

**A *MAQĀṢID* APPROACH TO CONTEMPORARY *FIQH* OF FAMILY IN  
THE MALAYSIAN CONTEXT WITH SPECIAL REFERENCE TO  
ILLEGITIMATE CHILD ISSUES**

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**UNIVERSITI SAINS ISLAM MALAYSIA**

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ILLEGITIMATE CHILD ISSUES**

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## AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this thesis is my own except for quotations and summaries which have been duly acknowledged.

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## ABSTRAK

Kajian ini bertujuan menyingkap dan mengembangkan pendekatan *Maqāṣid al-Sharī'ah* dalam fikah keluarga kontemporari menurut konteks Malaysia. Pemanfaatan *Maqāṣid al-Sharī'ah* dalam pendekatan fikah yang dominan terhadap isu dan cabaran dalam fikah keluarga kontemporari secara umumnya dan nasab anak tak sah taraf khususnya masih terhad, justeru perlu diulangkaji dengan penuh hemat. Oleh itu, kajian ini menjelaskan konsep *Maqāṣid al-Sharī'ah* serta peranan pentingnya dalam menawarkan penyelesaian bagi isu dan cabaran dalam fikah keluarga. Usaha merealisasikan pendekatan *Maqāṣid al-Sharī'ah* dalam fikah kekeluargaan jelas diaplikasikan dalam kes status nasab anak tak sah taraf. Selain itu, kajian ini menggunakan metode kualitatif, serta pendekatan *Maqāṣid* dalam mentafsirkan nas-nas agama. Berdasarkan penemuan kajian, kajian ini menyokong pandangan yang membenarkan legitimasi anak tak sah taraf, serta menawarkan saranan berbentuk *dawābiṭ* atau parameter untuk merealisasikan *Maqāṣid al-Sharī'ah* yang boleh dimanfaatkan oleh badan fatwa atau fiqh, mahkamah dan penggubal dasar. Hasil kajian ini menyimpulkan bahawa pendekatan *Maqāṣid al-Sharī'ah* berserta parameter khusus adalah penting dan membantu dalam menyelesaikan isu kontemporari fikah keluarga sebagaimana dalam kes nasab anak tak sah taraf.

## ABSTRACT

This study aims at exploring and developing a *Maqāṣid al-Sharī'ah* approach to the contemporary fiqh of family in the Malaysian context. The utilizing of *Maqāṣid al-Sharī'ah* in the predominant jurisprudence's approach to the contemporary fiqh of family's issues and challenges, particularly nasab of illegitimate child, is argued to be limited and in need of proper revision. Therefore, this study visualizes the *Maqāṣid al-Sharī'ah* concept as well as its significant roles in presenting solutions to the fiqh of family issues and challenges. The actualization of *Maqāṣid al-Sharī'ah* approach in the fiqh of family is contextualized in the case of nasab status of illegitimate child. This research employs a qualitative research method, and in terms of the interpretation of the Islamic scriptures, it applies the *Maqāṣid* oriented approach. In light of the research finding, this study supports the legitimation and offers recommendations in the form of *dawābiṭ* or parameters of realizing the *Maqāṣid* approach, which can be used as a reference by fatwa or fiqhi bodies, court and policymakers. The findings of this study conclude that a *Maqāṣid* approach with specific parameters is essential and instrumental in resolving contemporary fiqh of family issues as in the case of nasab of an illegitimate child.



## الملخص

هذه الدراسة تهدف إلى البحث عن المنهج المقاصدي وتطويره لتوظيفه في فقه الأسرة المعاصر في السياق الماليزي. إن توظيف المقاصد في دراسة قضايا الفقه الأسري وتحدياته خصوصاً في قضية نسب ولد غير الشرعي ما زال محدوداً فيحتاج إلى أن تعاد دراسته مع كل تقدير له. فهذه الدراسة تبين مفهوم مقاصد الشريعة وأهميتها في تقديم الحلول للقضايا والتحديات في فقه الأسرة. ويتم توظيف المنهج المقاصدي في فقه الأسرة من خلال الدراسة لقضية نسب ولد غير الشرعي. وتستخدم هذه الدراسة منهج البحث النوعي وفي تفسيرها للنصوص تعتمد على المنهج المقاصدي. وانطلاقاً من نتائج البحث تؤيد الدراسة رأي التنسيب للمولود كما تقدّم ضوابط أو معايير إعمال مقاصد الشريعة في فقه الأسرة المعاصر وكذلك بعض المقترحات التي يمكن الانتفاع منها مؤسسة الفقه والإفتاء والمحكمة وصناع القرار. والنتائج لهذه الدراسة تكشف عن أهمية المنهج المقاصدي وضوابطه الخاصة في القضايا الأسرية المعاصرة منها مسألة نسب ولد غير الشرعي.

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## TRANSLITERATION OF ARABIC WORDS

| Name of the Letters | Form | Transcription |
|---------------------|------|---------------|
| Aliff               | ا    | a             |
| Bā                  | ب    | b             |
| Tā                  | ت    | t             |
| Thā                 | ث    | th            |
| Jim                 | ج    | j             |
| Hā'                 | ح    | h             |
| Khā'                | خ    | kh            |
| Dāl                 | د    | d             |
| Dhāl                | ذ    | dh            |
| Rā'                 | ر    | r             |
| Zay                 | ز    | z             |
| Sīn                 | س    | s             |
| Shīn                | ش    | sh            |
| Sād                 | ص    | s             |
| Dād                 | ض    | d             |
| Tā'                 | ط    | t             |
| Zā'                 | ظ    | z             |
| Ayn                 | ع    | '             |
| Ghayn               | غ    | gh            |
| Fā                  | ف    | f             |
| Qāf                 | ق    | q             |
| Kāf                 | ك    | k             |
| Lām                 | ل    | l             |
| Mīm                 | م    | m             |
| Nūn                 | ن    | n             |
| Hā                  | ه    | h             |
| Wāw                 | و    | w             |
| Yā                  | ي    | y             |
| Hamzah              | ء    | ,             |

Notes:

- i. Short vowels are transliterated as [a], [i] and [u];
- ii. Long vowels are transliterated as [ā], [ī] and [ū]; and
- iii. There are two diphthongs in Arabic which are transliterated as [aw] and [ay].