Psychology* 4, no. 1 (2024): 170, <https://doi.org/10.1007/s44202-024-00286-4>.

⁶ Yanuar Farida Wismayanti et al., 'Child Sexual Abuse in Indonesia: A Systematic Review of Literature, Law and Policy', *Child Abuse & Neglect* 95 (September 2019): 104034, <https://doi.org/10.1016/j.chiabu.2019.104034>.

⁷ Convention on the Rights of the Child (1989).

⁸ Brian Littlechild and Carolyn Housman, 'Applying Universal Principles of "Best Interest": Practice Challenges across Transnational Jurisdictions, Cultural Norms, and Values', *Children* 10, no. 3 (2023): 537, <https://doi.org/10.3390/children10030537>; Aishah Mohd Nor et al., 'Legal Framework for The Protection of Teenage Pregnancies in Malaysia', *International Journal of Academic Research in Progressive Education and Development* 11, no. 3 (2022): Pages 1447-1466, <https://doi.org/10.6007/IJARPED/v11-i3/14925>.

2. Literature Review

Previous studies have indeed touched upon the issue of marriage during pregnancy from various perspectives. The first perspective, from the viewpoint of Islamic law, is generally limited to the context of consensual adultery and the validity of lineage.⁹ The second tendency is to examine incest on a case-by-case basis, looking at its impact on the victim.¹⁰ Meanwhile, the third tendency examines incest from a normative perspective compared with positive law in Indonesia.¹¹ However, unlike previous studies, this article highlights marriage resulting from incestuous pregnancy as a sexual crime that directly impacts children's rights.

This research gap suggests that the existing *maqāshid* approach remains normative in nature and has not been fully integrated into the legal framework for child protection. In fact, *maqāshid al-syarī'ah* and child protection law actually have convergent objectives: upholding justice, protecting life, and preventing social harm. The absence of studies linking these two value systems has resulted in a weak ethical and legal framework for assessing the practice of marriage due to incest, which is claimed to be a "social solution" but is in fact a form of revictimisation. Thus, this article takes a transdisciplinary position to fill the gap in cases of marriage due to incest, particularly in Sendang 1, Gunungkidul.

3. Method

This study uses a qualitative approach with a descriptive-analytical research type. This approach was chosen because the main focus of the study is not only on the formal legality of the practice of marriage due to incest, but also on the accompanying social, psychological, and moral dimensions. With a qualitative approach, researchers can explore the hidden meanings behind the decisions of families and communities, namely (1) how does the practice of marriage due to incest occur in the social reality of the local community? and (2) to what extent does this practice comply with or contradict the principles of *maqāshid al-syarī'ah* and child protection principles? Thus, the research results are not only based on legal texts, but also reflect the empirical reality experienced by the parties involved.

The research location was set in Sendang 1, Gunungkidul Regency. This area was chosen because it had experienced cases of incest that led to the practice of marriage during pregnancy, making it contextually relevant for analysis. The characteristics of rural communities, which are still steeped in a culture of shame, provide a unique social context for understanding marriage practices

⁹ Muhammad Nur Fathoni et al., 'Kawin Hamil Perspektif Mazhab Fikih, Kompilasi Hukum Islam Dan Maqāshid Syarī'ah (Sebuah Kajian Komprehensif)', *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 68–80, <https://doi.org/10.32332/syakhshiyah.v3i1.6797>; Sumirahayu Sulaiman, 'Perkawinan Wanita Hamil menurut Peraturan Perundang-Undangan', *Jurnal Kolaboratif Sains* 6, no. 10 (2023), <https://doi.org/10.56338/jks.v6i10.4217>; Syukrawati Syukrawati, 'Kedudukan Anak Hasil Kawin Hamil Karena Zina (Studi Perbandingan Antara Kompilasi Hukum Islam Dan Fiqh)', *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 14, no. 2 (2016), <https://doi.org/10.32694/010290>.

¹⁰ Maria Misrelma Moura Bessa et al., 'Characterization of Adolescent Pregnancy and Legal Abortion in Situations Involving Incest or Sexual Violence by an Unknown Aggressor', *Medicina* 55, no. 8 (2019): 474, <https://doi.org/10.3390/medicina55080474>; Kenan Karbeyaz et al., 'Case of Sibling Incest Resulting in Pregnancy', *Egyptian Journal of Forensic Sciences* 6, no. 4 (2016): 550–52, <https://doi.org/10.1016/j.ejfs.2016.09.002>; Kacie M. Thompson, 'Sibling Incest: A Model for Group Practice with Adult Female Victims of Brother–Sister Incest', *Journal of Family Violence* 24, no. 7 (2009): 531–37, <https://doi.org/10.1007/s10896-009-9251-6>.

¹¹ Mursyid Djawas et al., 'The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 139–55, <https://doi.org/10.22373/sjhk.v6i1.11904>; Hijriani Hijriani and Rizki Ramadani, 'From Criminal Law to Customary Law: Incest as a Sexual Crime', *Yuridika* 37, no. 2 (2022): 399–414, <https://doi.org/10.20473/ydk.v37i2.32830>.

based on the motive of covering up disgrace. The data sources in this study consisted of primary and secondary data. Primary data was obtained through interviews with various parties, including victims, victims' parents, and village officials who were directly or indirectly involved in the case. Meanwhile, secondary data was collected from laws and regulations, such as Law No. 35 of 2014 concerning Child Protection, Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, and the Compilation of Islamic Law (KHI). Classical and contemporary fiqh literature, as well as previous research results, also served as important references to enrich the analysis.

Data collection was conducted using three primary techniques. First, limited participatory observation allowed researchers to observe the community's socio-cultural conditions directly. Second, in-depth interviews were conducted using semi-structured guidelines, allowing informants to explain their experiences and views more freely. Third, documentation in the form of official records, archives, and legal documents related to marriage and child protection. The collected data were then analysed using Miles and Huberman's interactive model, which includes data reduction, data presentation, and conclusion drawing. The analysis was conducted thematically by grouping information based on Islamic law issues, child protection, and community social dynamics. Furthermore, the findings were interpreted through two theoretical frameworks, namely *maqāṣid al-syarī'ah* and child protection theory, to assess whether the practice of marriage due to incest was in line with or contrary to these principles.

4. Result and Discussion

a. Marriage During Pregnancy From The Perspective Of Islamic Law

Marriage during pregnancy is a social issue that often sparks debate in the realm of Islamic law. This issue is closely related to the validity of marriage contracts, the recognition of a child's lineage, and the moral and social responsibilities that accompany it.¹² In practice, women who become pregnant outside of marriage can be married either to the man who impregnated them or to another man.¹³ This phenomenon not only involves legal aspects, but also reflects the low awareness of some Muslims regarding religious norms and social values.¹⁴ Therefore, scholars from various Islamic schools of thought have diverse views on the legal status of marriages that occur as a result of adultery.

The Hanafi madhhab permits women who become pregnant as a result of adultery to marry, subject to certain legal conditions. According to Imam Abu Hanifah, women who become pregnant as a result of adultery are not included in the category of women who are forbidden to marry. This view is based on QS. al-Nisā 'verses 23–24, which clearly only prohibits marriage to women who are *maḥram*. Based on these verses, a woman who becomes pregnant as a result of adultery is permitted to marry, either to the man who impregnated her or to another man. However, if she marries a man other than the one who impregnated her, the marital relationship can only be consummated after she has given birth. Thus, the Hanafi madhhab still provides a

¹² Asman Asman, 'Hamil Di Luar Nikah Dan Status Nasab Anaknya: (Studi Komperatif Antara Pendapat Imam Syafi'i Dan Imam Ahmad Bin Hambal)', *Shar-E : Jurnal Kajian Ekonomi Hukum Syariah* 6, no. 1 (2020): 1–16, <https://doi.org/10.37567/shar-e.v6i1.9>.

¹³ Ahmad Mustarsidin and Akhmad Khisni, 'Pregnancy Married in The Perspective of Four Madzhab and Compilation of Islamic Law (KHI)', *Jurnal Daulat Hukum* 1, no. 3 (2018): 699, <https://doi.org/10.30659/jdh.v1i3.3370>.

¹⁴ Mulyadi Antori et al., 'Resolving Marriage Dispensation Cases for Pregnant Women Due to Adultery as Urgent Grounds: An Analysis of Practices in the Simalungun Religious Court', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 11, no. 2 (2024): 300, <https://doi.org/10.29300/mzn.v11i2.5117>.

valid legal basis for marriage in cases of pregnancy resulting from adultery, while maintaining the principle of caution in the consummation of the marital relationship.¹⁵

The Hanbali and Maliki schools of thought take a much stricter approach to the permissibility of marrying a woman who is pregnant as a result of adultery than other schools of thought. Both are based on the principle of preserving the purity of lineage (*hifz al-nasl*) and rejecting any form of marriage that could mix lineages or disregard moral values in Islamic law. In the view of Hanbali scholars, marriage to a woman who is pregnant as a result of adultery is only valid if two conditions are met, namely, after the *istibra* period has ended or the child has been born, and the woman has sincerely repented.¹⁶ This provision emphasises that the Hanbali madhhab not only focuses on legal aspects, but also considers spiritual and ethical dimensions when addressing the issue of marriage during pregnancy.

Meanwhile, the Maliki madhhab takes a stricter view on the marriage of women who are pregnant as a result of adultery. Imam Malik firmly believes that marriage in a state of pregnancy due to adultery is invalid under any circumstances, whether with the man who impregnated her or with another man. For the Maliki madhhab, marriage in such circumstances can confuse lineage and contradict the principle of prudence upheld by Sharia law. Therefore, women who are pregnant as a result of adultery are treated in the same way as women who are involved in relationships that are shrouded in doubt or based on a faulty contract (*fasid*), which requires them to undergo a period of *iddah* before they are allowed to marry.¹⁷ Thus, both the Hanbali and Maliki madhhab emphasise the importance of maintaining clarity of lineage and moral honour, which is reflected in the strict prohibition of marriage in cases of pregnancy resulting from adultery until the woman gives birth.

The Shafi'i madhhab has a more permissive view regarding the permissibility of marrying a woman who is pregnant as a result of adultery compared to other schools of thought. In this madhhab, a woman who is pregnant due to adultery is not required to undergo the *iddah* period, unlike a woman who is pregnant within a valid marriage according to Islamic law. Imam Shafi'i emphasises that marriage to a woman who is pregnant as a result of adultery is still valid, whether it is performed by the man who caused the pregnancy or by another man. In this case, marital relations are permitted immediately without waiting until the woman gives birth. This view is reinforced by the explanation of Imam Nawawi, who states that a woman who commits adultery is not required to undergo the waiting period, as the purpose of the waiting period is to ensure the clarity of lineage in a valid marriage, not in an unlawful relationship.¹⁸ Therefore, a child born out of wedlock cannot be attributed to the man who impregnated the woman, but only to the mother. Overall, the Shafi'i madhhab considers the marriage of a woman who is pregnant as a result of adultery to be valid according to Sharia law, even though the child's lineage is still legally recognised as being only from the mother.

From the various perspectives of the above madhhab, it can be concluded that the issue of marriage due to adultery shows a dialectic between legal legitimacy, moral sharia, and social

¹⁵ Djawas et al., 'The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)'.

¹⁶ Safwanto Safwanto, 'Menikah Dalam Kondisi Hamil, Ini Pandangan Empat Mazhab Dan KHI', 2021, <https://lampung.nu.or.id/syiar/menikah-dalam-kondisi-hamil-ini-pandangan-empat-mazhab-dan-khi-BBVkd>.

¹⁷ Afif Mubaroq et al., 'Kawin Hamil Perspektif Kompilasi Hukum Islam Dan Mazhab Fikih', Articles, *Jurnal Al-Wasith : Jurnal Studi Hukum Islam* 10, no. 1 (2025): 15–26, <https://doi.org/10.52802/wst.v10i1.1419>.

¹⁸ Holilur Rohman, *Hukum Perkawinan Islam Menurut Empat Mazhab Disertai Aturan Yang Berlaku Di Indonesia* (Kencana, 2021).

needs. The Hanafi and Shafi'i madhhab allow for certain limitations to maintain social welfare, while the Hanbali and Maliki madhhab place greater emphasis on morality and caution to preserve the purity of lineage (*hifz al-nasl*) and honour (*hifz al-'ird*). These differences show that Islamic law is not singular, but rather adapts to the social context and objectives of *maqāsid al-syarī'ah*. On the one hand, the lenient view reflects a response to social realities; on the other hand, the strict stance emphasises the need to uphold moral values and legal responsibility. Thus, this debate confirms that the primary purpose of marriage is not merely the legality of the contract, but the preservation of human dignity, the production of legitimate offspring, and the establishment of a just moral order.

b. The Practice Of Pregnancy Marriage In Sendang 1, Gunungkidul

The incest case that occurred in Padukuhan Sendang 1, Kalurahan Sawahan, Kapanewon Ponjong, Gunungkidul Regency, stemmed from unhealthy family relationships and a lack of parental supervision. The victim, CF, a 16-year-old girl, lived in a relatively small house with her older brother. The habit of sleeping in the same bed and the absence of parental control created an opportunity for incestuous sexual relations, which ultimately resulted in pregnancy.¹⁹ This phenomenon reflects the weakness of the family protection system in safeguarding children from the risk of sexual violence, particularly incest, which is considered a serious violation of moral norms and family sanctity, both religiously and socially.²⁰

CF's pregnancy caused panic, fear and deep shame for the family. In the context of rural communities, where the culture of shame is still strong, family disgrace is considered more dangerous than individual suffering. Instead of reporting the case to the authorities or child protection agencies, the parents chose the easy way out by marrying CF off. Ironically, the marriage is forced upon ES, another man who is in debt, with the CF family offering to pay off all his debts as a condition for him to marry CF. According to P, "ES agreed to the marriage because of the offer to pay off his debts, which amounted to millions."²¹ The main consideration of CF's parents is to restore the family's good name and cover up the disgrace, without regard for psychological considerations, emotional readiness, or CF's right to choose a life partner freely.²²

For CF herself, the marriage she entered into was not born of conscious choice, but rather structural coercion.²³ As a teenager still in school, she had to leave her education behind and take on a new role as a wife and future mother. This situation caused a double psychological burden: trauma from incestuous sexual violence, as well as social pressure to adapt to married life without being prepared for it.²⁴ Thus, the practice of marriage due to incest actually leads to revictimisation, as victims suffer further physical, psychological, social, and educational harm.

¹⁹ Interview Suwanto, 'Headman', July 2025.

²⁰ Mochammad Wahyu Ghani and Marya Yenita Sitohang, 'Come Back Stronger After Suffered for Child Sexual Abuse: A Case Study to Understand the Family Resilience Process', *Sawwa: Jurnal Studi Gender* 17, no. 1 (2022): 17–46, <https://doi.org/10.21580/sa.v17i1.11552>.

²¹ Interview P, 'Brother ES', July 2025.

²² Interview SR, 'Father CF', July 2025; EA, 'Mother CF', July 2025.

²³ Interview CF, 'Victim', July 2025.

²⁴ Hawa Hidayatul Hikmiyah et al., 'Dampak Psikologis Korban Inses: Analisis Terhadap Kualitas Hidup Dan Fungsi Sosial Dalam Pendekatan Empiris Normatif', *Legitima: Jurnal Hukum Keluarga Islam* 5, no. 2 (2023): 347–62, <https://doi.org/10.33367/legitima.v5i2.4080>.

The phenomenon in Sendang 1 suggests that marriage is not used as an instrument of worship or guardian of welfare, but rather as a mechanism to conceal family shame. This practice reveals a significant gap between the normative ideal of marriage in Islamic law and the prevailing rules and social practices in the field. Therefore, this case serves as an important starting point for further analysis within the framework of *maqāṣid al-syarī'ah* and child protection, to assess whether this practice can be justified or, conversely, must be rejected to protect the fundamental rights of the victims.

c. The Practice of Marriage Due to Incest: The Perspective of *Maqāṣid al-Shari'ah*

Islam strictly prohibits incestuous relationships. This prohibition is emphasised in QS. al-Nisā': 23, which details the mahram groups that are forbidden to marry, such as mothers, daughters, sisters, aunts from the father's or mother's side, and nieces. Scholar Muslims agree that incestuous relationships fall under the category of permanent prohibitions (*taḥrīm mu'abbad*), meaning that marriage between two individuals with a blood relationship is invalid under Islamic law.²⁵ The hadith narrated by Ibn Majah further emphasises this provision.²⁶ It states that the Prophet Muhammad SAW forbade marriage between blood relatives because it can cause physical and psychological damage.²⁷ Thus, from the outset, Islamic law has ruled out any possibility of incestuous practices, given their negative impact on moral and social order and the purity of lineage in society.

In accordance with the Qur'an and hadith, the practice of marriage to a pregnant victim of incest substantially violates the principle of *ḥifz al-nafs* (protection of life), because such an act places the physical and psychological safety of the child victim in the most vulnerable position. The principle of *maqāṣid al-syarī'ah* emphasises that protecting human life is the highest goal of sharia, as all forms of protection must be directed towards preventing suffering and harm.²⁸ However, in the case of Sendang 1, Gunungkidul, this norm was ignored when a family forced a 16-year-old girl who was pregnant as a result of incest to marry another man to cover up the shame. This coercion not only denied the child's right to live safely and with dignity, but also created new trauma through structural violence legalised by social pressure. She lost her education, her freedom of choice, and her right to recover from the sexual violence she experienced. Thus, this action cannot be categorised as protection, but rather a form of neglect of *maqāṣid al-syarī'ah*, which morally and legally destroys the essence of protecting life.

Furthermore, the practice of marriage due to incest also contradicts *ḥifz al-nasl* (protection of lineage), as it obscures family lines and negates the principle of justice in determining lineage. The purpose of *ḥifz al-nasl* is to guarantee the clarity of a child's origins and honour, so that they grow up in a dignified environment, free from social stigma. However, forced marriages to cover up the shame of incest actually conceal criminal facts and mislead legal records. In the context of Islamic law, incest is an act that cannot be purified through any marriage contract

²⁵ Firdaus Firdaus et al., 'Mahram Dan Pembatasan Pernikahan Dalam Konteks Hukum Islam: Kajian Tematik Ayat-Ayat Hukum Keluarga', *Ikhlas : Jurnal Ilmiah Pendidikan Islam* 2, no. 1 (2024): 132–39, <https://doi.org/10.61132/ikhlas.v2i1.291>.

²⁶ Qazwīn Abū 'Abdillāh Muḥammad ibn Yazīd Ibn Mājāh al-Rab'ī al-, *Kitab Sunan Ibnu Majah* (Dar Al-Sadiq Li-Nasr, 2014).

²⁷ Nurul Fadlillah et al., 'Hadis Tentang Menikah Dengan Mahram Melalui Pendekatan Psikologi', *El-Sunnah: Jurnal Kajian Hadis Dan Integrasi Ilmu* 5, no. 2 (2024): 224–35, <https://doi.org/10.19109/elsunnah.v5i2.15512>.

²⁸ Bambang Tri Bawono et al., 'Human Trafficking and the Relevance of Hifz Al-Nafs and Hifz al-'ird in Contemporary Islamic Legal Ethics', *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 597–618, <https://doi.org/10.32332/milrev.v4i1.10694>.

because it violates the *maqāṣid syari'ah*, which protects the purity of descent. Although the Compilation of Islamic Law allows the marriage of a woman who is pregnant out of wedlock to the man who impregnated her, this provision does not apply to cases of incest, which is a moral and legal violation. Thus, attempts to cover up crimes through marriage only create false social legitimacy and add to the suffering of children born without a clear identity and proper protection.²⁹

In addition to these two dimensions, violations of *ḥifẓ al-'ird* (protection of honour) constitute the most apparent form of deviation from *maqāṣid*. In the concept of Sharia, honour refers to human dignity that stems from human values and obedience to Allah, rather than merely a social image. However, in societies that uphold a culture of shame, such as in Gunungkidul, honour is reduced to a symbol of family reputation that must be maintained, even if it means sacrificing the victim. The victim's family chose to cover up the disgrace through forced marriage rather than uphold justice and legal protection. This action reveals a shift in the meaning of *ḥifẓ al-'ird* from a spiritual value to a social mechanism that provides a false moral legitimacy for covering up sins. From the perspective of *maqāṣid al-syarī'ah*, covering up sexual crimes with marriage is not a form of honour protection, but rather the destruction of the moral values that underlie it. Therefore, this practice confirms the failure of society to understand *maqāṣid* as an instrument of justice and protection, rather than as a justification for violating children's rights.

- d. Analysis of the Practice of Pregnancy Marriages Resulting from Incest through Child Protection
- The theory of child protection is based on the belief that every child has inherent rights from birth to live, grow, and develop in a safe, dignified environment, free from violence. This principle forms the main foundation of the 1989 Convention on the Rights of the Child (CRC), which affirms four key pillars: non-discrimination, the best interests of the child, the right to life and development, and respect for the child's views.³⁰

In the context of Indonesian national law, these principles are adopted in Law No. 35 of 2014 on Child Protection. This law emphasises that every policy and decision concerning children must be oriented towards the preservation of children's lives, dignity, and welfare.³¹ The principle of the best interests of the child is not only understood as a legal norm but also as an ethical foundation that places children as moral and legal subjects who must be protected from various forms of violence, neglect, and exploitation. Theologically, these values are in line with the basic objectives of *maqāṣid al-syarī'ah* in Islam, especially in three main aspects: *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-nasl* (protection of offspring), and *ḥifẓ al-'ird* (protection of honour).³² Thus, from both the perspective of modern law and within the framework of Islamic

²⁹ Sukataman et al., 'Maqāṣid Al-Sharī'ah and the Prohibition of Incest in Indonesian Legislation: An Analysis of the Protection of Lineage and Public Morals', *Al-Manahij: Jurnal Kajian Hukum Islam*, 18 September 2025, 205–26, <https://doi.org/10.24090/mnh.v19i2.14989>.

³⁰ Nurzakiah Nurzakiah et al., 'International Legal Framework for Children's Rights in Juvenile Criminal Justice in Indonesia', in *Proceedings of the International Conference on Law Reform (5th Inclar 2024)*, ed. Sholahuddin Al Fatih et al., vol. 870, Advances in Social Science, Education and Humanities Research (Atlantis Press SARL, 2025), https://doi.org/10.2991/978-2-38476-362-7_21.

³¹ Melinda Fajar Irianti and Anwar Sadat, 'Legal Protection for Children Reviewed from Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection (Case Study of High Court Decision Number 255/PID/2023/PT.BDG)', *FOCUS* 5, no. 2 (2025): 205–12, <https://doi.org/10.37010/fcs.v5i2.2002>.

³² Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008), <https://doi.org/10.2307/j.ctvkc67tg>.

law, child protection has the same objective: to ensure that children live in justice, compassion, and social security, thereby guaranteeing the continuation of the human race with dignity.

The practice of marriage due to incest in Padukuhan Sendang 1 reflects a serious violation of the principles of non-discrimination and the best interests of the child. Based on Articles 2 and 3 of Law Number 35 of 2014, every child has the right to equal treatment without discrimination, as well as decisions that prioritise the best interests of the child. However, in reality, the decisions made by the victim's family focused more on maintaining social honour than on the welfare of the child herself. The deep-rooted culture of shame in rural communities often encourages families to choose instant solutions in the form of forced marriage to maintain their social image, rather than focusing on justice for the victim.³³ This phenomenon shows that social pressure is a source of discrimination against girls who are victims of incest, because they not only lose their rights to freedom and education, but are also used as a means to restore the family's reputation. Thus, the practice of forced marriage due to incest in Gunungkidul clearly violates the basic principles of child protection, both within the framework of international and national law. The best interests of the child are sacrificed for the sake of the symbolic interests of a society that prioritises social reputation over human rights and individual welfare.

Marriage due to incest is also a serious violation of children's rights to be free from violence and exploitation. Articles 76D and 76F of Law No. 35 of 2014 clearly prohibit all forms of sexual violence and exploitation against children, while Articles 4–6 of Law No. 12 of 2022 on Sexual Violence Crimes emphasise that marriage cannot be used as a means to cover up sexual crimes. In the context of Islamic law, such actions are contrary to the principle of *la ḍarar wa la ḍirār*, which means that no action should cause harm or danger, either to oneself or to others.³⁴ In the case that occurred in Sendang 1, coercion to marry another man to pay off family debts shows economic exploitation disguised as false morality. Thus, the practice of marriage due to incest not only violates ethical norms but is also a structural crime that disregards child protection as a fundamental principle of universal law.

The case of marriage due to incest in Sendang 1 also shows multiple violations of children's rights to identity, education, and psychological recovery. The 1989 Convention on the Rights of the Child (CRC) guarantees children's rights to identity in Article 8, while Articles 28 and 39 affirm children's rights to education and post-traumatic recovery (rehabilitation and reintegration). However, in reality, the victim was forced to drop out of school and take on the role of wife and mother at the age of 16, without adequate legal or social support. This situation reflects the failure of the state and society to ensure comprehensive protection of children, both legally and morally.

5. Conclusion

This study found that the practice of marriage due to incest in Sendang 1, Gunungkidul, is a form of structural failure in understanding the essence of human protection as regulated in *maqāṣid al-syarī'ah* and child protection theory. This is evident in the attempt to cover up shame through

³³ Rikki Jones et al., 'The Shame of Sexual Violence towards Women in Rural Areas', *International Journal of Mental Health Nursing* 33, no. 3 (2024): 728–34, <https://doi.org/10.1111/inm.13269>.

³⁴ Ichwan Ahnaz Alamudi et al., 'Studi Qawaid Fiqhiyyah: Aspek Ibadat Dan Muamalat Dalam Kaidah La Dharara Wa La Dhirar', *Qonun Iqtishad EL Madani Journal* 4, no. 1 (2025): 21–28, <https://doi.org/10.55438/jqim.v4i1.140>.

marriage, which actually gives rise to multiple violations of the principles of *hifz al-nafs* (protection of life), *hifz al-nasl* (protection of offspring), and *hifz al-'ird* (protection of honour). From a child protection perspective, this practice also violates the principle of the best interests of the child, as it disregards the child's right to protection, education, and freedom from exploitation. Scientifically, this study contributes to the development of a new paradigm in Islamic family law, based on children's rights, by utilising *maqāṣid* as an instrument of advocacy and social correction against dysfunctional practices of concealing disgrace. However, its limitation lies in its focus on a single case study, so further research needs to expand the comparative scope of similar cases through a transdisciplinary lens to strengthen the existing findings.

Reference

- Abū □ Abdillāh Muḥammad ibn Yazīd Ibn Mājah al-Rab'ī al-, Qazwīn. *Kitab Sunan Ibnu Majah*. Dar Al-Sadiq Li-Nasr, 2014.
- Alamudi, Ichwan Ahnaz, Suriyadi Suriyadi, Mieke Aprilia Utami, and Sri Ridma Ramadhani. 'Studi Qawaid Fiqhiyyah: Aspek Ibadat Dan Muamalat Dalam Kaidah La Dharara Wa La Dhirar'. *Qonun Iqtishad EL Madani Journal* 4, no. 1 (2025): 21–28. <https://doi.org/10.55438/jqim.v4i1.140>.
- Antori, Mulyadi, Sukiati Sukiati, and Imam Yazid. 'Resolving Marriage Dispensation Cases for Pregnant Women Due to Adultery as Urgent Grounds: An Analysis of Practices in the Simalungun Religious Court'. *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 11, no. 2 (2024): 300. <https://doi.org/10.29300/mzn.v11i2.5117>.
- Asman, Asman. 'Hamil Di Luar Nikah Dan Status Nasab Anaknya: (Studi Komperatif Antara Pendapat Imam Syafi'i Dan Imam Ahmad Bin Hambal)'. *Shar-E : Jurnal Kajian Ekonomi Hukum Syariah* 6, no. 1 (2020): 1–16. <https://doi.org/10.37567/shar-e.v6i1.9>.
- Assaiq, Muhammad Royhan. 'Aktualisasi Maqāṣid Al-Syarī'ah Dalam Peran Ganda Istri Di Dusun Ngrancang, Yogyakarta'. *The Indonesian Journal of Islamic Law and Civil Law* 6, no. 2 (2025). <https://doi.org/10.51675/ijil%20and%20cil.v6i2.1111>.
- Auda, Jasser. *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. International Institute of Islamic Thought, 2008. <https://doi.org/10.2307/j.ctvkc67tg>.
- Bambang Tri Bawono, Moh. Nurul Huda, Ahmad Hadi Prayitno, and Moh. Aris Siswanto. 'Human Trafficking and the Relevance of Hifz Al-Nafs and Hifz al-'ird in Contemporary Islamic Legal Ethics'. *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 597–618. <https://doi.org/10.32332/milrev.v4i1.10694>.
- Bessa, Maria Misrelma Moura, Jefferson Drezett, Fernando Adami, Sandra Dircinha Teixeira De Araújo, Italla Maria Pinheiro Bezerra, and Luiz Carlos De Abreu. 'Characterization of Adolescent Pregnancy and Legal Abortion in Situations Involving Incest or Sexual Violence by an Unknown Aggressor'. *Medicina* 55, no. 8 (2019): 474. <https://doi.org/10.3390/medicina55080474>.
- Convention on the Rights of the Child (1989).
- Djawas, Mursyid, Gamal Achyar, Nursyirwan Bustanul Arifin, Masri Reza, and Baharuddin Umar Yakub. 'The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)'. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 139–55. <https://doi.org/10.22373/sjhk.v6i1.11904>.

- Fadlillah, Nurul, Muhid Muhid, and Andris Nurita. 'Hadis Tentang Menikah Dengan Mahram Melalui Pendekatan Psikologi'. *El-Sunnah: Jurnal Kajian Hadis Dan Integrasi Ilmu* 5, no. 2 (2024): 224–35. <https://doi.org/10.19109/elsunnah.v5i2.15512>.
- Fajar Irianti, Melinda, and Anwar Sadat. 'Legal Protection for Children Reviewed from Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection (Case Study of High Court Decision Number 255/PID/2023/PT.BDG)'. *FOCUS* 5, no. 2 (2025): 205–12. <https://doi.org/10.37010/fcs.v5i2.2002>.
- Fathoni, Muhammad Nur, Nawa Angkasa, and Tarmizi Tarmizi. 'Kawin Hamil Perspektif Mazhab Fikih, Kompilasi Hukum Islam Dan Maqāshid Syari'ah (Sebuah Kajian Komprehensif)'. *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 68–80. <https://doi.org/10.32332/syakhshiyah.v3i1.6797>.
- Firdaus Firdaus, Tati Yalina Andiyah, Lidya Andita, Saras Ainurrochimah, Fajrul Hakim, and Wismanto Wismanto. 'Mahram Dan Pembatasan Pernikahan Dalam Konteks Hukum Islam: Kajian Tematik Ayat-Ayat Hukum Keluarga'. *Ikhlas : Jurnal Ilmiah Pendidikan Islam* 2, no. 1 (2024): 132–39. <https://doi.org/10.61132/ikhlas.v2i1.291>.
- Ghani, Mochammad Wahyu, and Marya Yenita Sitohang. 'Come Back Stronger After Suffered for Child Sexual Abuse: A Case Study to Understand the Family Resilience Process'. *Sawwa: Jurnal Studi Gender* 17, no. 1 (2022): 17–46. <https://doi.org/10.21580/sa.v17i1.11552>.
- Hawa Hidayatul Hikmiyah, Ahmad Riski Musthofa, and Amal Zainun Naim. 'Dampak Psikologis Korban Inses: Analisis Terhadap Kualitas Hidup Dan Fungsi Sosial Dalam Pendekatan Empiris Normatif'. *Legitima : Jurnal Hukum Keluarga Islam* 5, no. 2 (2023): 347–62. <https://doi.org/10.33367/legitima.v5i2.4080>.
- Hijriani, Hijriani, and Rizki Ramadani. 'From Criminal Law to Customary Law: Incest as a Sexual Crime'. *Yuridika* 37, no. 2 (2022): 399–414. <https://doi.org/10.20473/ydk.v37i2.32830>.
- Jones, Rikki, Kim Usher, Kylie Rice, Louise Morley, and Joanne Durkin. 'The Shame of Sexual Violence towards Women in Rural Areas'. *International Journal of Mental Health Nursing* 33, no. 3 (2024): 728–34. <https://doi.org/10.1111/inm.13269>.
- Karbeyaz, Kenan, Mehmet Toygar, and Adnan Çelikel. 'Case of Sibling Incest Resulting in Pregnancy'. *Egyptian Journal of Forensic Sciences* 6, no. 4 (2016): 550–52. <https://doi.org/10.1016/j.ejfs.2016.09.002>.
- Littlechild, Brian, and Carolyn Housman. 'Applying Universal Principles of "Best Interest": Practice Challenges across Transnational Jurisdictions, Cultural Norms, and Values'. *Children* 10, no. 3 (2023): 537. <https://doi.org/10.3390/children10030537>.
- Maimun, Maimun. 'Pernikahan Dalam Kompilasi Hukum Islam Dan Perdata'. *Jurnal Al-Mizan* 9, no. 1 (2022): 12–21. <https://doi.org/10.54621/jiam.v9i1.263>.
- Mensah, Felix, Alhassan Abdullah, and Ebenezer Cudjoe. 'Unpacking Norms Shaping Disclosure of Intrafamilial Child Sexual Abuse'. *Discover Psychology* 4, no. 1 (2024): 170. <https://doi.org/10.1007/s44202-024-00286-4>.
- Mohammad Rafli, Fahmi Muhaemin Zaen, and Bambang Ari Sya'bana. 'Perjanjian Pasca-Nikah (Postnuptial Agreement) Dalam Konteks Maqashid al-Syari'ah: Analisis Pandangan al-Syatibi'. *Legitima : Jurnal Hukum Keluarga Islam* 5, no. 2 (2023): 363–74. <https://doi.org/10.33367/legitima.v5i2.4121>.

- Mohd Nor, Aishah, Najibah Mohd Zin, and Roslina Che Soh. 'Legal Framework for The Protection of Teenage Pregnancies in Malaysia'. *International Journal of Academic Research in Progressive Education and Development* 11, no. 3 (2022): Pages 1447-1466. <https://doi.org/10.6007/IJARPED/v11-i3/14925>.
- Mubarog, Afif, Jumni Nelli, M. April, and Zulikromi. 'Kawin Hamil Perspektif Kompilasi Hukum Islam Dan Mazhab Fikih'. *Articles. Jurnal Al-Wasith : Jurnal Studi Hukum Islam* 10, no. 1 (2025): 15-26. <https://doi.org/10.52802/wst.v10i1.1419>.
- Mustarsidin, Ahmad, and Akhmad Khisni. 'Pregnancy Married in The Perspective of Four Madzhab and Compilation of Islamic Law (KHI)'. *Jurnal Daulat Hukum* 1, no. 3 (2018): 699. <https://doi.org/10.30659/jdh.v1i3.3370>.
- Nurzakiah, Nurzakiah, Wasis Wasis, and Siti Wulandari. 'International Legal Framework for Children's Rights in Juvenile Criminal Justice in Indonesia'. In *Proceedings of the International Conference on Law Reform (5th Inclar 2024)*, edited by Sholahuddin Al Fatih, Hilaire Tegnan, Muhamad Helmi Bin Md Said, et al., vol. 870. *Advances in Social Science, Education and Humanities Research*. Atlantis Press SARL, 2025. https://doi.org/10.2991/978-2-38476-362-7_21.
- Rohman, Holilur. *Hukum Perkawinan Islam Menurut Empat Mazhab Disertai Aturan Yang Berlaku Di Indonesia*. Kencana, 2021.
- Safwanto, Safwanto. 'Menikah Dalam Kondisi Hamil, Ini Pandangan Empat Mazhab Dan KHI'. 2021. <https://lampung.nu.or.id/syiar/menikah-dalam-kondisi-hamil-ini-pandangan-empat-mazhab-dan-khi-BBVKd>.
- Sukataman, Idlofi, Agung Nugroho Reformis Santono, and Umar Chamdan. 'Maqāṣid Al-Sharī'ah and the Prohibition of Incest in Indonesian Legislation: An Analysis of the Protection of Lineage and Public Morals'. *Al-Manahij: Jurnal Kajian Hukum Islam*, 18 September 2025, 205-26. <https://doi.org/10.24090/mnh.v19i2.14989>.
- Sulaiman, Sumirahayu. 'Perkawinan Wanita Hamil menurut Peraturan Perundang-Undangan'. *Jurnal Kolaboratif Sains* 6, no. 10 (2023). <https://doi.org/10.56338/jks.v6i10.4217>.
- Syatibi, Al-Imam Abu Ishaq Asy-. *Al-Muwafaqat Fi Ushul as-Syari'ah*. Dar al-Kutub al-Ilmiyyah, 2003.
- Syukrawati, Syukrawati. 'Kedudukan Anak Hasil Kawin Hamil Karena Zina (Studi Perbandingan Antara Kompilasi Hukum Islam Dan Fiqh)'. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 14, no. 2 (2016). <https://doi.org/10.32694/010290>.
- Thompson, Kacie M. 'Sibling Incest: A Model for Group Practice with Adult Female Victims of Brother-Sister Incest'. *Journal of Family Violence* 24, no. 7 (2009): 531-37. <https://doi.org/10.1007/s10896-009-9251-6>.
- Wismayanti, Yanuar Farida, Patrick O'Leary, Clare Tilbury, and Yenny Tjoe. 'Child Sexual Abuse in Indonesia: A Systematic Review of Literature, Law and Policy'. *Child Abuse & Neglect* 95 (September 2019): 104034. <https://doi.org/10.1016/j.chiabu.2019.104034>.
- Wulandari, Erma, Hilal Malarangan, and Ermawati Ermawati. 'Pre-Marriage Pregnancy in Islamic Law Compilation'. *International Journal of Contemporary Islamic Law and Society* 2, no. 2 (2020): 18-32. <https://doi.org/10.24239/ijcils.Vol2.Iss2.19>.
- Zakaria, Soni. 'The Contextualization Of The Māqāṣid Āl-Šyāriāh Jasser Auda Theory In The Concept And Practice Of Islamic Family Law'. *Al-'Adl* 14, no. 2 (2021): 83. <https://doi.org/10.31332/aladl.v14i2.2396>.