

INTERPRETATION OF MAQASID SHARIA PRINCIPLES IN THE CONTEXT OF CHILDREN'S BEST INTEREST: To Avoid Dissenting Opinion On Adoption Motives

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ARTICLE INFO	ABSTRACT
<i>Article History</i> <i>Recieved Feb 2026</i> <i>Accepted Mar 2026</i> <i>Available April 2026</i>	The ambiguity of the phrase ‘best interests of the child’ in Article 39 of Law No. 23/2002 on Child Protection is a major source of potential dissenting opinions and disparity of decisions in the context of adoption in Indonesia. The absence of explicit and measurable juridical parameters opens room for subjective interpretation among judges and legal practitioners, hampering legal certainty and optimal protection of children's rights. This research aims to resolve the interpretative dilemma by proposing the interpretation of the <i>Maqasid Sharia</i> principle as a methodological framework. Using a qualitative normative research method with literature study and hermeneutic analysis, this research examines how the lofty goals of <i>Maqasid Sharia</i> particularly <i>hifz al-nafs</i> (preservation of the soul), <i>hifz al-aql</i> (preservation of the intellect), and <i>hifz al-nasl</i> (preservation of offspring) can provide more objective and structured guidance. The results show that the integration of <i>Maqasid Sharia</i> is able to minimise subjectivity, provide more consistent criteria for judges, and bridge positive law with universal benefit values, thereby reducing dissenting opinions and increasing legal certainty and the quality of child protection in adoption decisions.
<i>Keywords:</i> <i>Motive, Adoption,</i> <i>Dissenting Opinion,</i> <i>Maqasid Sharia</i>	

INTRODUCTION

Law No. 23/2002 on Child Protection, specifically Article 39, affirms that every decision regarding children, including in the context of adoption, must be based on the phrase ‘best interests of the child’.¹ However, this open norm juridical formulation, without explicit limitations or measurable parameters, has become a major source of potential dissenting opinions among academics and legal practitioners.² The ambiguity inherent in this provision opens up wide room for interpretation, allowing judges and legal experts to draw different conclusions based on a spectrum of philosophical, sociological and psychological perspectives on child welfare. This directly triggers differing views on how the principle of ‘best interests’ should be operationalised in concrete adoption cases, which in turn has the potential to result in disparities in decisions that are detrimental to legal certainty.

From a legislative science perspective, open-ended norms do require an in-depth and contextualised interpretation process to fill in the gaps in meaning.³ However, the absence of more specific guidelines in the law makes this interpretation vulnerable to subjectivity.⁴ When there are no standardised parameters, personal preferences or individual views of judges can dominate the decision-making process. This intrinsically increases the likelihood of dissenting opinions as a logical consequence of differences in interpretation methodologies and the weight given to various factors deemed relevant in determining a child's ‘best interests’. This phenomenon not only exposes structural weaknesses in legislation, but also highlights the urgency of seeking a more robust interpretative framework.

The implications of this lack of clarity are not only limited to the theoretical realm, but also have significant practical consequences in the adoption judicial process. According to Azizi (2025), the unclear juridical boundaries of the phrase ‘best interests of the child’ in Article 39 of Law No. 23/2002 on Child Protection, particularly in the context of adoption, has led to different interpretations among legal experts.⁵ The absence of measurable and firm parameters in the law opens room for subjectivity in its application, which in turn can trigger dissenting opinions among legal scholars and

¹ Indonesia, *Undang-Undang Republik Indonesia Nomor 23 Tahun 2002 Tentang Perlindungan Anak*, 2002.

² Urbanus Ura Weruin, ‘Dissenting Opinion Para Hakim Dalam Pengadilan: Fungsi Dan Ancamannya’, *Jiip - Jurnal Ilmiah Ilmu Pendidikan*, 7.10 (2024), 12359–67 <<https://doi.org/10.54371/jiip.v7i10.6183>>.

³ Umi Abadi, M. Husnu, Hajri, Wira Atma, & Muslikhah, ‘Implikasi Atas Perubahan Sikap Mahkamah Konstitusi Terhadap Pengujian Undang-Undang Yang Merupakan Kebijakan Hukum Terbuka, Melalui Putusan Mahkamah Konstitusi No. 116/PUU-XXI/ 2023’, *Journal Of Mandalika Science*, 3.1 (2024), 183–200 <<https://journal.institutemandalika.com/index.php/jomss>>.

⁴ I Wayan Yasa and Echwan Iriyanto, ‘Kepastian Hukum Putusan Hakim Dalam Penyelesaian Sengketa Perkara Perdata’, *Jurnal Rechtsens*, 12.1 (2023), 33–48 <<https://doi.org/10.56013/rechtsens.v12i1.1957>>.

⁵ M. Adib Ridwan Azizy, ‘Motif Adopsi Anak Dalam Perundang-Undangan Dan Dissenting Opinion Penetapan Pengadilan Agama Buol Nomor: 0083/Pdt.P/2018/PA.Buol’, *Juris Prudentia: Jurnal Hukum Ekselen*, 7.2 (2025), 116–38 <<https://journalversa.com/s/index.php/jhe>>.

practitioners regarding the criteria and implementation of this fundamental principle in judicial practice. Different interpretations of 'best interests' can lead to contradictory judgements in cases with factual similarities, creating legal uncertainty for the child, biological parents and prospective adoptive parents. This situation can prolong the legal process, increase the psychological burden for the parties involved, and damage public confidence in the justice system. Therefore, an in-depth analysis of the potential dissenting opinions caused by the ambiguity of Article 39 of Law No. 23/2002 is crucial in order to encourage the creation of legal certainty and optimal protection of children's rights.

To resolve interpretive dilemmas and minimise dissenting opinions in the context of adoption in the best interests of the child, this study proposes an innovative normative approach: interpretation through the principles of *Maqasid Sharia*. *Maqasid Sharia*, which is the lofty goal behind Islamic law, offers a holistic and comprehensive methodological framework to understand the substance and philosophy behind legislation. It is not mere textual interpretation, but rather an attempt to capture the spirit and ultimate goal of a norm, which in this context is the protection and welfare of children.

The application of the *Maqasid Sharia* framework that emphasises the protection of the soul (*hifz al-nafs*), mind (*hifz al-aql*), offspring (*hifz al-nasl*), religion (*hifz al-din*), and property (*hifz al-mal*) to the interpretation of the phrase 'best interests of the child' in Article 39 of the Child Protection Law is expected to provide more rigorous, measurable, and objective parameters. For example, *hifz al-nasl* (preservation of offspring) is directly relevant to the legality and continuity of lineage in adoption, while *hifz al-nafs* (preservation of soul) covers the physical and psychological aspects of the adopted child. This integration potentially provides a stronger foundation to reduce subjectivity and disparity in adoption decisions, resulting in more consistent and predictable decision outcomes.

Furthermore, the adoption of a *Maqasid Sharia* perspective in the interpretation of the best interests of the child in the context of adoption offers a bridge between universal values of child protection and Indonesia's positive legal framework. This approach allows for the formulation of more structured criteria to assess whether an adoption truly fulfils the best interests of the child, for example, by evaluating the extent to which the new environment can ensure the child's optimal physical, mental, emotional and social development. It can also serve as a guideline for judges in weighing various complex factors, ranging from the family background, the psychological condition of the child, to the capacity of prospective adoptive parents, with a more philosophical and substantial foundation.

The adoption of the *Maqasid Sharia* perspective in interpreting the best interests of the child in the context of adoption demands space to apply universal principles of child protection, while recognising the legal framework governed by Indonesia's positive legal system. The researchers point out that this approach serves as a bridge in integrating human values with Islamic norms to promote clearer criteria in evaluating

adoption practices.⁶ Referring to research on Islamic justice that considers the best interests of the child, this requires an in-depth assessment of how the new environment can support the child's optimal physical, mental, emotional and social development.⁷ In this context, adoption is not just about transferring a child's status, but also ensuring a better future for them within the ethical and spiritual framework promoted by *Maqasid Sharia*.⁸

The use of *Maqasid Sharia* principles also provides valuable guidance for judges who face a complex range of factors in the consideration of adoption, which include family background, the psychological condition of the child, and the likely capacity of prospective adoptive parents.⁹ With this foundation, judges can make decisions that are not only legally appropriate, but also socially and ethically just. This is important to avoid dissenting opinions and ensure that decisions are focussed on the best interests of the child, as part of a larger effort to protect children's rights within the existing legal system. This approach allows for increased understanding of the importance of adoption in helping children gain better access to the protection, education and emotional support they need.¹⁰

Innovative integration of *Maqasid Sharia* principles as a systematic and comprehensive interpretative framework to address the ambiguity of the phrase 'best interests of the child' in Article 39 of the Child Protection Law, particularly in the context of adoption. The conception contained in this research is key to building a more comprehensive framework regarding adoption in the context of Islamic family law, by linking *Maqasid Sharia* and normative perspectives in daily life practices. Therefore, the application of this approach is particularly relevant in the Indonesian context, given the challenges and richness of the existing legal culture.¹¹

Although there have been many studies on child protection and *Maqasid Sharia* separately, no study has explicitly and in-depth proposed *Maqasid Sharia* interpretation as a method to reduce dissenting opinions among judges and legal practitioners. This approach offers a normative solution that goes beyond mere textual interpretation,

⁶ Silfi Rizkina and Arief Suryono, 'Rights and Position of Adopted Children According to KHI and Common LAW', *Proceedings of the 1st International Conference on Social Science (ICSS)*, 3.2 (2024), 295–301 <<https://doi.org/10.59188/icss.v3i2.184>>.

⁷ Abdulraheem Abdulwahid Yusuph, 'Adoption Under Islamic Law: Correcting Misconceptions', *ICR Journal*, 9.2 (2018), 189–204 <<https://doi.org/10.52282/icr.v9i2.121>>.

⁸ Ermita Zakiyah, 'Maudhui's Tafsir Method in the Qur'an and Hadith on Maqasid Syariah for Economic Welfare in Indonesia', *Journal of Islamic Economics and Philanthropy*, 5.4 (2022), 235 <<https://doi.org/10.21111/jiep.v5i4.8289>>.

⁹ Ali Hamzah and others, 'Turkish State Family Law: History Reform, Legislation, and Legal Materials', *Politica: Jurnal Hukum Tata Negara Dan Politik Islam*, 7.1 (2020), 31–42 <<https://doi.org/10.32505/politica.v7i1.1621>>.

¹⁰ Daud Salman, 'Comparison of Ottoman Family Law Decree (Hak) and Islamic Family Law in Nigeria in the Framework of Divorce.', *Journal of Mediterranean Basin and African Civilizations*, 5.1 (2023), 79–96 <<https://doi.org/10.54132/akaf.1207735>>.

¹¹ Zainuri, Umi Cholidah, and Erika Ayu Pandini, 'The Influence of Maqasid Shariah Index and Shariah Business Good Governance on the Profit Growth of Islamic Commercial Banks in Indonesia', *Jurnal Ekonomi Syariah Teori Dan Terapan*, 10.4 (2023), 415–26 <<https://doi.org/10.20473/vol10iss20234pp415-426>>.

providing more structured and philosophically grounded parameters for determining the best interests of children, thus hopefully resulting in greater uniformity of judgement and legal certainty in Indonesia.

To clarify the original contribution of this study, it is crucial to map its position within the landscape of existing literature combining child adoption and the Maqasid Sharia framework. Previous studies predominantly apply Maqasid Sharia as a retrospective evaluative tool for specific societal or judicial anomalies in adoption practices. For instance, Indrisa and Marwa (2025) examined the phenomenon of unregistered adoptions, analyzing how a lack of formal registration contradicts the five basic pillars of al-kulliyat al-khamsah and strips children of legal protection.¹² Meanwhile, Kamala (2022) utilized the Maqasid Sharia lens to analyze an atypical judicial decision, demonstrating how judges exercised discretion to legitimize the adoption of an adult based on circumstantial *maslahah* and the prevention of *mafsadah*.¹³ While these academic works provide valuable insights into the status of adoptions, they focus strictly on the legality, administrative compliance, or specific outputs of separate adoption cases. In contrast, a significant research gap remains unexplored: no study has yet positioned Maqasid Sharia as a prospective, systematic interpretative method specifically designed to resolve statutory ambiguity and mitigate dissenting opinions among judges. While existing literature evaluates the outcome of the adoption itself, this research targets the methodology of statutory interpretation faced by judges dealing with the open-ended norm of the 'best interests of the child' in Article 39 of Law No. 23/2002. Therefore, the novelty of this study lies in its innovative conceptualization of Maqasid Sharia not merely as an ethical or evaluative concept, but as a structured, normative parameter to stabilize judicial discretion, reduce institutional subjectivity, and minimize decision disparities in Indonesian family law.

Therefore, this research aims to deeply analyse the potential for dissenting opinions resulting from the ambiguity of Article 39 of Law Number 23 Year 2002 and, more importantly, explore how *Maqasid Sharia* interpretation can be a substantive solution. Hopefully, this approach will not only contribute to the achievement of uniformity and legal certainty in adoption decisions, but also fundamentally improve the protection of children's rights more optimally in the Indonesian legal system, in line with universal values of justice and benefit.

METHOD

1. Research Design and Legal Materials

This study employs a qualitative, normative research method (literature review). The normative approach was chosen because the primary focus of this study is to

¹² Echa Indrisa, Muhammad Habibi Miftakhul Marwa, 'Analisis Terhadap Pengangkatan Anak Tanpa Pencatatan Perspektif Maqashid Syariah', *Jurnal USM Law Review* Vol 8 No 3 (2025) 1440-1464

¹³ Arini Dina Kamala, Maqashid Syariah Putusan Nomor 378/Pdt.P/2019/PA.Tbn Tentang Pengangkatan Anak Dewasa, SAKINA: JOURNAL OF FAMILY STUDIES, Vol 6 Issue 1 (2022), Available online at: <http://urj.uin-malang.ac.id/index.php/jibl>

examine and analyse legal norms, namely Article 39 of Law No. 23 of 2002 on Child Protection, and to interpret them through the framework of the principles of Maqasid al-Shari'ah.

This study employs a normative legal research design (doctrinal research) with a juridical and conceptual approach. To ensure a comprehensive analysis, this study utilises both primary and secondary legal sources.

The data to be used is presented in the following table:

Table 1. Primary and secondary legal sources

Primary Materials	Legal	The analysis is not limited to Law No. 23 of 2002 on Child Protection (and its amendments). It fundamentally integrates interrelated legal frameworks governing adoption in Indonesia, including Government Regulation (PP) No. 54 of 2007 on Child Adoption, Law No. 4 of 1979 on Child Welfare, and the Compilation of Islamic Law (KHI). Furthermore, selected Supreme Court jurisprudence containing dissenting opinions or disparities in adoption rulings are analyzed to demonstrate the practical implications of statutory ambiguity: Religious Court (PA) of Tuban Decision No. 378/Pdt.P/2019/PA.Tbn and No.0033/Pdt.P/2010/ PA.Dmk, Buol Religious Court Decision No. 0083/Pdt.P/2018/PA.Buol.
Secondary Materials	Legal	These encompass classical and contemporary Islamic jurisprudence literature, peer-reviewed academic journals, and legal dictionaries.

2. Literature Selection Criteria and Timeframe

To ensure the relevance and novelty of the secondary data, the literature collection was conducted based on strict inclusion criteria. The academic journals selected were restricted to publications from the last ten years (2016–2026) to capture contemporary debates on child adoption, open norms, and the modern application of Maqasid Sharia. The search was systematically executed across reputable databases (such as Scopus, google scholar, DOAJ, and SINTA) using specific keywords: "Maqasid Sharia," "child adoption," "best interests of the child," and "open norm". Conversely, classical texts serving as the foundational theory of Islamic law were exempt from this time restriction to preserve the ontological roots of the Maqasid concept.

3. Operational Hermeneutic Analysis

The collected legal materials were analyzed qualitatively using legal hermeneutics. Rather than merely describing the laws, the hermeneutic method is operationalized in this study through three systematic stages to bridge Maqasid Sharia with positive legal norms:

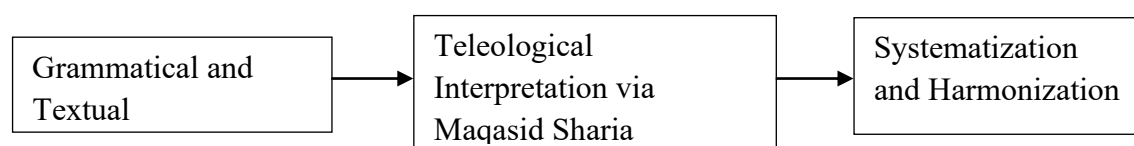


Figure 1. Data analysis methods

- a. First, dissecting the literal ambiguity of the phrase "best interests of the child" within Article 39 of Law No. 23/2002 to identify the exact legal loopholes that allow for subjective judicial discretion.
- b. Second, contextualizing the fundamental purpose of the law (*ratio legis*) by projecting the five pillars of Maqasid Sharia (*al-kulliyat al-khamsah*: protection of religion, life, intellect, lineage, and property) onto the adoption context. For example, operationalizing *hifz al-nasl* (protection of lineage) to ensure adoption does not sever biological ties, which harmonizes with the principles in KHI.
- c. Finally, synthesizing these Maqasid values into concrete, standardized legal parameters that can be integrated into the implementation framework of PP No. 54/2007. This final stage translates abstract Islamic ethical values into workable positive legal indicators, offering a unified standard for judges to prevent arbitrary rulings and dissenting opinions.

DISCUSSION

1. The Ambiguity of “The Best Interests of the Child” in the Child Protection Law and the Potential for Differing Opinions

The phrase ‘best interests of the child’, enshrined in Article 39 of Law No. 23/2002 on Child Protection, and repeated in various derivative regulations, is a normative core that should be the main compass in any decision-making regarding children, including in the context of adoption. However, instead of providing clear direction, this formulation is the main source of significant juridical ambiguity. Its characteristic as an open norm, i.e. a legal provision that is deliberately formulated in a broad and abstract manner, is actually intended to provide flexibility for judges in adjusting decisions to an infinite variety of cases.¹⁴ However, in the absence of rigid and measurable parameters in the legislation, this flexibility paradoxically turns into a wide and subjective range of interpretations, which directly triggers the need for a stronger interpretative framework.

The absence of an explicit definition of ‘best interests of the child’ in the law is often a source of diverse interpretations among judges and legal practitioners. The research conducted by Budi et al. asserts that this principle should be a key consideration in all legal decisions related to children, particularly in the context of Islamic law which describes the characteristics of this principle.¹⁵ The researchers highlighted that differences in judges' cultural, educational and moral backgrounds often influence how they interpret the best interests of the child. The same was found in

¹⁴ Dwiky Arief Darmawan and Andy Usmina Wijaya, ‘Teori Opened Legal Policy Dalam Putusan Mahkamah Konstitusi Nomor 90/Puu-Xxi/2023’, *Gorontalo Law Review*, 7.1 (2024), 111 <<https://doi.org/10.32662/golrev.v7i1.3355>>.

¹⁵ Kukuh Pramono Budi and others, ‘Adjudicating Joint Property Dispute in Islamic Jurisprudence: Balancing the Best Interests of the Child With a Focus on Residency’, *Syariah: Jurnal Hukum Dan Pemikiran*, 23.2 (2023), 245–66 <<https://doi.org/10.18592/sjhp.v23i2.12278>>.

Anwar and Wijaya's study, which showed that the application of the best interests principle is often ignored by judges in cases of children in conflict with the law, suggesting that the absence of clear guidelines results in disparities in court decisions.¹⁶

Other studies have also revealed the uncertainty that surrounds this concept. Edlund and Stehlík point out that the lack of solid criteria for defining the best interests of the child often leads to the use of this principle to justify decisions that may not reflect the true interests of the child.¹⁷ On the other hand, Wertheimer and Wiener note that stereotypes and stigmatising judgements against parents, including those who have been in conflict with the law, can influence the outcome of child custody decisions. This adds a layer of complexity to how judges interpret what is in the best interest of the child in varied contexts.¹⁸

Furthermore, judges' overly subjective approach in assessing the best interests of the child can lead to inconsistencies in decision-making. Leloup notes that the use of this principle in court decisions is often inconsistent, creating challenges in the implementation of laws that are fair and favourable to children.¹⁹ The principle of the best interests of the child should not only be a stated principle, but also in practice, should involve clearer and more consistent guidelines so that it can be referred to in every legal decision relating to children.²⁰ Overall, socialisation and education on the best interests of the child is needed to create a better understanding among judges, lawyers and all parties involved in the legal process to protect children's rights. Through a more consistent and clear approach, disparities in judgements can be addressed and the interests of children comprehensively protected.²¹

The absence of an explicit definition or operational indicators of what concretely constitutes the 'best interests of the child' has opened the door for multiple interpretations. Judges and legal practitioners are often forced to rely on their own personal perspectives, educational backgrounds, moral values, and even sociological or psychological views in determining the best interest standard. For example, one judge may place economic stability as a top priority, while another may place more emphasis

¹⁶ Mashuril Anwar and M Ridho Wijaya, 'Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum: Studi Putusan Pengadilan Tinggi Tanjung Karang', *Undang: Jurnal Hukum*, 2.2 (2020), 265–92 <<https://doi.org/10.22437/ujh.2.2.265-292>>.

¹⁷ Jennie Edlund and Václav Stehlík, 'The Uncertain Place of the Child's Best Interests in ECtHR's Immigration Case Law', *International and Comparative Law Review*, 20.2 (2020), 93–112 <<https://doi.org/10.2478/iclr-2020-0019>>.

¹⁸ J Wertheimer and R. L. Wiener, 'Custody Judgments, Ex-offender Parents, and Best Interests of the Child', *Analyses of Social Issues and Public Policy*, 1.22 (2020), 230–63 <<https://doi.org/https://doi.org/10.1111/asap.12199>>.

¹⁹ M Leloup, 'The Principle of the Best Interests of the Child in the Expulsion Case Law of the European Court of Human Rights: Procedural Rationality as a Remedy for Inconsistency', *Netherlands Quarterly of Human Rights*, 1.37 (2019), 50–68 <<https://doi.org/https://doi.org/10.1177/0924051918820986>>.

²⁰ L Lonardo, 'The Best Interests of the Child in the Case Law of the Court of Justice of the European Union.', *Maastricht Journal of European and Comparative Law*, 5.29 (2022), 596–614 <<https://doi.org/https://doi.org/10.1177/1023263x221144829>>.

²¹ Minela Đerlek, 'Deprivation of Parental Rights and "the Best Interest of the Child"', *LAW - Theory and Practice*, 41.1 (2024), 151–63 <<https://doi.org/10.5937/ptp2401151d>>.

on emotional ties with biological parents, or even the child's educational development potential. The different weightings on these factors inherently trigger dissenting opinions within judges or disparity of judgements between courts in similar adoption cases, suggesting that the current interpretative approach is inadequate.

Child adoption in Indonesia is a complex issue involving various legal aspects, both from the perspective of national positive law and Islamic law. In the context of adoption litigation, there are significant dynamics related to interpretation by members of the panel of judges, particularly regarding the principle of 'best interests of the child'. This can prolong the litigation process and add uncertainty for the parties involved. Several studies have shown that in child adoption cases, differing views can have an impact on court decisions. Umar et al. note that adoption law in Indonesia encompasses a variety of viewpoints, including from national law and Islamic law.²² This leads to the possibility of dissenting opinions, especially when there are different legal approaches in determining the status of the adopted child.

Furthermore, Lubis et al. also explained that in the context of Indonesian family law, there is a dynamic between positive law and social and cultural norms relating to adoption. This can lead to different interpretations among judges.²³ This research highlights the importance of considering the local legal and social context in the adoption judicial process, which can lead to decisions that accommodate a range of views.²⁴ Analyses by Judges show that religious courts in Indonesia are becoming arenas where legal interpretations can conflict. In this context, dissenting opinions may represent dissatisfaction with the application of existing legal norms.²⁵ This is in line with the view of Fauzi et al. who emphasise that the status and position of adopted children in the Islamic legal system shows differences of opinion among judges.²⁶

Conflicts of interpretation in adoption litigation do not only occur in Indonesia, but also in various jurisdictions around the world. Dissenting opinions may reflect similar challenges to the principle of 'best interests of the child' at the international level, providing a broader context for understanding how the law functions in social reality. This potential for dissenting opinions is not only theoretical, but has real impact in adoption court practice. Within a panel of judges, for example, different members may have contradictory interpretations of what crucial elements should be prioritised. It is not uncommon for this to lead to intense internal debate, and even if consensus is

²² Hasbi Umar, Husin Bafadhal, and Arnelli Darwita, 'Adopted Children in the Perspective of National Law and Islamic Law in Indonesia', *Journal of Social Research*, 2.7 (2023), 2491–2503 <<https://doi.org/10.55324/josr.v2i7.1157>>.

²³ Aldi Subhan Lubis, Revi Fauzi Putra Mina, and Nabila Fahira Nasution, 'Legal Studies on Child Adoption in the Indonesian Family Context: A Juridical Review', *Jurnal Multidisiplin Madani (MUDIMA)*, 4.3 (2024), 417–26 <<https://doi.org/10.55927/mudima.v4i3.8410>>.

²⁴ Arief Rachman Hakim, 'Adoption of Children in the Perspective of National Law and Its Relation to Religious Courts', *KnE Social Sciences*, 2024 (2024), 502–9 <<https://doi.org/10.18502/kss.v9i2.15007>>.

²⁵ Hakim.

²⁶ Ahmad Fauzi and others, 'Controversy of Adopted Children Status and Foster Father in the Marriage Process Based on Islamic Law Perspective', *Journal of Progressive Law and Legal Studies*, 1.02 (2023), 131–43 <<https://doi.org/10.59653/jplls.v1i02.100>>.

eventually reached, the process may take a long time and add uncertainty. If consensus is not reached, then the dissenting opinion becomes an explicit manifestation of fundamental disagreement with the application of the norm. This phenomenon has been observed in various jurisdictions, where the concept of ‘best interests of the child’ has also faced similar interpretation challenges, confirming that this problem is not unique to Indonesia, but the solution must be relevant to the local legal and social context.

In the context of progressive law, the application of an open-ended norm such as ‘the best interests of the child’ must go through a flexible interpretation that is responsive to socio-cultural changes. This interpretation process is crucial to ensure that the norm remains relevant to the evolving dynamics of society. For example, in the Indonesian legal system, judges are required to explore and understand the legal values that live in society, in accordance with Article 5 paragraph (1) of the Judicial Power Law. This reflects that the law does not simply act as a static rule, but requires adjustments in practice to fulfil larger social goals, including in child adoption cases.²⁷

However, challenges arise when there is no clear framework to guide legal interpretation, with the potential for unguided judicial activism to blur the boundaries of existing norms. It is feared that this could harm the principle of legal certainty (*rechtszekerheid*), which is a fundamental cornerstone of the justice system. When the law is not applied consistently, the public will experience confusion in understanding how the law works, which is contrary to the need for legal certainty in various aspects, including child protection in the adoption process.²⁸

From a progressive legal perspective, an open-ended norm such as ‘best interests of the child’ requires a dynamic and adaptive process of interpretation. However, this adaptation must be framed within a consistent and predictable framework. Without such a framework, interpretation becomes vulnerable to unguided ‘judicial activism’, with judges potentially creating new norms without a solid foundation. This runs counter to the essential principle of legal certainty (*rechtszekerheid*) in the justice system, where the public requires clarity on how the law will be applied, thus demanding an interpretation methodology that can provide consistency.

A comparison with other legal systems shows that while the concept of ‘best interests of the child’ is universal, developed countries tend to have more detailed (though not absolute) guidelines or lists of factors that courts should consider. For example, in some Western countries, there are checklists that include health, education, social environment, and the child's preferences (according to age and maturity) as guidelines. The absence of similar robust guidelines in Indonesia exacerbates the problem of ambiguity and increases the scope for divergent interpretations, highlighting the urgency to develop a guiding framework that is specific and relevant to the Indonesian context.

²⁷ Suwito Suwito, ‘Putusan Hakim Yang Progresif Dalam Perkara Perdata (Telaah “Kasus Pohon Mangga”)', *Hasanuddin Law Review*, 1.1 (2015), 101 <<https://doi.org/10.20956/halrev.v1n1.43>>.

²⁸ Ida Made Oka Wijaya, ‘Restorative Justice Dalam Tinjauan Hukum Progresif: Eksistensi Dan Implikasi’, *Indonesia Berdaya*, 3.3 (2022), 707–18 <<https://doi.org/10.47679/ib.2022297>>.

Another implication of this ambiguity is the potential for discrimination and injustice. Without clear parameters, adoption decisions may be influenced by prejudices or biases that judges are unaware of. For example, socio-economic factors or the religious background of prospective adoptive parents may indirectly influence the assessment of 'best interests', when the primary focus should be on the welfare of the child. This can cause unrest among the public and erode trust in the objectivity of the judiciary, hence the need for a framework that can minimise subjective bias and ensure fairness.

In discussing the concept of 'best interests of the child' in the context of child adoption in Indonesia, there is a clear comparison with other legal systems, especially in developed countries. Although the concept is universal, developed countries tend to provide more detailed guidelines or lists of factors for the courts' guidance. According to Damayanti and Arfittariah, adoption should be conducted with consideration focused on the best interests of the child, and this should be followed by criteria that can assist in determining the eligibility of prospective adoptive parents.²⁹ This is important because the absence of clear and robust guidelines in Indonesia can lead to ambiguity in court proceedings, as revealed in research by Istriani and Khoiriyah, which showed that vagueness in legal criteria can lead to discrimination and unfairness in legal proceedings.³⁰ In the face of these obstacles, the judiciary must adopt a strategy that focuses not only on legal compliance, but also on the fulfilment of children's rights, ensuring that every decision made truly reflects the best interests of the child. A more holistic approach is essential to prevent discrimination and create justice in every child adoption process.

In addition, the ambiguity of Article 39 also complicates advocacy efforts and legal protection for children and parties involved in the adoption process. Lawyers often struggle to predict the outcome of judgements as there is no clear standard they can refer to or use as a basis for argumentation. This makes the adoption process more complex, costly and time-consuming, which can ultimately be detrimental to children who need certainty of legal status and a stable environment, making the need for a more definitive interpretation a priority.

The ambiguity contained in Article 39 poses serious challenges to advocacy efforts and legal protection for children and parties involved in the adoption process. This ambiguity makes it difficult for lawyers to predict the outcome of judgements in the absence of clear legal standards that can be used as a reference in making arguments. According to the research, ambiguities in policy definitions and professional roles in the legal context affect advocacy practices, where lawyers have to operate within uncertain boundaries, making the adoption process more complex and

²⁹ Elsa Damayanti and Arfittariah, 'Sistem Pendukung Keputusan Penentuan Kelayakan Calon Orang Tua Angkat Menggunakan Metode Ahp-Topsis', *Jurnal Sains Dan Sistem Teknologi Informasi (SANDI)*, 5.2 (2023), 146–53 <<https://doi.org/10.35508/JME->>.

³⁰ Istriani and Laila Marotus Khoiriyah, 'Penerapan Asas Kepentingan Terbaik Bagi Anak Berdasarkan Perpektif Undang-Undang Sistem Peradilan Pidana Anak', *Literatus*, 4.2 (2022), 685–91 <<https://doi.org/10.37010/lit.v4i2.871>>.

inefficient.³¹ As a result, this lengthy and costly process negatively affects children who require certainty of legal status and a stable environment, making the expansion of legal definitions and interpretations crucial.³²

Not only that, but inconsistent regulations on adoption are also influential. The history of adoption legislation shows variations in implementation that can cause injustice to children.³³ Furthermore, research shows that the absence of clear standards and varied judgements in the courts add to the layers of ambiguity lawyers face in advocating for children's rights.³⁴ In this context, adoption should be handled more judiciously, according to the legal and social needs of the children involved. There should be a review of adoption-related regulations and a more holistic approach to ensure the protection of children's rights.³⁵

The uncertain and prolonged process of adoption underscores the need for more robust and clear legal revisions to support the effective protection of children. A comprehensive understanding of the roles and responsibilities of adoptive parents should be the focus of any legislative reform.³⁶ This is essential to create an enabling environment for adopted children, so that they are guaranteed adequate legal rights and status and stability in their lives.³⁷ In essence, there is an urgency to address the ambiguities in Article 39 that not only complicate legal advocacy but also pose risks to the welfare of children in relation to adoption. Therefore, constructive dialogue and legal reforms that focus on protecting children's rights should be prioritised, in order to create the necessary certainty in the adoption process.³⁸

This condition confirms that although the principle of 'best interests of the child' has noble intentions, its legal formulation in Indonesia is not sufficient to provide strong and consistent guidance. This lacuna is fertile ground for the emergence of dissenting opinions and disparity in judgements. Therefore, constructive efforts are needed to enrich the interpretation of this norm with a framework that can offer objectivity, consistency and predictability, so that the goal of child protection can be optimally achieved. Analysing this problem is fundamental before offering a more holistic interpretative solution, and this is what underlies the urgency to seek new approaches, such as *Maqasid Sharia*.

This phenomenon also underscores the challenge of harmonising universal child protection values with local legal and social contexts. The phrase 'best interests of the

³¹ Lubis, Mina, and Nasution.

³² Hakim.

³³ Dewi Indriani and others, 'Determination of Adoption of Children in Judicial Settings in Religious Courts and District Courts Batusangkar', *Journal International Dakwah and Communication*, 2.1 (2022), 31–38 <<https://doi.org/10.55849/jidc.v2i1.107>>.

³⁴ Umar, Bafadhal, and Darwita.

³⁵ Lubis, Mina, and Nasution.

³⁶ Umar, Bafadhal, and Darwita.

³⁷ Glad Mauraina, Angel Pratiwi, and Dian Purnama, 'Child Adoption By Unmarried Person in the Indonesian Civil Law System', *Cepalo*, 5.2 (2021), 141–56 <<https://doi.org/10.25041/cepalo.v5no2.2390>>.

³⁸ Ogwezzy, 'Legal Perspective of Child Adoption under the Nigerian Law', *Agora International Journal of Juridical Sciences*, 2.12 (2018), 57–63 <<https://doi.org/https://doi.org/10.15837/aijjs.v12i2.3467>>.

child' is a translation of an international concept adopted from instruments such as the UN Convention on the Rights of the Child. However, its implementation at the national level often encounters obstacles due to different legal systems, cultures and interpretations of values. Herein lies the urgency to find an interpretative bridge that can bridge this gap, ensuring that the implementation of the law is not only in line with the international spirit but also relevant and effective in Indonesia's domestic context, making *Maqasid Sharia* a strong candidate for such a bridge.

Ultimately, this ambiguity is not just a technical legal issue, but has deep ethical and moral dimensions. The adoption decision is a fundamental life decision for a child. The lack of certainty in the determination of 'best interests' means leaving the child's future to overly subjective interpretations, potentially resulting in injustice or sub-optimal outcomes for the child. This emphasises the urgent need for an interpretative framework that can provide more certain and objective guidance to legal decision-makers, and this is the *raison d'être* of the proposed interpretation of *Maqasid Sharia*.

2. Empirical Urgency: Analyzing Judicial Disparity and Dissenting Opinions in Indonesian Courts

To prove that the urgency of the Maqasid Sharia approach is not purely theoretical, it is essential to analyze the empirical reality of judicial practices in Indonesia, where ambiguities in positive law often lead to disparities and dissenting opinions. A prominent example of judicial disparity can be seen when comparing the Religious Court (PA) of Tuban Decision No. 378/Pdt.P/2019/PA.Tbn and No.0033/Pdt.P/2010/PA.Dmk Both cases involved the adoption of an adult (over 18 years old), which formally contradicts the age limit set by Indonesian adoption regulations.³⁹

In the Demak case, the panel of judges strictly adhered to the formal positive law, rejecting the adoption application because the prospective adoptee was an adult, married, and deemed capable of self-care.⁴⁰ Conversely, in the Tuban decision, the judges approved the adoption of a 23-year-old unmarried woman. Using the lens of Al-Syatibi's Maqasid Sharia, the Tuban decision illustrates the principle of prioritizing the prevention of harm (*dar'u al-mafasid*) and realizing benefits (*jalb al-masalih*).⁴¹ Despite violating formal age requirements, the judges recognized that an unmarried female adult without parental support still requires protection from negative societal influences and moral degradation, effectively prioritizing *hifz al-nafs* (protection of the soul) and *hifz al-din* (protection of religion). This disparity highlights how the absence of a standardized Maqasid framework leaves judges relying on divergent interpretations of formal rules versus substantive justice, creating inconsistent legal precedents.

³⁹ Religious Court (PA) of Tuban Decision No. 378/Pdt.P/2019/PA.Tbn and No.0033/Pdt.P/2010/PA.Dmk

⁴⁰ Khofifah Nabila, Mhd Yadi Harahap, Dissenting Opinion Pengangkatan Anak oleh Kakek Kandung Analisis Putusan Pengadilan Agama Demak No.0033/Pdt.P/2010/PA.Dmk, *Uness Law Review*, Vol. 6, No. 2, (2023), 6464-6472 <https://doi.org/10.31933/unessrev.v6i2>

⁴¹ Arini Dina Kamala.

The empirical need for *Maqasid Sharia* is further reinforced by cases explicitly featuring dissenting opinions, such as the Buol Religious Court Decision No. 0083/Pdt.P/2018/PA.Buol. This case involved biological grandparents seeking to adopt their grandchild primarily to include the child in the grandfather's Civil Servant (PNS) dependent list. The majority of the panel rejected the petition; however, a dissenting opinion was issued by one of the member judges, Muhammad Jalaluddin. He argued that the adoption met the criteria for the "best interests of the child," as the grandparents were highly capable of fulfilling the child's material, physical, and spiritual needs.⁴²

The dissenting opinion in the Buol case stems directly from the ambiguity of the phrase "best interests of the child" found in Article 39 of Law No. 23 of 2002 concerning Child Protection. Because this phrase functions as an "open norm" without rigid and measurable parameters, it opens the door to immense subjectivity, allowing legal practitioners to interpret economic and administrative motives either as a valid form of child welfare or an invalid circumvention of administrative rules.⁴³

If the courts had applied a structured *Maqasid Sharia* framework, the parameters for "best interests" would be objectively measured through the *dharuriyat al-khams* (the five basic objectives). The judges could systematically evaluate whether the administrative and financial benefits (aligning with *hifz al-mal* or preservation of wealth) outweighed potential disruptions to the child's lineage identity and psychological status (*hifz al-nasl* and *hifz al-aql*). Thus, integrating *Maqasid Sharia* into positive law is not merely an academic exercise; it is an empirical necessity to minimize subjective dissenting opinions, bridge the gap between administrative implications and family relations, and provide robust legal certainty in complex adoption disputes.

3. Measurable Parameters of *Maqasid Sharia* in Court Proceedings

To transition *Maqasid Sharia* from a philosophical concept into a functional judicial tool, it is imperative to establish concrete, measurable parameters. The primary weakness of the current interpretation of the "best interests of the child" is the absence of objective evidentiary standards during court trials. To eliminate subjectivity and prevent dissenting opinions, judges must operationalize the five pillars of *Maqasid Sharia* (*al-kulliyat al-khamsah*) into specific judicial questions and demand verifiable material evidence during the evidentiary stage of the trial.

The following matrix illustrates how the *Maqasid Sharia* framework can be systematically applied as a practical checklist for judges in adoption cases:

Table 2. Measurable Indicators of *Maqasid Sharia* in Adoption Proceedings

Maqasid Principle	Key Judicial Questions for the "Best Interests"	Concrete Evidence Required in Court
1. <i>Hifz al-Nafs</i> (Preservation of Soul/Life)	Is the child's physical safety, health, and mental well-being guaranteed in the prospective	Health/medical certificates of the prospective parents; psychological assessment reports; social worker reports

⁴² Buol Religious Court Decision No. 0083/Pdt.P/2018/PA.Buol.

⁴³ M. Adib Ridwan Azizy

	home?	regarding the safety of the housing conditions; post-mortem/visum (in cases of prior abuse).
2. <i>Hifz al-Aql</i> (Preservation of Intellect)	Is the child's cognitive development and access to sustainable, quality education assured?	Proof of school registration or educational planning; financial projection or savings plan specifically allocated for the child's education.
3. <i>Hifz al-Nasl</i> (Preservation of Lineage/ Identity)	Are the child's biological origins, fundamental identity, and legal status preserved and transparent?	Authentic birth certificates; formal written consent from biological parents; an explicit, written commitment from adoptive parents to disclose the child's true origins upon maturity.
4. <i>Hifz al-Din</i> (Preservation of Religion)	Will the child's religious identity be respected, protected, and nurtured without coercion?	Identity cards (KTP) proving religious alignment between the prospective parents and the child; written statements guaranteeing religious education and freedom of worship.
5. <i>Hifz al-Mal</i> (Preservation of Property)	Are the child's basic material needs met, and are future financial rights (e.g., inheritance) secured?	Income statements/salary slips of the prospective parents; formal written agreements regarding wasiat wajibah (mandatory bequest) or hibah (grants) to secure the adopted child's future assets.

By utilizing the matrix above, the abstract phrase of the "best interests of the child" is systematically decoded into empirical legal facts (*fakta hukum*). When a judge evaluates an adoption petition, the decision is no longer based on personal intuition or unguided discretion, but rather on whether the prospective adoptive parents can provide the concrete documents listed in the matrix. Consequently, if a panel of judges adheres to this standardized Maqasid checklist, the space for arbitrary interpretations is drastically narrowed, thereby significantly minimizing the potential for dissenting opinions and establishing robust legal certainty.

4. *Maqasid al-Sharia* as a Pillar of Interpretation to Avoid Dissenting Opinions in Adoption

The integration of *Maqasid Sharia* principles offers a transformative and substantive interpretative paradigm to overcome the ambiguity of the phrase 'best interests of the child' in the context of adoption, as well as being an effective instrument in minimising dissenting opinions. *Maqasid Sharia* is not just a list of objectives, but rather a philosophy of Islamic law that aims to realise the benefit of the good and reject the mafsadat (harm and danger) for mankind in this world and the hereafter.⁴⁴ The five

⁴⁴ Idul Adnan and others, 'Menggali Prinsip-Prinsip Hukum Keluarga Islam: Perspektif Keseimbangan Antara Tradisi Dan Modernitas', *Al-Balad: Jurnal Hukum Tata Negara Dan Politik Islam*, 1.1 (2023), 13–20.

basic objectives (*dharuriyat al-khams*), namely the maintenance of religion (*hifz al-din*), soul (*hifz al-nafs*), intellect (*hifz al-aql*), offspring (*hifz al-nasl*), and property (*hifz al-mal*), can be used as a lens to elaborate and give concrete meaning to the ‘best interests of the child’ with a strong and tested foundation.

In a study by Hardiyatullah et al, it was revealed that the importance of a balance between tradition and modernity in the application of Islamic family law is key to providing relevant solutions even in complex situations, such as adoption.⁴⁵ This research shows that an approach that integrates *Maqasid Sharia* principles can provide a coherent framework for evaluating the best interests of the child, which can minimise dissenting opinions that usually arise in society.⁴⁶ Sugitanata also emphasises that the reform of Islamic family law in Indonesia, including the understanding of child custody, must be based on the interests of the community in accordance with the changing needs of a dynamic society.⁴⁷

The five major objectives in *Maqasid Sharia* of preserving religion, soul, mind, offspring and property can be used as guidelines in interpreting the ‘best interests of the child’.⁴⁸ With this approach, the assessment of adoption decisions can be more in-depth and based on proven principles. This is in line with Rizal et al.'s research, which emphasises the importance of legal protection for children in the family context and how existing laws should reflect their best interests.⁴⁹ *Maqasid Sharia* is therefore an important tool in ensuring that any decision taken in the context of adoption prioritises the welfare of children, by providing alternatives that are in line with universal values of justice and family welfare.⁵⁰

In the context of adoption, *hifz al-nasl* (preservation of offspring) has crucial relevance. This principle is not only related to the continuity of biological lineage, but also includes aspects of maintaining the child's identity, legal status, and healthy kinship relationships. This is why *Maqasid Sharia* is relevant: in adoption, *Maqasid Sharia* would encourage judges to ensure that the adoption process does not completely sever ties with the biological family (where possible and in the best interests of the child), but rather provides legal certainty and identity for the child. This can serve as a guideline to weigh the importance of information on the child's origins and the child's right to know

⁴⁵ Arif Sugitanata, ‘Transformasi Konsep Hadhanah Di Indonesia: Analisis Kemaslahatan Pada Surat Edaran Mahkamah Agung Nomor 1 Tahun 2017’, *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab*, 3.2 (2023), 302–16 <<https://doi.org/10.59259/jd.v3i2.66>>.

⁴⁶ Andi Darna, ‘Perkembangan Hukum Islam Di Indonesia: Konsep Fiqih Sosial Dan Implementasinya Dalam Hukum Keluarga’, *El-Usrah: Jurnal Hukum Keluarga*, 4.1 (2021), 90–107 <<https://doi.org/10.22373/ujhk.v4i1.8780>>.

⁴⁷ Sugitanata.

⁴⁸ Marli Candra, Umi Asmaul Fauziah Adha, and Athifatul Wafirah, ‘Menjaga Keharmonisan Keluarga Melalui Ruqyah Perspektif Maqashid Syariah’, *El-Usrah: Jurnal Hukum Keluarga*, 4.2 (2021), 430–48 <<https://doi.org/10.22373/ujhk.v4i2.9022>>.

⁴⁹ Deri Rizal, Desi Asmaret, and Muhammad Hizbi Islami3 Islami, ‘Perlindungan Hukum Keluarga Islam Di Indonsia Terhadap Korban Kekerasan Seksual’, *EL-Hekam: Jurnal Studi Keislaman*, 2020, 137–45.

⁵⁰ Darna.

his or her biological parents, which are often complex issues in adoption practice that without clear guidance can trigger dissenting opinions.

Furthermore, *hifz al-nafs* (preservation of the soul) and *hifz al-aql* (preservation of the intellect) are directly related to the physical well-being, psychological and cognitive development of children. Why does *Maqasid Sharia* offer an advantage here? Because when determining 'best interests', judges can refer to these principles to evaluate whether the proposed adoptive environment will provide adequate nutrition, physical security, affection, emotional support and intellectual stimulation. *Maqasid Sharia* will encourage a holistic approach that looks at not only the material aspects, but also the mental and emotional balance of the child. This provides a more comprehensive framework than simply looking at the prospective parents' financial means, which is often the sole focus and leads to differing views among judges.

The principle of *hifz al-din* (maintenance of religion) is also relevant, especially in the context of Indonesia's religious society. Although the state guarantees freedom of religion, in adoption, consideration of the religious alignment between the child and prospective adoptive parents can be an important factor to maintain the continuity of the child's identity and spiritual values, especially if the child already has a certain religious understanding. *Maqasid Sharia* reasoning is needed here: it will guide the judge to consider how the adoption environment can support or honour the spiritual aspects of the child, without imposing a particular faith. This offers a more in-depth perspective compared to secular approaches that may overlook this important dimension, which if ignored can be a source of debate and dissenting opinions.

The adoption of the *Maqasid Sharia* framework will provide more objective and structured parameters for judges in weighing various factors in adoption cases. This is the essence of why *Maqasid Sharia* can avoid dissenting opinions: Instead of relying on intuition or personal preference, judges can refer to these predetermined lofty goals as philosophically agreed guidelines. For example, in the face of a dilemma between retaining a child with economically disadvantaged biological parents versus giving them up to wealthy adoptive parents, *Maqasid Sharia* would encourage a deeper look into aspects of *hifz al-nafs* (physical/mental health and security) and *hifz al-nasl* (identity and healthy development of offspring), rather than solely material factors. This provides a stronger basis for consensus.

With clearer guidance based on *Maqasid Sharia*, the potential for dissenting opinions can be significantly minimised. Judges will have a more robust common frame of reference to analyse the facts of the case and reach more consistent conclusions. Dissenting opinions may still exist, but they will be narrower in scope and centred on the application of the principle, rather than on the fundamental interpretation of 'best interests' itself. This is the main *raison d'être* of using *Maqasid Sharia*: it increases the predictability of court judgements and provides much-needed legal certainty in adoption cases, as all parties operate under the same philosophical understanding.

Furthermore, the application of *Maqasid Sharia* can serve as a bridge between positive law and socio-religious values that live in Indonesian society. Why is this bridge

crucial to avoid dissenting opinions? Because in a context where adoption often intersects with customary and religious norms, this framework provides legitimacy and a stronger philosophical foundation for court judgements. This not only increases the acceptability of the judgement in the eyes of the public, but also strengthens the moral and ethical basis of child protection. The law is no longer seen as an entity separate from the noble values of society, but rather as a manifestation of those values, thereby reducing conflicts of interpretation rooted in differences in values.

The application of *Maqasid Sharia* in the context of positive law in Indonesia serves as a bridge between legal norms and socio-religious values prevailing in society. This relationship becomes all the more important in issues such as adoption, where conflicting opinions may arise from various viewpoints, be it customary, religious, or secular law. In this case, *Maqasid Sharia* provides legitimacy and a solid philosophical foundation for legal decisions, which in turn creates greater public acceptability of court decisions. This research shows that when laws are formed based on values and norms recognised by society, including Islamic values, it reduces the potential for conflicts between interpretations that arise due to different views.

Practically speaking, judges can develop a list of *Maqasid Sharia*-based questions or criteria to evaluate each adoption case. For example, 'Will this adoption ensure the child's *hifz al-nafs* (physical and psychological safety)' or 'How will this adoption affect the child's *hifz al-nasl* (identity and origins)'. This is *Maqasid Shariah*'s mechanism in reducing dissenting opinions: This kind of structured approach will help them gather relevant information and make more informed and principle-based decisions. It also provides a tool for legal practitioners to craft more persuasive arguments in court, as there is a clear framework for argument.

Although *Maqasid Sharia* originates from the Islamic legal tradition, its values are universal and can be applied in a wider context, including in secular or pluralistic legal systems. The protection of the soul, mind and offspring are universally recognised basic human needs. This is the reason why *Maqasid Sharia* is widely accepted: the adoption of *Maqasid Sharia* as an interpretative framework does not mean applying Islamic law literally, but rather utilising its methodology and philosophy to enrich the interpretation of national legal norms, making it relevant to all judges regardless of their faith background.

The application of *Maqasid Sharia* also encourages judges to think contextually and prospectively. This means that the 'best interest' assessment not only looks at current conditions, but also projects the long-term impact of the adoption decision on the child's future. Will this decision support the child's development into adulthood, helping him or her to become an independent, ethical individual who contributes to society? *Maqasid Shariah*, with its emphasis on long-term benefit, provides a philosophical foundation for this prospective consideration, thereby reducing the divergent views on short-term versus long-term priorities.

Ultimately, by integrating *Maqasid Sharia* into adoption motives to avoid dissenting opinions in the context of the child's best interests, we not only strengthen

legal certainty, but also elevate the quality of child protection to a more substantial level. This is the ultimate rationale of this research: it ensures that any adoption-related decision truly reflects the lofty goal of placing the welfare and future of the child as the highest priority, making it a model for other jurisdictions facing similar interpretation challenges.

CONCLUSION

This research clearly demonstrates that the ambiguity of the phrase ‘best interests of the child’ in Article 39 of Law No. 23/2002 is a significant loophole that triggers dissenting opinions and disparity in adoption decisions, hindering the achievement of legal certainty and optimal child protection. To overcome this challenge, interpretation through the *Maqasid Sharia* principle has proven to be a fundamental and effective solution. By decomposing the ‘best interests of the child’ into the *Maqasid Sharia* framework such as *hifz al-nafs*, *hifz al-aql*, and *hifz al-nasl*, this research successfully presents more objective, structured, and value-based parameters for judges. The application of *Maqasid Sharia* not only reduces subjectivity, but also provides a solid philosophical foundation to achieve decision consistency, bridges positive legal norms with universal values of benefit, and ultimately, ensures that every adoption decision is truly based on the true welfare of the child. The practical implication is the creation of clearer guidelines for the judiciary and related parties, which encourages harmonisation of legal interpretations and improves the quality of child protection in Indonesia.

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