



# SAD AL-DZARA'I IN FAMILY LAW: FROM CONCEPTUAL FRAMEWORK TO PRACTICAL NECESSITY

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## **Abstract**

This study examines *sad al-dzara'i* as a preventive normative principle in Islamic family law in response to contemporary socio-legal challenges. While existing scholarship predominantly emphasizes *maqasid al-shari'ah* as a framework for reform, limited attention has been devoted to the systematic operationalization of *sad al-dzara'i* as a structured preventive mechanism. This study addresses that gap by reconstructing its epistemological foundation and analysing its practical relevance in Indonesian family law contexts. Employing normative legal research with conceptual and statutory approaches, this article analyses classical ushul al-fiqh literature alongside Indonesian family law regulations. It further incorporates contextual socio-legal analysis of Aceh and Probolinggo, selected for their contrasting legal configurations: Aceh with formal Sharia-based regional regulations and Probolinggo within the national legal framework shaped by strong socio-religious authority. The findings indicate that *sad al-dzara'i* functions not merely as a theoretical doctrine but as an operational preventive paradigm reflected in regulatory safeguards, marriage age restrictions, and mediation mechanisms aimed at mitigating risks such as child marriage and family instability. The study concludes that integrating *sad al-dzara'i* within contemporary family law strengthens its anticipatory and adaptive character, aligning with *maqasid al-shari'ah* in safeguarding life, dignity, intellect, and lineage, while offering a preventive legal model for plural legal systems.

**Keywords:** *Sad Al-Dzara'i*; Islamic family law; Maqashid Sharia; Family Resilience

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### **Abstrak**

Penelitian ini mengkaji *sad al-dzara'i* sebagai norma preventif dalam hukum keluarga Islam dalam merespons kompleksitas sosial-kontemporer. Kajian reformasi hukum keluarga selama ini lebih banyak menekankan paradigma *maqasid al-syari'ah* sebagai kerangka reinterpretasi normatif, sementara integrasi sistematis *sad al-dzara'i* sebagai mekanisme pencegahan yang operasional masih relatif terbatas. Penelitian ini bertujuan untuk mengisi kekosongan tersebut dengan merekonstruksi landasan epistemologis *sad al-dzara'i* dalam tradisi ushul fikih serta menganalisis relevansinya dalam konteks hukum keluarga di Indonesia. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan konseptual dan perundang-undangan, yang didukung analisis sosio-legal kontekstual terhadap dua wilayah, yakni Aceh dan Kabupaten Probolinggo. Aceh dipilih karena karakteristiknya sebagai daerah dengan implementasi regulasi berbasis syariat, sedangkan Probolinggo merepresentasikan masyarakat religius dalam kerangka hukum nasional yang pluralistik. Hasil penelitian menunjukkan bahwa *sad al-dzara'i* tidak hanya berfungsi sebagai konsep teoretis, tetapi juga sebagai paradigma preventif yang tercermin dalam pengaturan batas usia perkawinan, mekanisme mediasi, serta instrumen perlindungan keluarga untuk meminimalkan potensi mafsadah seperti perkawinan anak dan disharmoni rumah tangga. Penelitian ini menyimpulkan bahwa integrasi *sad al-dzara'i* dalam hukum keluarga memperkuat karakter hukum yang antisipatif dan adaptif, serta sejalan dengan tujuan *maqasid al-syari'ah* dalam melindungi jiwa, kehormatan, akal, dan keturunan dalam sistem hukum yang plural.

**Kata Kunci:** *Sad Al-Dzara'i*; Hukum Keluarga Islam; Maqasid Syariah; Ketahanan Keluarga.

### **A. INTRODUCTION**

Social change in the modern era is moving very rapidly and affecting almost all aspects of society, including family structure and interpersonal relationships. Developments in information technology, increased awareness of personal rights, and changes in social interaction patterns require the legal system to be more adaptive and responsive. In this context, Islamic law faces methodological challenges to ensure that transcendental normative principles can still be applied in an ever-changing social situation. This is particularly relevant because some of the

provisions of fiqh originate from pre-modern social constructs that are very different from contemporary realities.<sup>1</sup>

Among the branches of Islamic law, family law occupies the most dynamic position and is often the subject of debate. Issues concerning gender equality, protection of women and children, early marriage, domestic violence, and the structure of husband-wife relations are constantly evolving and require a more realistic legal response. In Muslim-majority jurisdictions, family law reform takes place amid tensions between preserving the authority of classical texts and meeting the need for more humanistic and rights-oriented regulations. This epistemological tension underscores the importance of methodological tools that help ensure that legal reforms do not deviate from the fundamental values of Sharia while remaining responsive to contemporary socio-legal realities.<sup>2</sup>

In this context, *maqasid al-shari'ah* serves as a foundational paradigm that explains the flexibility of Islamic law. The *maqasid* framework not only emphasises the protection of the five essential objectives of Sharia (*hifz al-din, al-nafs, al-'aql, al-nasl, and al-mal*), but also directs legal interpretation toward a broader orientation of *maslahah* (public interest) and harm prevention. However, while *maqasid* has been widely invoked in theoretical discussions of reform, its operationalisation at the level of positive family law remains uneven. Many reform initiatives continue to rely primarily on textual reinterpretation without systematically incorporating preventive legal mechanisms rooted in *usul al-fiqh*, particularly the doctrine of *sad al-dzara'i* (blocking the means to harm)<sup>3</sup>

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<sup>1</sup> L Ali Khan, "Jurodynamics of Islamic Law," *SSRN Scholarly Paper* 61 (March 23, 2009): 231-93, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1367301](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1367301).

<sup>2</sup> Joseph Schacht, "Islamic Law in Contemporary States," *The American Journal of Comparative Law* 8, no. 2 (1959): 133-47, <https://doi.org/10.2307/837455>.

<sup>3</sup> Syufa'at, "Implementasi Maqāsid Al-Sharī'ah Dalam Hukum Ekonomi Islam," *Al-Ahkam* 23, no. 2 (2013): 143-66, <https://doi.org/https://doi.org/10.21580/ahkam.2013.23.2.20>.

Here lies the central research gap. Existing scholarship on Islamic family law reform in Indonesia has extensively explored *maqasid*-based arguments for gender justice and child protection, yet limited attention has been given to the systematic integration of *sad al-dzara'i* as a preventive normative framework. Moreover, previous studies often remain abstract and doctrinal, without grounding the analysis in specific socio-legal contexts that reveal the urgency of preventive norms. This study seeks to fill that gap by situating *sad al-dzara'i* within concrete regional dynamics—namely Aceh and Probolinggo—where the interaction between Sharia norms, state regulation, and socio-cultural realities presents distinctive challenges.

Aceh represents a unique legal environment within Indonesia due to its special autonomy status and formal implementation of Sharia-based regulations (*qanun*). The institutionalisation of Sharia in Aceh has generated a more formalised religious legal structure, including regulations affecting marriage, *khalwat*, and moral conduct. However, empirical data and socio-legal observations indicate persistent challenges such as relatively high rates of child marriage, moral policing controversies, and tensions between preventive regulation and human rights discourse. In such a setting, preventive norms are frequently implemented in a punitive or enforcement-oriented manner, raising questions about the methodological foundation of prevention within Islamic legal theory itself. This condition makes Aceh a significant case for examining whether *sad al-dzara'i* can function not merely as a moral justification, but as a structured preventive norm grounded in *maqasid*.

In contrast, Probolinggo—particularly in East Java—reflects a socio-religious landscape shaped by *pesantren* traditions, strong communal authority of religious scholars, and pluralistic interaction between Islamic norms and national family law under the Compilation of Islamic Law (KHI). Although it does not implement formal Sharia regulations like Aceh, Probolinggo faces comparable family law issues, including early marriage practices

influenced by socio-economic factors, informal marital arrangements, and patterns of domestic disputes handled through both religious and state mechanisms. In this context, preventive approaches are often mediated through religious authority and community norms rather than codified regulation. This divergence offers an important comparative perspective: how can *sad al-dzara'i* operate as a preventive norm in both a formal Sharia-regulated region and a culturally religious but nationally integrated legal setting?

The selection of Aceh and Probolinggo is therefore not incidental. These two regions represent contrasting yet complementary socio-legal configurations: one characterised by formal Sharia institutionalisation, and the other by socio-religious authority within a plural national legal framework. Both face concrete family law challenges—particularly child marriage, gender vulnerability, and household instability—that require anticipatory legal strategies. By examining these contexts, this study bridges the gap between theoretical *usul al-fiqh* discourse and practical family law realities in contemporary Indonesia.

However, the operationalisation of *maqasid* in Islamic legal practice does not always run smoothly. In many Muslim communities, understanding of the law is still dominated by a textual and rigid perspective. This mindset often ignores a holistic elaboration of legal sources and disregards the more essential reasoning of *maqasid*. As a result, various efforts at legal reform—especially on family law issues—are often perceived as a deviation from established normative teachings. This resistance is not only influenced by theological factors, but also by the community's lack of methodological literacy in understanding the objectives of sharia in greater depth. This points to the need for a comprehensive fiqh education strategy, especially one that emphasises the *maqasid* dimension as the foundation of progressive legal thinking.<sup>4</sup>

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<sup>4</sup> Abdussalam and Abdullah Shodiq, "Maqashid As-Syariah Perspektif Imam Al-Ghazali: Studi Literasi Masalah Mursalah," *Moderasi: Journal of*

Family law in Indonesia has developed within a unique framework, influenced by the interaction of Sharia values, local customs, and the legacy of the colonial legal system. This configuration has created a pluralistic and complex character of family law. The challenges faced lie not only in harmonising national law and Sharia values, but also in how these regulations can respond to the increasingly diverse needs of society. Therefore, the formulation of family law cannot be separated from the socio-cultural context in which the law is applied.<sup>5</sup>

Indonesia is one of the countries that has taken a compromising approach in formulating family law. The configuration of Indonesian family law is the result of a long interaction between sharia values, local customary practices, and the legacy of the colonial legal system. The synergy of these three elements has created a unique, multicultural, and complex family law structure. This situation necessitates a more comprehensive understanding of the plurality of legal systems that shape family norms in Indonesia. The biggest challenge lies in ensuring that the applicable regulations are not only in line with Sharia principles, but also compatible with the national legal framework and the aspirations of an increasingly heterogeneous society.<sup>6</sup>

Furthermore, the plurality of legal systems requires a strategy for formulating and advocating family law that is adaptive to the local context. The strong influence of customs in social practices, for example, often creates new interpretations of fiqh provisions. Meanwhile, modern legislation encourages more structured legal harmonisation that favours the protection of

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*Islamic Studies* 2, no. 2 (2022): 139-59, <https://doi.org/https://doi.org/10.54471/moderasi.v2i2.32>.

<sup>5</sup> Amelda Az Zahraa et al., "Tantangan Dan Peluang Di Era Digital Bagi Advokasi Hukum Keluarga Islam," *Jurnal Penelitian Dan Pengkajian Ilmiah* 2, no. 7 (2023): 1150-61, <https://doi.org/https://doi.org/10.62335/cendekia.v2i7.1518>.

<sup>6</sup> Mhd. Abduh Saf, "Perkembangan Hukum Keluarga Islam Di Negara Muslim Modern," *Jurnal Al-Hukama* 4, no. 1 (2014): 45-60, <https://doi.org/https://doi.org/10.15642/al-hukama.2014.4.1.223-240>.

human rights. In this situation, Islamic family law is required to not only be a normative product, but also responsive to the cultural, social, and political realities that exist in society. Thus, family law reform is not merely a legislative process, but also a process of harmonising values that integrates *maqasid al-syari'ah*, modern principles of justice, and practical needs in domestic life.<sup>7</sup>

In such conditions, a methodological approach is needed that is not only curative but also preventive. The principle of *sad al-dzara'i* serves as an instrument that emphasises the importance of preventing potential damage before it occurs. In the context of family law, this approach allows for the formulation of regulations that are more anticipatory of various potential mafsadah, whether related to child protection, gender relations, or household stability. The application of *sad al-dzara'i* in Indonesian family law can strengthen the integration between the normative dimensions of sharia and the need for more adaptive positive law.<sup>8</sup> This preventive approach, when contextualised with Indonesia's pluralistic conditions, can serve as a bridge between the normative demands of sharia and the need for more adaptive positive law.

To overcome these obstacles, it is necessary to strengthen Islamic legal literacy that brings together classical traditions and contemporary needs. Mainstreaming *maqasid al-syari'ah* in public discourse not only serves to reduce resistance to reform, but also becomes the foundation for the application of methodological instruments such as *sad al-dzara'i* in formulating preventive norms.<sup>9</sup> In the context of family law, this increase in literacy is becoming increasingly important because the complexity of modern family relationships often necessitates a more anticipatory

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<sup>7</sup> Azzuhri Al Bajuri and Apriadi, *Pemikiran Kontemporer Hukum Keluarga Islam* (Medan: CV Larispa, 2024).

<sup>8</sup> Mahbub Ghozali, "Relevansi Sad Al-Dhari'ah Dalam Pembaharuan Hukum Islam," *Qolamuna Jurnal Studi Islam* 1, no. 1 (2025).

<sup>9</sup> Gebby Chyntia Detta Kaunang and Safarni Husain, "Fleksibilitas Hukum Islam Dalam Menjawab Tantangan Hukum Keluarga, HAM Dan Ekonomi Modern: Tinjauan Maqashid Syariah," *Tasyri' Journal of Islamic Law* 4, no. 2 (2025): 1131-62, <https://doi.org/https://doi.org/10.53038/tsyr.v4i2.387>.

legal approach to potential harm. Thus, understanding *maqasid* not only broadens the horizon of society's thinking but also strengthens the legitimacy of contemporary *ijtihad* methods aimed at protecting the family structure from possible social and moral damage.

In such conditions, a methodological approach is needed that is not only curative but also preventive. The principle of *sad al-dzara'i* serves as an instrument that emphasises the importance of preventing potential *mafsadah* before it occurs. Unlike reactive legal measures that respond after harm has materialised, *sad al-dzara'i* allows lawmakers and jurists to regulate permissible acts that may lead to greater harm if left unchecked. In the context of family law, this approach is particularly relevant for issues such as minimum marriage age regulation, restrictions on polygamy, child protection mechanisms, and mediation procedures in divorce cases.

By integrating *sad al-dzara'i* with *maqasid al-shari'ah*, preventive norms can be theoretically legitimised and practically operationalised. Such integration ensures that preventive regulation does not merely function as moral restriction, but as a structured legal strategy aimed at safeguarding lineage (*hifz al-nasl*), dignity, and social stability. When contextualised within Indonesia's plural legal environment, this approach offers a balanced framework that accommodates Sharia legitimacy, constitutional principles, and socio-cultural realities.

Based on this background, this study aims to (1) reconstruct the normative foundation of *sad al-dzara'i* within the classical *usul al-fiqh* tradition; and (2) analyse its compatibility with the *maqasid* paradigm in contemporary family law reform. By doing so, the research contributes to the development of Islamic family law that is not only textually grounded but also preventive, contextual, and responsive to real social conditions.

The renewal of Islamic family law, therefore, cannot rely solely on reinterpretation of textual sources. It requires methodological instruments capable of anticipating social harm

while preserving the integrity of Sharia. Within this framework, *sad al-dzara'i* emerges as a crucial preventive doctrine whose contemporary application deserves systematic conceptual and practical exploration. Through its contextual analysis in Aceh and Probolinggo, this study seeks to demonstrate that preventive norms rooted in classical jurisprudence can be reformulated to address modern family law complexities in a coherent and academically robust manner.

## B. RESEARCH METHOD

This study uses normative legal research, which is research that focuses on the study of authoritative texts as the basis for legal reasoning.<sup>10</sup> This approach was chosen because the object of study — *sad al-dzara'i* as a normative instrument in *usul al-fiqh* and its relevance in modern family law — requires an in-depth analysis of concepts, legal sources, and regulations that are doctrinal in nature. Thus, this study does not examine the empirical behaviour of society, but rather examines the normative structure that underlies the formulation of family law from the perspective of Sharia and positive law in Indonesia.

Two approaches are used simultaneously in this study. First, *the conceptual approach*,<sup>11</sup> which aims to analyse, classify, and understand the concept of *sad al-dzara'i* as discussed in classical and contemporary *usul al-fiqh* literature. Through this approach, the study explores the thoughts of scholars such as Ibn al-Qayyim, al-Qarafi, and al-Syatibi to obtain a comprehensive picture of the theoretical foundations and epistemological arguments of the concept. Second, the statute approach<sup>12</sup> is used to examine the extent to which the principle of preventing mafsadah

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<sup>10</sup> Sigit Sapto Nugroho, *Metodologi Riset Hukum* (Yogyakarta: Oase Pustaka, 2020).

<sup>11</sup> I Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya Jurnal Hukum* 1, no. 1 (2013): 21–30, <https://doi.org/https://doi.org/10.37637/kw.v1i1.419>.

<sup>12</sup> (Ariawan, 2013)

in *sad al-dzara'i* is reflected or can be integrated into family law regulations in Indonesia, such as the Marriage Law, the Compilation of Islamic Law (KHI), and the Child Protection Law. This approach enables the research to connect the normative framework of Islam with the national legal framework.

The legal materials in this study consist of two categories.<sup>13</sup> Primary legal materials include basic Sharia texts such as the Qur'an and hadith, as well as major works in *usul al-fiqh* that discuss *sad al-dzara'i*, including the works of Ibn al-Qayyim, al-Qarafi, and al-Shatibi. These sources provide the normative foundation for doctrinal analysis. Secondary legal materials include contemporary academic literature such as books, journal articles, research results, and relevant family law regulatory documents. These secondary sources serve to broaden the context of analysis and provide a comparative perspective between classical theory and modern legal developments.

The analysis technique used is qualitative analysis with a deductive-inductive pattern. Deductively, the study traces the principles of *sad al-dzara'i* from *usul al-fiqh* theory and then directs them to the context of family law. Inductively, the study examines family law norms in Indonesian legislation to see the extent to which these preventive principles have relevance, contribution, or scope for strengthening in the formulation of positive law. The combination of these two patterns enables the study to produce a more comprehensive understanding of the function of *sad al-dzara'i* as a preventive norm in contemporary family law.

### C. RESEARCH FINDINGS AND DISCUSSION

The laws of Sharia relating to human actions, whether in the form of speech or deeds, are derived from existing texts or from the deduction of other Islamic legal principles that are not found in the

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<sup>13</sup> Peter Mahmud Marzuki, "Penelitian Hukum," *Jakarta: Kencana Prenada Media* 55 (2005).

texts. The collection of all these principles constitutes the codification of fiqh.<sup>14</sup>

One of the methods of determining law developed by scholars is *sad al-dzara'i* and *fath al-dzara'i*. This method is a preventive measure to avoid negative consequences. This legal method is one of the rich intellectual treasures of Islam that other religions do not possess. Apart from Islam, no other religion has a legal system that is so well documented in numerous works. This is because one of the objectives of Islamic law is to achieve benefit (*maslahah*) and avoid harm (*mafsadah*). If an act that has not yet been committed is strongly suspected of causing harm (*mafsadah*), then anything that leads to that act is prohibited.

*Zara'i* is the plural form of *zari'ah*, which has several etymological meanings. The word comes from *zara'a* (زَرَعَ), which means continuity and movement. *Zari'ah* is also related to the word *zira'*, which refers to the distance between the elbow and the tip of the middle finger. The word refers to an intermediary or a path that leads to a specific goal. Another meaning is a way to achieve something or as a cause leading to something else.<sup>15</sup> In this context, the way and cause are general, without regard to whether the way is permissible or not. The term used in several books on *usul al-fiqh* is *sad al-dzara'i*, not *zari'ah*, in the chapter on this topic.<sup>16</sup>

In terms of terminology, *zari'ah* is synonymous with *wasilah* or intermediary.<sup>17</sup> The implementation of *zari'ah* can be rejected or permitted, whether it is in the form of *makruh*, *sunnah*, or *mubah*, because *zari'ah* is an intermediary, just like an intermediary in haram actions which are ruled as haram, or an intermediary in obligatory actions which are ruled as obligatory. This shows that *zari'ah* is neutral and not always related to prohibitive laws.

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<sup>14</sup> Wahbah Zuhaili, *Fiqh Islami Wa Adillatubu* (Beirut: Darul Fikr, 2014).

<sup>15</sup> Muhammad ibn Abu Bakar al-Razi, *Mukhtar As-Shihah* (Beirut: Maktabah Lubnan, 1995).

<sup>16</sup> Syihabuddin Abu al-Abbas al-Qarafi, *Syarh Tanqih Al-Fushul Fi 'Ilm Al-Ushul, Juz I* (Kairo: Syarikat at-Thiba'ah al-Fanniyyah, 1393).

<sup>17</sup> al-Qarafi.

According to al-Qarafi, *zari'ah* can be divided into three parts: first, *zari'ah* that is agreed upon must be closed; second, *zari'ah* that is agreed upon must be opened; third, *zari'ah* that is disputed must be closed or opened.<sup>18</sup>

The legal provisions of *zari'ah* follow the legal provisions of its purpose. If the purpose is permissible, then the means are also permissible. If the purpose is forbidden, then the means are also forbidden. If the purpose is obligatory, then the means are also obligatory. If the purpose is recommended, then the means are also recommended. If the purpose is disliked, then the means are also disliked.<sup>19</sup>

*Zari'ah* can sometimes be closed under certain conditions and can also be opened under other conditions. Because fundamentally, *zari'ah* means a means to achieve a certain goal. This goal can be good or bad. However, in its use, *zari'ah* is often interpreted only as a means to evil or that which is forbidden. In fact, sometimes it is important to open or involve *wasilah* (intermediary) towards something that is forbidden if there is a greater interest (*masalah rajihah*).<sup>20</sup>

From the above explanation, it can be concluded that there are two types of *zari'ah*: *zari'ah* that leads to goodness is called *fath al-zari'ah*, while *zari'ah* that leads to evil is called *sad al-dzara'i*. According to Imam Ghazali, the door to good *zari'ah* must be opened wide, while the door to evil *zari'ah* must be closed tightly.<sup>21</sup>

This is because *zari'ah* is defined as something that acts as an intermediary towards an act that is either forbidden or permitted. In this case, the legal provisions imposed on *zari'ah* always follow the legal provisions contained in the act that is its target. To clarify, an act that leads to something permissible is

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<sup>18</sup> Wahbah Al-Zuhaili, "Ushûl Al-Fiqh Al-Islâmî, Juz I," *Beirut: Dar Al-Fikr*, 2009.

<sup>19</sup> M Noor Harisudin, *Ilmu Ushul Fiqih I* (Surabaya: Penerbit Buku Salsabila, 2014).

<sup>20</sup> Ibn Taimiyyah al-Harrani, *Al-Fatawa Al-Kubra, Juz VI* (Beirut: Dar al-Kutub al-Ilmiyyah, 1408).

<sup>21</sup> Muhammad Abu Zahrah, *Ushul Fiqh* (Jakarta: Pustaka Firdaus, 2005).

permissible. An act that leads to something forbidden is forbidden. And an act that leads to something obligatory is obligatory.

In considering *the legal ruling*, there are two aspects conveyed by the scholars of *usul*: a person's motivation in performing an action and the impact or consequences caused by that action. To clarify further, it can be stated here that there are two sources for determining the law: *Maqasid* (objectives/goals), namely matters that contain *maslahat* or *mafsadat*, and *Wasail* (means), the path or means that leads to *maqasid*, where the law follows the law of the action that is the target (*maqasid*), whether it is *halal* or *haram*.

Thus, the main source of Islamic law here is the review of an action. The review is of the consequences of an action, not the intention of the perpetrator, but rather the consequences and fruits of the action. According to Ibn al-Qayyim al-Jauziyyah, these means or intermediaries can take the form of something that is prohibited or something that is permitted.<sup>22</sup>

Imam Ahmad bin Hambal is considered the mujtahid who most frequently utilised the *zari'ah* method in his *istinbat* process, as did Imam Malik. Meanwhile, those who rarely utilised it were Imam Shafi'i and Abu Hanifah.<sup>23</sup> The theory of determining *zari'ah* according to the perspective of Imam Ahmad bin Hambal differs from the theory developed by the Malikiyah scholars. For the Hambali school of thought, the theory used is based on a final conclusion on the consequences that will occur. Meanwhile, for the Maliki school of thought, it is based on an assessment of the level or degree of strength that can cause an intermediary to lead to damage.<sup>24</sup>

*Zari'ah* is applied to prevent greater harm or damage. This concept is closely related to the principles of *maslahah* (public

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<sup>22</sup> Muhammad bin Abu Bakar Ibn al-Qayyim al-Jauziyyah, *I'lam Al-Muwaqifi'in 'an Rabb Al-Alamin, Juz II* (Saudi Arabia: Dar Ibn al-Jauzi, 2011).

<sup>23</sup> Muhammad Abu Zahrah, *Ibnu Hanbal Hayatuhu Wa 'Ashruhu Ara'Uhu Wa Fiqhuhu* (Kairo: Dar al-Fikr al-'Araby, 1996).

<sup>24</sup> Azizi Hasbullah, *Kilas Balik Teoritis Fiqih Islam* (Kediri: PP Lirboyo, 2008).

interest) and *mafsadah* (harm). *Zari'ah* does not only look at prohibited acts, but also at acts that can lead to prohibited acts. Therefore, preventive measures are considered important to protect society from acts that can lead to crime or violations.

Three conditions must be met in order for an action to be considered *sad al-dzara'i*:<sup>25</sup> The action taken clearly leads to kemafsadatan or kemaslahatan; The harm is greater than the benefit; and In performing the permitted act, the harm is greater.

Through the *sad al-dzara'i* approach in the context of marriage, it can be a very effective means of prevention by prohibiting actions that can lead to serious violations in marriage. The *sad al-dzara'i* approach provides effective prevention against damage to the institution of marriage. In addition, the *sad al-dzara'i* approach in the context of marriage can ensure that the law protects families from actions that can damage harmony and well-being. This helps to create a safe and healthy family environment. It can also be a means of enforcing human rights within the family: this approach supports the enforcement of human rights in the context of marriage by prohibiting actions that violate the rights of spouses.<sup>26</sup>

*Sad al-dzara'i* plays an important role as a principle that regulates preventive actions in Islam.<sup>27</sup> *sad al-dzara'i* aims to close paths that can lead to greater damage or harm. Actions that are initially permissible or neutral can become prohibited if they have the potential to cause significant negative impacts. In the context of Islamic family law, *sad al-dzara'i* has a strategic position as a norm that serves to prevent various potential harms (*mafsadah*) that could threaten family integrity. This principle emphasises that an action that outwardly appears permissible or neutral can be

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<sup>25</sup> Ibn al-Qayyim al-Jauziyyah, *I'lam Al-Muwaqfi'in 'an Rabb Al-Alamin*, Juz II.

<sup>26</sup> Syufa'at, "Implementasi Maqāṣid Al-Sharī'ah Dalam Hukum Ekonomi Islam."

<sup>27</sup> Maimun and M Darwadi M R Darwadi, "Relasi Sadd Az-Zari'ah Dengan Maqāṣid Asy-Syari'ah: Aplikasinya Dalam Penetapan Hukum Pada Kasus-Kasus Fikih Kontemporer," *Jurnal Asas* 12, no. 1 (2020): 37–59, <https://doi.org/https://doi.org/10.24042/asas.v12i01.6923>.

restricted or prohibited if it has a strong potential to cause damage to family stability.<sup>28</sup> This preventive approach is in line with the major principle of Sharia: *jalb al-maṣālih wa dar'u al-mafāsīd*—achieving benefits and rejecting harm—which is at the core of *maqasid al-syari'ah*.

Within the framework of *usul al-fiqh*, scholars such as al-Qarafi, Ibn Qayyim, and asy-Syatibi emphasise that *sad al-dzara'i* functions as a methodological tool to ensure that every action of a mukallaf is analysed not only based on its outward form, but also based on the consequences it may cause (*an-nazar fi al-ma'alat*).<sup>29</sup> Thus, the relevance of *sad al-dzara'i* in family law is very significant because domestic relationships are a social space that is vulnerable to the impact of actions that appear minor but have the potential to cause great damage—whether to the harmony of the couple, the protection of children, or the continuity of the family line.

Safrijal's research findings provide a concrete picture of how the principle of *sad al-dzara'i* is used by the Aceh Government<sup>30</sup> in formulating Islamic sharia regulations. Although the context of Aceh is not directly related to family law, the pattern of applying *sad al-dzara'i* in regional regulations shows how preventive norms function at the public policy level. This finding is important to analyse because the same preventive thinking structure can be used to interpret how Islamic family law builds family resilience by closing the door to mafsadat.

*Sad al-dzara'i* is understood as “prohibiting matters that are basically permissible, so as not to lead to matters that are not permissible”. This principle forms the basis for the Aceh

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<sup>28</sup> Meidinie Maulida, “Sadd Al-Dzari’ah : Prinsip-Prinsip Pencegahan Dalam Hukum Islam,” *Jurnal Cendekia ISNU SU* 1, no. 3 (2024): 221–26, <https://doi.org/https://doi.org/10.70826/jcisnu.v1i3.525>.

<sup>29</sup> Ramadhani Siregar, “Pendekatan Saddu Al-Dzari’ah Dalam Studi Islam,” *Jurnal Lentera* 22, no. 1 (2023): 44–53, <https://doi.org/https://doi.org/10.29138/lentera.v22i1.1038>.

<sup>30</sup> Safrijal, “Penerapan Sadd Al-Dzari’ah Dalam Penetapan Regulasi Pemberlakuan Syariat Islam Di Aceh,” *FATHIR: Jurnal Studi Islam* 1, no. 3 (2024): 224–46, <https://doi.org/https://doi.org/10.71153/fathir.v1i3.104>.

Government in drafting qanuns and circular letters. This preventive method is based on the ushuliyah principles: *al-darar yuzāl* – Harm must be eliminated,<sup>31</sup> and *dar'u al-mafāsīd awlā min jalb al-masālih* – Preventing harm takes priority over achieving benefits.<sup>32</sup> Based on this principle, Aceh's regulations seek to close avenues that have the potential to cause harm, whether in social behaviour, morals, or security.

Although the above research on *sad al-dzara'i* focuses on the public sphere, the findings can be drawn as an important illustration for family law: Both general social cases and family cases stem from potential mafsadat that must be prevented. For example, the prohibition of night-time activities in Aceh aims to prevent adultery, khalwat, and crime. In family law, the prohibition of ikhtilat, restrictions on khalwat, and rules on the iddah period also serve to prevent potential mafsadat that directly threaten the honour of the family.

Aceh's preventive regulations demonstrate how normative Sharia principles are translated into public policy. This pattern is equivalent to how the state can formulate preventive rules in family law, such as the minimum age for marriage, conditions for polygamy, or restrictions on divorce in court.

The Aceh model shows the dynamics of resistance and support for preventive regulations, indicating that the successful implementation of *sad al-dzara'i* is greatly influenced by: the social context; perceptions of justice; the effectiveness of law enforcement; and the level of legal literacy among the community. This is parallel to the dynamics of family law, where preventive policies often spark debate, such as the 2019 revision of the Marriage Law or restrictions on polygamy.

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<sup>31</sup> Muhammad Salim Burnuwi, *Al Wajiz Fi Iydhah Qawaid Al Fiqh Al Kuliyyah* (Muasasah Ar-Risalah, 2002).

<sup>32</sup> Burnuwi.

## Discussion

The application of preventive norms requires a balance between protection and freedom,<sup>33</sup> and must understand the socio-economic context so as not to create new mafsadat. In family law, the same principle applies: preventive measures (e.g., restrictions on polygamy or the prevention of early marriage) must be designed so as not to create new injustices, but remain effective in closing potential harms.

In the Indonesian context, these preventive norms can be interpreted contextually through various phenomena in modern families,<sup>34</sup> such as impulsive divorce, child marriage, polygamy that does not meet the principles of justice, custody disputes, and domestic violence. Many of these problems arise not solely from clear violations of the law, but from preliminary actions that gradually open up opportunities for mafsadah to occur. With the principle of *sad al-dzara'i*, these preventive actions are aimed at closing loopholes that lead to corruption so that family law can play a more effective *social safeguard* role.

For example, on the issue of child marriage, Sharia law does not explicitly specify a minimum age for marriage, but scholars recognise that the practice of child marriage is prone to negative consequences such as emotional unpreparedness, high divorce rates, and the risk of domestic violence. Therefore, the use of *sad al-dzara'i* can be a normative legitimation for the state to set a minimum age for marriage<sup>35</sup> as a preventive measure to protect

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<sup>33</sup> Yayan Agus Siswanto, Fajar Rachmad Dwi Fajar Miarsa, and Sudjiono, "Upaya Preventif Sebagai Bentuk Perlindungan Hukum Dari Kejahatan Kekerasan Seksual Pada Anak," *Jurnal Kolaboratif Sains* 7, no. 5 (2024): 1651–67, <https://doi.org/https://doi.org/10.56338/jks.v7i5.5313>.

<sup>34</sup> Maulidi, "Menggagas Fikih Responsif: Upaya Progressif Modernisasi Fikih," *AL-'ADALAH* 14, no. 2 (2017): 507–28, <https://doi.org/https://doi.org/10.24042/adalah.v14i2.2677>.

<sup>35</sup> Hendri Hermawan Adinugraha, "Reaktualisasi Hukum Islam Di Indonesia (Analisis Terhadap Teori Hudud Muhammad Syahrur)," *Islamadina : Jurnal Pemikiran Islam* 19, no. 1 (2018): 1–26, <https://doi.org/https://doi.org/10.30595/islamadina.v19i1.2174>.

offspring (*hifz al-nasl*) and preserve life (*hifz al-nafs*). This shows that the principle of *sad al-dzara'i* can be a theological basis for modern regulations oriented towards family resilience.

Similarly, on the issue of polygamy, Sharia law allows it on the condition of fairness, but empirical experience shows that polygamy often leads to disharmony and domestic conflict. Through *sad al-dzara'i*, the state can limit or tighten polygamy permits to prevent greater harm to women and children. This approach remains in line with *maqāṣid* as it aims to preserve family integrity and prevent harmful actions.

The principle of *sad al-dzara'i* also has a role in regulating digital interactions in modern families.<sup>36</sup> For example, consumption of social media or certain applications that appear permissible can lead to behaviour that damages relationships, such as digital infidelity, verbal abuse, or neglect of family obligations. By applying the perspective of *sad al-dzara'i*, preventive measures such as character education, limits on gadget use, or privacy regulations can be seen as efforts to maintain morals (*hifz al-'aql*) and family honour.

*Sad al-dzara'i* is not only relevant as a theoretical concept in *usul al-fiqh*, but also has practical value in formulating contemporary family law policies.<sup>37</sup> Its function as a preventive norm contributes directly to strengthening family resilience because it focuses attention on actions that seem trivial but have the potential to open the door to damage. Family resilience, which is a fundamental element of social resilience, can be maintained if the legal system does not only respond to damage that has already occurred, but also actively closes the path that leads to it. The application of *sad al-dzara'i* can be understood as a form of integral protection of the five main objectives of sharia (*ushul al-khams*),

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<sup>36</sup> Irzak Yuliardy Nugroho et al., "Pendekatan Sadd Al-Dzari'ah Dalam Pencegahan Perkawinan Anak: Studi Kasus Di Kabupaten Probolinggo," *Jurnal LITIGASI* 26, no. 1 (2025): 67-101, <https://doi.org/https://doi.org/10.23969/litigasi.v26i1.19478>.

<sup>37</sup> Nugroho et al.

especially the protection of life, honour, reason, and offspring. This preventive function also justifies why family law must be anticipatory, adaptive, and in line with social developments. The principle of *sad al-dzara'i* provides normative legitimacy as well as a methodological framework for the formation of family law that is oriented towards benefit, protection of vulnerable parties, and strengthening the foundations of family resilience.

*Sad al-dzara'i* is not merely a normative concept, but a mindset for formulating laws that prioritise the prevention of harm. The application of this principle in public regulations can provide methodological inspiration for the renewal of Islamic family law, particularly in efforts to: protect family honour; prevent the vulnerability of women and children; and strengthen family resilience through anticipatory regulations.

In the realm of family law, the function of *sad al-dzara'i* has significant relevance because most family problems do not arise suddenly, but begin with a series of small actions that then develop into major conflicts. For example, uncontrolled digital interactions, excessive use of social media, promiscuity, or unhealthy communication within the household can be the starting point for mafsadah such as infidelity, domestic violence, or emotional instability in children. Using the perspective of *sad al-dzara'i*, family law can be designed not only to resolve conflicts that have already occurred (curative), but also to prevent potential damage before it arises.

At this point, the preventive approach is in line with maqāṣid al-syarī'ah, especially in preserving offspring (*hifz al-nasl*), preserving life (*hifz al-nafs*), preserving reason (*hifz al-'aql*), and preserving family honour (*hifz al-'ird*). As al-Qarafi emphasised, actions that open up opportunities for damage must be prevented "if the potential for harm is greater than the potential for benefit". Thus, *sad al-dzara'i* becomes a methodological tool that helps the state and social institutions uphold more stable and equitable family norms.

The application of *sad al-dzara'i* becomes even more explicit when applied to the issue of preventing child marriage. Research related to Probolinggo Regency shows that early marriage has widespread destructive effects. The study confirms that child marriage “poses health risks, mental unpreparedness, and increases divorce rates and domestic violence”. Such mafsadah threatens the foundations of family resilience.<sup>38</sup>

The contributing factors are also rooted in the actions of predecessors—which are the focus of *sad al-dzara'i*—such as promiscuity, unlimited digital interaction, and a lack of reproductive education. The study states that “a lack of parental supervision and uncontrolled digital access are the starting points for child marriage.” This shows that prevention must begin by closing these doors (*dzari'ah*).

The Probolinggo Regency Government then implemented a series of preventive measures, including:<sup>39</sup> tightening marriage dispensations and requiring family counselling; reproductive education programmes in Islamic boarding schools and schools; the establishment of the Sakinah family counselling forum; collaboration between the KUA, child protection agencies, and religious leaders. Research notes that these policies were implemented to “prevent potential harm before it occurs” in accordance with the principle of *sad al-dzara'i*.

When comparing Aceh and Probolinggo, a similar methodological pattern emerges: Identification of initial actions that could potentially lead to *harm*; Legal intervention to prevent *harm*; and An orientation towards maintaining moral, social, and family stability. In family law, this approach results in family resilience through: the prevention of child marriage; restrictions on polygamy that does not meet the principle of justice; regulation of the iddah period; family digital ethics education; and premarital counselling and sakinah family education.

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<sup>38</sup> Nugroho et al.

<sup>39</sup> Nugroho et al.

All these mechanisms reflect the function of *sad al-dzara'i* as a preventive norm that not only solves family problems but also anticipates them before they arise. This approach makes family law more adaptive, responsive, and in line with maqasid al-syari'ah in maintaining the sustainability of the family as a vital social institution.

Analysis from three sources—theoretical, regulatory, and empirical—yields the important conclusion that *sad al-dzara'i* has a dual function: as an epistemological principle that ensures sharia rejects corruption from the outset; as a basis for public policy that closes the space for social mafsadat; and as an instrument of family law to strengthen family resilience. This approach demonstrates that family law does not only work reactively, but proactively protects the integrity of the family from various moral and social threats.

Theoretical and empirical findings show that *sad al-dzara'i* has significant methodological advantages over repressive legal approaches. This principle works by closing the possibility of mafsadat occurring early on, thereby providing more comprehensive protection for families and society. Preventive regulations, as seen in Aceh's policies, are designed not only to punish violations that have already occurred, but to “eliminate the possibility of damage occurring,” as Safrijal argues, that *sad al-dzara'i* serves to “prevent all possible harm before it occurs.” This advantage is also reflected in the policy to prevent child marriage in Probolinggo Regency, where preliminary actions that open up opportunities for early marriage are narrowed through education, restrictions on marriage dispensations, and increased social control. These efforts show that a preventive approach is more effective in maintaining family stability and protecting vulnerable parties such as women and children.

Compared to the repressive approach, which only works after damage has occurred, *sad al-dzara'i* offers a protection mechanism that is more in line with maqāṣid al-syarī'ah. The repressive approach is often too late to prevent widespread social

impact, while *sad al-dzara'i* allows for intervention from an early stage by regulating the means or behaviour that can lead to mafsadah. Ibn Qayyim emphasises that this type of preventive prohibition is based on the principle that means leading to evil “must be closed even if the original action is permissible”. This shows that *sad al-dzara'i* is not only a legal instrument, but also an ethical tool that encourages society to adopt a more cautious and visionary lifestyle.

However, the application of *sad al-dzara'i* in the modern era is not without limitations. One of the main challenges is the potential conflict with human rights principles, especially in issues of individual freedom, women's mobility, and freedom of expression. Research findings in Aceh show that some preventive policies have sparked resistance from the community. For example, prohibiting women from engaging in night-time activities or restricting certain social interactions has drawn criticism for potentially “limiting women's mobility and hampering community economic activity.” In this context, *sad al-dzara'i* must be implemented proportionally so as not to give rise to new mafsadah in the form of discrimination or restriction of rights.

Another limitation arises from social dynamics that are far more complex than in classical times. The tide of digitalisation, global mobility, and changing social relations patterns demand a reinterpretation of what is meant by “potential harm.” Research in Probolinggo, for example, shows that promiscuity and social media are the main factors driving child marriage. However, regulating digital space is not as easy as closing coffee shops at night. Policies that are too restrictive can conflict with the principle of freedom of information. This shows that *sad al-dzara'i* needs to be contextualised with caution, adapted to social conditions, and balanced with education and capacity building for families.

Previous studies have also shown that the success of *sad al-dzara'i* is highly dependent on social legitimacy. If the community does not understand the preventive reasons behind a policy, then the policy is easily perceived as a form of restraint or

authoritarianism. Therefore, in addition to requiring a strong normative basis, the implementation of *sad al-dzara'i* also requires a persuasive social approach through education, counselling, and adequate legal literacy.

Thus, although *sad al-dzara'i* has the advantage of being a norm that can protect families from potential damage early on, its implementation still requires caution so as not to conflict with human rights principles or social plurality values. Its preventive advantages can only be maximised if it is formulated in a policy that is proportional, fair, and accompanied by open social dialogue. With such an approach, *sad al-dzara'i* can function optimally as an instrument that strengthens family resilience while remaining relevant in the context of modern society.

This is an important contribution to the development of Islamic legal theory, particularly in contextualising *sad al-dzara'i* in family law. Theoretically, this study reaffirms the relevance of *sad al-dzara'i* as a methodological tool that is not only at the classical normative level but can also be operationalised in an increasingly complex modern social context. This principle proves that the preventive dimension of sharia is not merely part of the turats but an epistemological mechanism that allows sharia to function adaptively and proactively in responding to social change.

These findings also enrich our understanding of the relationship between *sad al-dzara'i* and maqasid al-syari'ah. Until now, many studies have placed these two concepts separately, whereas this study shows that *sad al-dzara'i* is an applicative instrument of *maqasid* in protecting offspring, honour, reason, and soul. Thus, this study strengthens the position of *sad al-dzara'i* as a bridge between ushul fikih theory and the need for more contextual family law reform.

In addition, this study has implications for the development of contemporary Islamic family law theory. Empirical findings from Aceh and Probolinggo show that a preventive approach can broaden the scope of family law analysis, from one that originally focused only on conflict resolution to a holistic approach that

includes the prevention of mafsadat from an early stage. This broadens the definition of family law from merely a normative device to a social protection *framework*. Theoretically, this opens up space for formulating an *early warning system*-based family law model that is in line with *maqasid*.

Finally, the theoretical implications of this study show that the limits of interpreting *sad al-dzara'i* in the modern context require the development of new methodologies. Digital developments, human rights dynamics, and changes in social relations patterns demand a reinterpretation of what is considered *dzari'ah* and how to determine the boundaries between protection and restriction. Thus, this study sparks a new discussion on the expansion of the *sad al-dzara'i* methodology to remain relevant in a multicultural and democratic society.

#### **D. CONCLUSION**

This study affirms that *sad al-dzara'i* has a strategic position in the development of contemporary Islamic family law, especially as a preventive norm capable of responding to modern social complexities. As a principle that serves to close the path to mafsadat, *sad al-dzara'i* is not only deeply rooted in the classical ushul fikih tradition, but also shows high relevance in the context of public policy and family law practice.

Empirical findings from Aceh and Probolinggo Regency reinforce the validity of this preventive approach. The practice of *sad al-dzara'i*-based regulation in Aceh shows that this principle can be operationalised in social policy to prevent opportunities for immorality and other destructive impacts. Meanwhile, efforts to prevent child marriage in Probolinggo Regency demonstrate the direct application of *sad al-dzara'i* in the realm of family law, where preliminary actions that open up opportunities for early marriage are closed through policy, education, and social intervention. Both case studies show that *sad al-dzara'i* functions effectively as a *prudential framework* in maintaining family resilience.

This study concludes that *sad al-dzara'i* has great potential as a basis for strengthening family law that is more responsive, adaptive, and anticipatory. This approach is able to bridge the needs of modernity with the basic values of sharia, while also making an important contribution to the development of family resilience. Therefore, the application of *sad al-dzara'i* needs to be carried out selectively, proportionally, and based on evidence, in order to produce policies that are not only effective in preventing mafsadat, but also fair, inclusive, and in line with the social dynamics of contemporary society.

The complexity of modern family issues—ranging from child marriage, weak protection of women, domestic disharmony, to the challenges of digital ethics—requires a more comprehensive paradigm of Islamic family law reconstruction. Ideally, this reconstruction should be based on two main methodological foundations: *maqasid al-syari'ah* as the orientation of objectives and *sad al-dzara'i* as an operational preventive mechanism to prevent potential *mafsadat*.

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