

# JUSTICE AND PEACE: THE RECONSTRUCTION OF INHERITANCE LAW BASED ON TRADITION IN LOMBOK

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**Abstract** - This article aims to explore the dialectics of inheritance law thought in Lombok, eastern Indonesia. To focus the study, this article only discusses the thoughts of Maulana Syaikh Muhammad Zainuddin; academics, scholars, figures, and thinkers in Lombok. This research is a descriptive-analysis qualitative research based on literature study and field data. The data collection methods in the research were documentation, interviews, and observation. Documentation is conducted by tracing Maulana Shaykh's work in the field of inheritance and articles related to it. Interviews were conducted with the historical actors, students and family of Maulana Syaikh, as well as the Sasak community in the implementation of inheritance. Observations were conducted by observing the practice of inheritance in Sasak society. The results of this study indicate that the people of Lombok have a tradition system in inheritance, and it has been practiced for hundreds of years. Maulana Syaikh's thinking in some of his works on inheritance aims to introduce the main Islamic law on inheritance and its implementation for the community. However, on the practical side, Maulana Syaikh reconstructed the field of inheritance by considering aspects of local wisdom (*al-'urf*), public good (*maslahah*), and the purpose of law (*maqashid al-syariah*). Islamic inheritance law was used as a solution only when it was assumed that there was a possibility of conflict in the family. **The contribution of this article is to provide a conceptual frame work in solving the problem of inheritance in a society that adopts the multi law system.**

**Keywords:** *Justice; Peace; Inheritance; al-'Urf, Maslahah; Maulana Syaikh*

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## INTRODUCTION

Indonesia consists of various tribes, languages, traditions, religions and beliefs spread across thousands of islands. Each tribe has its own system, structure and law, known as customary law. Customary law in Indonesia existed before the arrival of Islam, Christianity, Hinduism and Buddhism. Indonesian indigenous people adhere to religious beliefs with different names of God. The interaction of Indonesians with the outside world enriches the existence of customary law. The originality of customary law persists, although there is internalization of values that are not original to the ancestral values. Some indigenous peoples adopt the values of local religion (aminism) as an ethical basis in constructing customary law, and others make the religion of heaven (Islam, Christianity, Hinduism, Buddhism) as an ethical basis in developing customary law. (Salahuddin & Sabri, 2022). More than 40% of indigenous peoples in Indonesia consider Islam as an ethical reference in the construction of customary law.

The kinship system in Indonesia's traditional family are patrilineal, matrilineal and bilateral. Patrilineal is a family system that prioritizes the male bloodline. Matrilineal, on the other hand, prioritizes the female bloodline. Bilateral is a family system that prioritizes men and women equally in the family. This kinship system has a strong influence on the customary inheritance system, where the inheritance property is given to the lineage that is in accordance with the kinship system adopted in customary law. The majority

of kinship systems adopted by indigenous communities in Indonesia are patrilineal systems, which are kinship systems that give greater space, power and authority to the male.

The study of customary law in Indonesia cannot be separated from Islam, because the influence of Islam in the creation of Indonesian culture is quite significant, and the majority of indigenous peoples in Indonesia recognize Islam as a source and reference for legal development (Salahuddin, 2005). Many academics in Indonesia recognize that it is hard to separate religion (Islam) and adat (culture) in the praxis of Indonesian society, but theoretically the two can be distinguished (Salahuddin et al., 2019). The Islam in question is not a single Islam, because in the historical record of the entry of Islam in Indonesia through multi-regional (Arab, Indian, Persian, and others) (Azra, 1999, 2013). In general, however, the development of customary law in Indonesia is based on the four schools of thought in Islam (shafi'iyah, malikiyyah, hanafiyyah, and hanabilah).

The intensity of intellectual interaction between the people of Indonesia and the Middle East began in the 13th century through Hajj and Umrah (Azra, 2013). Indonesians who perform the Hajj do not just worship, but study and work, and many settle in the holy land of Makkah and its nearby areas. The Hajj, before Indonesia's independence, was a symbol of reform, change, and resistance to the colonialists. Through the Hajj, the intellectual, diplomatic and social networks of Indonesian society are closely connected. This intellectual network has influenced customary law in the Indonesian archipelago.

One of the Indonesian intellectuals who had a strong influence in the change and reform of customary law in eastern Indonesia was Maulana Syaikh Muhammad Zainuddin Abdul Madjid. Intellectually, he left many books in the field of fiqh. Through the Nahdlatul Wathan organization that he established, Maulana Syaikh's influence grew stronger, both in the educational, social and political fields (Djawas, 2014). In many aspects, Maulana Syaikh's thoughts and movements are used as a reference in solving social and legal problems in eastern Indonesia.

This article describes Maulana Syaikh's thoughts in the Islamic inheritance law, which deal with the social context of Indonesian Sasak society. How do the two interact, and the solution ideas offered by Maulana Syaikh to make the process of wealth distribution through inheritance meet the principles of justice and take place peacefully. The ushuliyah and maqasidiyyah approaches are instruments to trace and analyze Maulana Shaykh's thoughts.

### 1. Inheritance: Distribution of Wealth in Islam

Inheritance is one of the many models of wealth distribution in Islam. Islamic inheritance is based on QS. Al-Nisa' (4): 11, 12, and 176 and several traditions related to inheritance. In the Quran and hadith, the amount received by each member of the family left behind is clearly stated; half, a quarter, a sixth, and an eighth. A striking provision in Islamic inheritance rules is that men get a larger portion than women (2:1). The above provision characterizes the patriarchal Arab society, where men are more dominant in determining and making decisions.

The essence of wealth distribution in Islam is to avoid the accumulation of wealth in people or groups of people in society, which opens up opportunities for economic exploitation (Rois & Salahuddin, 2022). The instruments provided by Islam to avoid economic exploitation are buying and selling, grants, zakat, waqf, sadaqah and inheritance, which the main foundation is not to harm each other and not to damage each other by prioritizing mutual cooperation based on God's values and humanity.

Inheritance in Islam is an instrument of wealth distribution that aims to distribute 'unclaimed property' when a person dies. The provisions on inheritance in the Qur'an and hadith are rigid (*qath'i al-dilalah*), both in terms of the heirs and the rights that will be received from the property they have left behind. The provisions on inheritance were clearly stated in QS. Al-Nisa' (4): 11, 12, dan 176. The hadith also states strong limits and confirms what has been stated in the inheritance verses in the Qur'an. The Qur'an and hadith are the limits that must be met to avoid disputes between family members in the distribution of inheritance. The purpose (maqashid) of Islamic teaching's explicitness in inheritance limits is to prevent conflicts in the distribution of wealth. The value of justice and peaceful ways is the goal to be achieved by referring to the 5 principles offered by Imam al-Gazali (Al-Ghazāli, 1970); to protect religion, soul, mind, offspring, and property (Salahuddin, 2012), which was later developed by Imam al-Syathibi into the concept of maqashid al-syariah (Al-Syāthibi, 2004).

Ibn Ashur offers a value base for the praxis of *maqashid al-syariah* with the principles of *al-hurriyah* (freedom based on equality of rights and egalitarianism), *al-fitrah* (purity and sincerity), *al-samahah* (tolerance), *al-haq* (truth), and *al-'adalah* (justice). Auda developed the meaning of al-Gazali's 5 pillars in a modern context; protecting the progeny means protection of the family and community, the concept of protecting the mind means intellectual freedom and the right to a proper education, protecting religion means freedom of belief, protecting property means economic development and reducing socio-economic disparities, protecting the soul means protection of human rights (Jasser Auda, 2007). Qardawi added family development and treating women fairly as part of the study of *maqashid al-syariah* (Qaradhawi, 2006).

Islamic inheritance rules that tend to side with men are considered by some intellectuals to be unjust when faced with the realities of modern society. Critical discourses on the concept and practice of Islamic inheritance have emerged with various perspectives and approaches. Syahrur offers the theory of limits (*nazhariyyat al-hudud*) as a solution to the reconstruction of Islamic inheritance law. Arkoun and Zaid offer a hermeneutic approach in re-understanding texts related to inheritance in Islam (Arkoun & Lee, 1994; Komer, 2005; Zayd, 2004). Some Indonesian writers have also criticized Islamic inheritance with a sociological approach in the Indonesian context (Hazairin, 1982; Sjadzali, 1995). The core of the discourse critique above is the revitalization of justice and peace in inheritance.

Theoretically, Islamic studies have been prepared with *ijtihad* in 'ilm *ushul al-fiqh* as a tool that anticipates the possibility of changes in the law due to changes in society (Hallaq, 2004). Some of the theories/concepts developed are consensus (*ijma'*), analogy (*qiyas*), utility (*maslahat*), accepting the customary law and tradition (*al-'urf*) and others. All of the above methods used to contextualize the spirit of Islam (*maqashid*) with the reality and changes. (Auda, 2008; Bahri, 2020; Chapra, 2008; Islam et al., 2022; Qaradhawi, 2006; Rofiq & Hasbi, 2022; Rois & Salahuddin, 2022; Utami et al., 2021; Yaakub & Nik Abdullah, 2020).

## 2. Islam, Inheritance, and Customary Law

Basically, every society has its own system (values, social, and legal) before the arrival of religion. They live in traditions and customs that are formed naturally through dialog with the nature and reality that keeps repeating over time. From their knowledge and experiences, humans create the social system that binds individuals, families, and communities with specific roles in the system. The presence of Islam was not aimed at breaking down the entire civilization, social and legal system frontally. Islam offers the principles of divinity, humanity, equality, and justice in the practical level of life. The process offered is gradual, and metologically the process is still ongoing today.

The Islamic methodological tool known as *ushul al-fiqh* places a space for dialogue between the text of the Qur'an and the social context through the concept of *al-'urf*, which is Islam's recognition of the existence of the culture and traditions of the previous community. The transformation is done when customs and traditions violate the principles of justice, ethics and humanity; sometimes the construction of the values of justice and humanity in one society and another may be different. This is where the existence of *al-'urf* as a dynamic concept to dialogue God's wishes (*maqashid al-syari'*) and human needs (*maqashid al-'ibad*).

In general, the concept of *al-'urf* in the study of Islamic methodology is to accommodate the good values of tradition and culture that exist in society and serve as a reference for Islamic praxis. The traditions that deviate from the values of humanity and justice are gradually rejected, and a replacement format for the rejected culture is created in a better direction without having to remove the essence of local traditions and culture. This is where the dialogue between Islam and tradition takes place. In the Indonesian context, it is difficult to distinguish between religion and tradition. Many of the local traditions of the archipelago in Indonesia make Islamic norms as the spirit of tradition (Salahuddin, 2005).

In the tradition of inheritance, customary law in Indonesia has its own system and rules, in line with the kinship pattern adhered to by the community; patrilineal, matrilineal, and bilateral. There is no one customary law in Indonesia that aligns with Islamic inheritance law, and the majority of people prefer their customary law in solving inheritance. In addition, some of the thoughts and practices of *ulama'* (religious leaders) allowed the practice of inheritance in the indigenous people, as long as the customary

inheritance model was considered as a solution and there was no conflict. In this context, Indonesian society prioritizes the *maslahah* aspect in solving inheritance problems. The concept of *al-'urf* comes as a dialogical instrument in Islamic studies by considering the local traditions of the community and the public good.

### 3. Inheritance: The Protection of Wealth, Family, and Kinship

Wealth in Islam functions as an instrument to achieve the goal, not the actual goal. As an instrument, wealth must be maintained to achieve individual, group and community goals. Inheritance is one of the instruments in Islamic teachings that regulates the distribution of wealth after someone dies. The inheritance system in Islam is basically to ensure the fairness of the distribution of wealth (capital) for the family left behind to ensure the continuity of the individuals in the family, descendants, and the utility (value) of the property left behind.

The family, in sociological studies, is the basis of community development. The quality of family and its members will strongly influence the quality of community/society. If the quality of the family is better, the quality of the community will be better. For this reason, inheritance in Islam is aimed to strengthen the economic quality of society through the protection of wealth (*hifz al-mal*), soul (*hifz al-nafs*), family (*hifz al-usrah*), and descendants (*hifz al-nasl*). The principle of justice is the main concern, and justice is something subjective, and therefore there is a wide space for dialog in the praxis of Islamic inheritance law with other inheritance law systems. Not to justify or blame the existence of the inheritance system, but to engage in dialogue on the inheritance system that ensures the survival of individuals, families, and descendants by fulfilling the elements of justice, humanity, and divinity.

Justice and peace as substantial values that must be prioritized in the inheritance distribution system are strongly influenced by changes in the existing social system in society. Islamic inheritance law as a system that ensures the distribution of wealth is the result of a process of thinking in time and space of human history. If you agree with Syahrur's opinion, Islamic inheritance law is the minimum limit, and it is possible that there is something more that offers a better sense of justice in the inheritance system (Nopriansyah, 2019). Of course, it is strongly influenced by the kinship system and the social system prevailing in the community.

### 4. Justice and Peace in Inheritance: The Maulana Syaikh Thought and Practice

#### *The Intellectual Background*

Maulana Syaikh Zainuddin's real name is Muhammad Saggaf, born on April 20, 1908 in Bermi, Lombok; (Sayuti et al., 2017) a small island in southeastern Indonesia. His father was a successful teacher and businessman, Haji Abdul Madjid. The Madjid family paid great attention to education, ethics and religion (Ashadi, 2018; Munir, 2019). Saggaf was taught by his father to read the Quran and several other sciences. Muhammad Saggaf's name was changed to Muhammad Zainuddin because of his admiration for a scholar named Zainuddin in Makkah. Since then he vowed to change his son's name.

At 9 years old, Zainuddin studied at a formal school (*gubernemen school*) in Selong. In this school he studied for 4 years, and continued to study non-formal at several religious leaders in East Lombok; Hajj Syarafuddin, Hajj Muhammad Said, Hajj Abdullah bin Amaq Dulaji, and several other names. (Sayuti et al., 2017). From these non-formal schools Saggaf learned religion, science, and Arabic grammar.

Zaiuddin went to Makkah with his parents to perform the *hajj* in 1923, and settled in Makkah to continue his studies. Early in Makkah, he studied informally at the Grand Mosque; moving from one teacher to another. Arab political conditions at that time required Saggaf to keep moving to find the right teacher; both in scientific and humanitarian aspects. He finally met Shaykh Marzuki who advised him to study at *Madrasah Shalatiyah*; the first formal school in the Arabic world founded by scholars of Indian descent. This madrasa is also known to have produced thousands of Indonesian scholars, including Ahmad Dahlan (founder of Muhammadiyah) and Hasyim Asy'ari (founder of Nahdlatul Ulama'). At this madrasa, Zainuddin completed his studies in 6 years; 3 years faster than the normal time.

Zainuddin was recorded as an alumnus with the predicate *mumtaz* (*summa cum laude*), which his teacher memorialized in poetic verse. Zainuddin's intelligence is not only academic, but also includes social, intellectual and spiritual intelligence. This is proven through his educational activities (Azmi & Wardi, 2020), social (Hamdi, 2018), dan religious (Ashadi, 2018; Rahmtullah, n.d.; Sayuti et al., 2017) yang dilakukannya sepulang dari Makkah tahun 1934. In the same year he founded the Islamic school 'Al-



Mujahidin' which later developed into Nahdlatul Wathan Diniyah Islamiyah (NWDI) in 1936. The inferiority of Sasak women at that time encouraged him to establish a special educational institution for women; Nahdlatul Banat Diniyah Islamiyah (NBDI) in 1943.

In tandem with the independent Indonesian movement, Zaenuddin founded the social organization Nahdlatul Wathan (NW), which was also involved in political praxis. Zainuddin's existence and totality in mobilizing the Sasak community led the community to respect and submit to him and gave him the title Maulana Syaikh in front of his name, which is an honorific for a person who has intelligence, sympathy for members of his community, strives to improve the quality of human life, is in tune with his words and actions, and has a special closeness to God. For his struggle, Maulana Shaykh was also given the title *abu al-masajid wa abu al-madaris* (the one who loves mosques and schools). He died in 1997 at Lombok, and was buried in the Pancor madrassa complex.

### ***Sasak Tribe: Social Context of Maulana Syaikh***

The Sasak tribe covers the geographical entirety of Lombok Island in Southeast Indonesia, bordering Bali to the west, and Sumbawa to the East. The south and north are bordered by the Indian Ocean and Java Sea. The total population of Lombok island is 5,125,622. 97% of the population of Lombok island are muslim, and strongly influenced by the teachings and religious movement of Nahdlatul Wathan. The existence of Sasak as a tribe is characterized by the existence power, social and legal system in the community, long before the arrival of Islam. Before the arrival of Islam, the Sasak people were adherents of animism and dynamism.

Trade and political relations between Javanese, Sulawesi and Sumatran Muslims allowed dialogue that contributed to mutual influence in the religious field. This is where Islam began to be recognized by the Sasak tribe, through trade activities and Islamic mission of the Muslims of Java, Sulawesi, and Sumatra. The meeting activities are getting more intense, and the process of learning about Islam is increasingly open. Some Sasak people went to Java and Arabia to study Islam. Sasak Islam developed into a distinctive and unique community; between local and universal values.

As an existing tribe, Sasak has a system of inheritance law based on a very strict patriarchal system; excessive recognition of men. This can be clearly shown in the inheritance system, where men get a very large portion. Although the distribution system is not uniform, men are always prioritized in the Sasak customary inheritance system. The distribution pattern of inheritance in the Sasak customary inheritance system is as follows:

1. If someone dies, the oldest male in the family is the rightful owner of the entire family property. The eldest man gets the inheritance from his parents and he is responsible for all the needs of his younger brothers and sisters. In many cases, when the eldest brother is irresponsible, it often leaves hurts for other family members. The eldest brother's monopoly on the inheritance without responsibility is a source of misery.
2. If a person dies, the sons are given the right to control the land and house. While women are given the right to own the furnitures in the house such as crockery and kitchen equipment. This inheritance system is still practiced in the northern and southern of Lombok.

From the observations done, after the strengthening of Islam in Sasak society, there are still many people who practice customary inheritance law, some others use the Islamic inheritance system, and there are also those who combine the two models of inheritance distribution; prioritizing potential resources to be given a larger portion of inheritance (in accordance with custom), and the rest is divided by the Islamic inheritance model.

### ***Justice and Peace in Inheritance: Maulana Syekh Work's and Practices***

Maulana Shaykh's thoughts on inheritance are contained in his three books; Nahdlah al-Zainiyyah, Fawākih al-Nahdiyyat (1937), and Tuḥfāt al-ampenāniyyah (1978). The first work is a personal spark of inheritance thought representing Maulana Syaikh, the second work describes himself and the school of thought of inheritance law that is specific to ahl Sunnah wa al-jama'ah, and the third work describes the dialogue of inheritance law in the local context of Ampenan (Sasak tribe). The there three works on the same theme shows that the problem he writes about is something important that is addressed to his readers; the Ampenan (Sasak) community as the main object/target in the title of the last book. *Tuḥfāt*

*al-Ampenāniyyah* is an explanation (*sharḥ*) of *Nahḍat al-Zainiyah*, written in the form of a strict *naẓam* ('poem'); the material is brief, concise, and clear. There are sociological aspects that cannot be discussed with certainty, but can be expressed through feelings, between the author and the reader. *Tuḥfat* means something valuable, and *al-ampenāniyyah* means that which belonged to the Ampenan people (Sasak tribe). Implicitly, Maulana Syaikh recognizes the existence of good value in the inheritance tradition of the Sasak culture.

According to Maulana Shaykh, inheritance is the knowledge of practical laws specifically related to property after the death of a person. The detailed rules related to inheritance; who gets the right of inheritance, how much portion is obtained, who is prevented from getting inheritance, and what are the obligations of the heirs before the distribution of inheritance, Maulana Shaykh refers to the verses of the Qur'an and hadith. He did not deviate from the basic rules, he just re-worded it in a thematic and systematic literature to make it easy for readers to understand. The description of inheritance written by Maulana Shaykh is more likely to conform to the *syāfi'iyyah* school of thought.

What is written in his book, he also taught in religious forums, both to his students in madrasas and in public recitation services. According to some of his students who were interviewed, Maulana Shaykh wanted to strengthen people's knowledge of valid Islamic inheritance law. Namun pada sisi lain, dia juga tidak pernah menyalahkan atas praktek hokum waris adat Sasak. But if there is a dispute in the process of distributing inheritance through the customary system, Maulana Syaikh instructs the people to refer it to Islamic law. That means that Maulana Shaykh recognizes the existence of customary inheritance law as long as it provides a benefit for the subject of law, but if there is a disagreement, then Islamic law is a peaceful solution to the conflict that occurs. For this reason, Maulana Syaikh is often invited by the community as an arbitrator in inheritance cases.

Maulana Shaykh thought that inherited property is family owned property from which the benefits must also be returned to family members. Family members as part of the community have established laws in securing the benefits of property for family members through their knowledge and experience. Islamic inheritance law is needed in cases of emergency, and the distribution of wealth in Islam is not only through the inheritance system. Grants, gifts, testaments, etc. are other possible models for distributing wealth to family members.

In his family practice, Maulana Shaykh prioritized *hibah* as a model for wealth distribution. His parents, Hajj Abdul Madjid, left the majority of their wealth to Maulana Shaykh as a gift (*hibah*), with the proviso that Maulana Shaykh was responsible for the survival of his brothers, relatives and family. Likewise Maulana Shaykh, did not fully practice what he wrote in his book on inheritance, he prioritized grants (*hibah*) in distributing his wealth. For Maulana Shaykh, the property owned by a person is essentially not for himself, and every parent has strong instincts and knowledge to whom to hand over the responsibility of managing the property left behind for the preservation and survival of family members.

From the explanation above, there are several conceptual offers by Maulana Shaykh to be used as a reference for the development of inheritance thought and praxis, namely; First, inheritance is one of the models/forms of wealth distribution in Islam, and hence it is optional. The essence of wealth distribution is the principle of justice and no fraud; second, Maulana Shaykh shifted the paradigm of inheritance from *fiqh* (Islamic law) oriented towards economic oriented. Thus, the inheritance received is capital/power that must be sustained to achieve the goal (*maqashid*); third, as part of *mu'amalah* (economics) the Islamic inheritance system is an offer that used as a solution if there is a conflict in the community in the distribution of inheritance.

The implications of Maulana Shaykh's inheritance praxis in eastern Indonesia are quite strong, and take a long time. The community does not feel bound by Maulana Shaykh's Islamic inheritance doctrine, nor does it defend the customary inheritance system, but rather sees the essence of inheritance as the distribution of wealth/power. Therefore, the praxis of inheritance among Sasak Muslims today takes the following form:

1. Basically, the distribution of inheritance is conducted after a person dies. However, to ensure that the heirs divide the inheritance with the Islamic inheritance system, the heirs distribute it while the person is still alive, and distributed in accordance precisely with the rules in the Islamic inheritance system.

2. The inheritor distributes part of his property by granting it to several people who are trusted to be able to manage and develop the property with greater responsibility. The remaining assets are distributed under the Islamic inheritance system, carried out both when the inheritor is still alive and has died.
3. The people divided the inheritance after the inheritor died using the Islamic inheritance system.
4. Inland communities, who are not in direct communication with Maulana Shaykh's inheritance doctrine, still use the customary inheritance system. However if there is a conflict, they invite arbitrators from religious leaders. Usually religious leaders offer an Islamic inheritance model to solve the conflict.

Sasak society had existed long before Islam came to this area. The law of inheritance as part of the legal and social system of the community has been deeply embedded in the traditions of community life. In this condition Maulana Shaykh was present, and he was part of the Sasak community itself. Maulana Syaikh's expertise in fiqh-ushul fiqh created a new pattern in inheritance; dialoguing the customary inheritance system and the Islamic inheritance system with a different perspective; economic power.

The author's appreciation of Maulana Syaikh's work is as follows; *first*, his work aims to preserve knowledge about Islamic inheritance law so that it is not lost and not forgotten by the Sasak people; *second*, knowledge of inheritance law for the Sasak Muslim community at that time was new knowledge; *third*, in religion, Muslims should first know the basic teachings of religion and then use their minds to develop religious beliefs (Munir, 2019). It also means that Maulana Shaykh invites everyone to return to the basis of the ushul fiqh framework (Islamic methodology) before expanding their ideas in the religious social sphere.

### CONCLUSION

The interaction between customary and Islamic inheritance law systems in Indonesia produces a variety of dialectics involving the state, customary law, and religious social organizations. The diverse kinship systems of Indonesian society are a major factor in the resulting dialectic. Through the role of Maulana Syaikh, the dialectic of inheritance in Lombok produces a unique understanding (*fiqh*) and practices; combining the two inheritance systems (customary and Islamic) as a reference in community inheritance practices based on the concept of *masalah* and *'urf*, in line with the principles in *ushul fiqh* by prioritizing aspects of *maqashid al-syariah* studies.

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