



Analyzing the prohibition of prostitution through the lens of *Maqasid al-Shari'ah* focuses on upholding *Al-Daruriyyat Al-Khamsah*.

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Abstract

Prostitution destroys the institution of valid marriage and obscures the clarity of lineage due to promiscuity/free sex. This practice is highly vulnerable to triggering sexual violence, human exploitation, and the spread of infectious diseases. Prostitution localization is often closely related to the circulation of liquor and illicit drugs. All forms of commercial sexual transactions constitute a form of disobedience to God's law that degrades the spiritual morals of the perpetrators. And prostitution transactions constitute a waste and the acquisition of illicit wealth. The primary goal of prohibiting prostitution through the *Maqasid al-Shari'ah* approach is to realize public welfare (*maslahah*) and prevent harm/corruption (*mafsadah*). By focusing on universal protection (*Al-Daruriyyat Al-Khamsah* - the five essential needs), this prohibition is designed to safeguard the core foundations of human life from moral and social destruction. research of an Approach of the Higher Objectives/Purposes of Islamic Law of prostitution by Using a normative legal approach with an Approach of the Higher Objectives/Purposes of Islamic Law research, research results show that First The approach of the Higher Objectives/Purposes of Islamic Law (*Maqāṣid al-Sharī'ah*) to prostitution is that it is strictly forbidden (haram) because it violates the fundamental, essential human needs (*al-darūriyyāt al-khamsah*) that Sharia aims to protect. Second, the approach of the Higher Objectives/Purposes of Islamic Law (*Maqāṣid al-Sharī'ah*) regarding prostitution results in a strict prohibition, framing it as a major violation of the foundational goals of Islamic jurisprudence, primarily the protection of religion, honor, lineage, and life.

INTRODUCTION

The application of the Higher Objectives/Purposes of Islamic Law (*Maqasid al-Shari'ah*) to the issue of prostitution presents a complex dilemma. While traditional Islamic law (*fiqh*) unequivocally prohibits prostitution as a form of *zina* (adultery/fornication), a *Maqasid* approach attempts to address the underlying causes and social realities, sometimes creating

tension between strict prohibition (*'azimah*) and pragmatism (*rukhsah* or *ta'zir*). The primary problems associated with this approach include:¹

Conflict Between *Mafsadah* (Harm) and *Maslahah* (Benefit): The central issue is navigating the dilemma of two destructive things (*mafsadah*): uncontrolled, illegal prostitution versus organized, monitored, or localized prostitution. **The Problem:** While prostitution is haram, a strict, instantaneous prohibition often fails to eradicate it, causing it to go underground or move online. **Maqasid Application:** Some, such as Indonesian scholar KH Sahal Mahfudz, have suggested that in specific, dire circumstances, localizing prostitution might be considered "taking the lightest harm" (*irtikābu akhaffu adh-dhararain*) to prevent greater harm, such as the spread of disease or violent crime.² The rule of "doing the least harm" is a principle of Ushul Fiqh. This rule is a branch of the principle *Al-Dhararu Yuzal* (Harm must be eliminated)³

To bridge the research gap in this ethical dilemma, you should position the "lesser of two evils" (*Irtikab Akhaff al-Mafsadatain*) not merely as an ad-hoc pragmatic tool, but as a methodological instrument designed specifically to uphold *Maqasid Syariah* (specifically *Hifz al-Din* or preservation of religion). In Islamic jurisprudence, the "lesser of two evils" principle (*fiqh al-muwazanat*) is heavily restricted. Scholars stipulate that it is only a last resort when a person is forced to choose between two unavoidable harms, never as a proactive justification to commit major sins or unlawful acts.

To explore this framework further, consider these core scholarly parameters: **Necessity** is strictly measured: The maxim *al-darar al-ashadd yuzaalu bil-darar al-akhaff* (a greater harm is repelled by a lesser harm) only applies in genuine situations of unavoidable *darurah* (extreme necessity). It is bound by the rule *al-darar yuqaddar bi qadriha* (necessity is assessed according to its actual proportion). **Preventing harm over securing benefit:** When an action yields both a benefit (*maslahah*) and a harm (*mafsadah*), the foundational maxim dictates that *dar' al-mafasid awla min jalb al-masalih* (warding off evil takes precedence over securing benefit). **The Hierarchical Objective (*Maqasid*):** The evaluation of what constitutes a "lesser evil" is not subjective. Scholars evaluate it based on the five core protections of the Shariah: religion, life, intellect, lineage, and property. A threat to a higher-tier necessity always outweighs a threat to a lower-tier one.

Balancing *Hifz al-Nafs* (Protection of Soul) and *Hifz al-Din* (Protection of Religion): A *Maqasid* approach, particularly when dealing with sex workers, often emphasizes protecting their lives and dignity (social welfare) over immediate, harsh punishment. **The Dilemma:** Prostitutes often face poverty, violence, and exploitation. A *Maqasid* approach seeks to help them leave their profession (e.g., through zakat or rehabilitation). **The Problem:** This "rehabilitation" approach is often seen as too lenient or in contradiction with the strict punishment (*hudud*) mandated for adultery, raising questions about whether focusing on the welfare of the perpetrator (*hifz al-nafs*) compromises the sanctity of the law (*hifz al-din*).⁴

***Hifz al-Nasl* (Protection of Offspring) vs. Social Reality:** Prostitution is seen as a severe threat to *hifz al-nasl* (lineage) and *hifz al-'ird* (honor). **The Problem:** The rise of online prostitution and "by-request" services makes it harder for traditional authorities to enforce bans, rendering some *fiqh* prohibitions difficult to implement. **The Dilemma:** A *Maqasid* approach to protecting lineage might warrant harsh measures, but the complex, economic, and social causes

¹ al-Burhan al-Juwaini, fi Ushul al-Fiqh. (Dar al-Anshar, 1440 H), h. 44

² Al-Syatibi, Abu Ishaq. *Al-Muwafaqat fi Ushul al-Syari'ah*.

³ kitab *Al-Asybah wa An-Nazhair* karya Imam As-Suyuthi.

⁴ Yusuf Al-Qardhawi, *Fiqh Maqashid Syari'ah, Modernisasi Islam Antara Aliran Tekstual dan Liberal*. (Jakarta: al-Kautsar. 2007), hlm.55

(poverty, lack of education) suggest that purely legalistic, prohibitive measures are ineffective.⁵

Implementation Challenges and Misinterpretation: Sectoral Ego and Misuse: The approach of "localization" or managed care, meant to minimize harm, is often misused or poorly managed, leading to a "shift in value from social to profit-driven orientations". **Stigma and Access to Justice:** The social stigma against prostitutes can prevent them from getting help, causing them to be ignored in aid programs. A *Maqasid* approach that focuses on rehabilitation may be misunderstood as condoning their actions rather than helping them.⁶

In summary, the problem is not a lack of clear prohibition of prostitution, but rather that a strictly punitive, text-only approach often fails to address the root, complex social and economic issues. A *Maqasid* approach aims to address these, but in doing so often struggles to balance the protection of public morals (strict law) with the protection of human dignity and social welfare (the law's broader underlying purpose).

Researching prostitution through the Higher Objectives/Purposes of Islamic Law (*Maqāṣid al-Sharī'ah*) is important because it moves beyond traditional, punitive, legalistic interpretations to offer comprehensive, rehabilitative, and context-sensitive solutions to a complex social problem. It allows for a focus on protecting human dignity, safety, and social welfare rather than simply punishing offenders.

An objective of the study of the Higher Objectives/Purposes of Islamic Law (*Maqasid al-Shari'ah*) regarding prostitution is to analyze how the prohibition of sexual immorality serves to protect human life, dignity, and societal structure, rather than just imposing punitive sanctions.

Prohibiting prostitution under Islamic law is not merely a punitive restriction but a foundational mechanism to preserve human dignity and societal welfare. Evaluating this prohibition through the *Maqasid al-Shari'ah* framework reveals how it operates to secure *Al-Daruriyyat Al-Khamsah* (the five universal pillars of human protection). The universal protection of this prohibition maps directly onto the five pillars of Islamic law:

Protection of Religion and Morality (*Hifz al-Din*): Prostitution violates foundational Islamic ethics. Prohibition limits the normalization of indecency (*fahsha*) and safeguards societal moral frameworks. **Protection of Lineage and Family (*Hifz al-Nasl*):** Sexual transactions disrupt the institution of marriage and obscure biological lineage. Prohibition ensures that children are born within legitimate family structures and prevents the spread of sexually transmitted diseases. Prostitution, particularly forced sex trafficking, is often linked to violence, substance abuse, and severe psychological trauma. Prohibition functions to shield vulnerable individuals from physical and mental harm. Commercial sex work relies on the exploitation of vulnerabilities, which often goes hand-in-hand with illicit drug abuse to endure the working conditions. Prohibition prevents the degradation of human cognition and mental health. **Protection of Wealth (*Hifz al-Māl*):** Monetary compensation for sexual services (*mahr al-baghi*) is considered unlawful wealth acquisition. Prohibiting this stops economic exploitation and the illegal channeling of resources into illicit markets.

⁵ Abi Hamid Muhammad bin Muhammad bin Muhammad al-Ghazali, *Al- Mustashfa min Ilm al-Ushul*. (Beirut: Muassasah al Risalah, 1997), hlm.56.

⁶ Wahbah Zuhaili, *Ushul al-Fiqh al-Islami*, (Damaskus: Dar al-Fikr. 1986), hlm.59

RESEARCH METHODS

This research uses normative or doctrinal legal research with a normative-philosophical approach. It examines prostitution and its legal implications through *maqasid al-shari'ah*, especially the framework of *al-daruriyyat al-khamsah*. The study relies on library research and uses secondary data consisting of primary, secondary, and supporting legal materials.

The primary legal materials include the Qur'an, hadith, and Islamic legal texts related to adultery, immoral acts, and prostitution. The secondary materials include classical and contemporary fiqh literature, books, journal articles, and legal commentaries on *maqasid al-shari'ah*, *maslahah*, *mafsadah*, family protection, and criminal law.

The data were analyzed using descriptive-analytical and interpretive methods. The analysis focuses on how the prohibition of prostitution protects the five basic objectives of Islamic law: *hifz al-din*, by preserving religious and moral values; *hifz al-nafs*, by protecting life from physical and psychological harm; *hifz al-aql*, by preventing conditions that damage reason and moral judgment; *hifz al-nasl*, by protecting marriage, lineage, and family integrity; and *hifz al-mal*, by preventing exploitation, trafficking, and unlawful economic gain.

Through this framework, the study evaluates prostitution not only as a prohibited act but also as a social and legal issue that threatens morality, human dignity, family order, and public welfare.

ANALYSIS AND DISCUSSION

Islamic Jurisprudence Universally Prohibits Prostitution as a Structural Threat to the Foundational Objectives of Islamic Law. Analyzing this Prohibition Through the Five Essentials (*Al-Daruriyyat Al-Khamsah*)

Prostitution is prohibited to achieve public welfare (*jalb al-masalih*) and prevent harm (*daf' al-mafasid*). Through the *Maqasid al-Shari'ah* (objectives of Islamic law) framework, this ban serves as a crucial tool to prevent structural dangers and ensure the protection of the five basic pillars of humanity (*Al-Daruriyyat Al-Khamsah*).

Classical Perspective: Classical Islamic scholars view prostitution as an act of abomination and a major sin (*fahisha/zina*) that corrupts the individual's spiritual morality. Detailed Explanation of the Classical Perspective: In classical Islamic jurisprudence, prostitution is unequivocally prohibited. Scholars base this condemnation on core tenets derived from the Quran and Hadith:

Categorized as *Zina* and *Fahisha*: Prostitution is categorized under *zina* (unlawful sexual intercourse). The Quran explicitly forbids it, labeling it as a shameful act (*fahisha*) and an evil way: "*And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way*".⁷ **Moral and Spiritual Corruption:** Classical scholars emphasize that prostitution degrades human dignity, violates the sanctity of the human body, and destroys spiritual morality. It is viewed as a severe deviation from the principles of modesty, chastity, and purity (*haya*) that are essential to a righteous Muslim life. **Prohibition of Earnings:** Because it is an unlawful transaction, the income derived from prostitution is considered illicit and impure (evil earnings).⁸ **Severe Repercussions:** Due to its destructive impact on both the individual and society, classical Islamic law prescribed severe deterrents (known as *hadd* punishments) for those who commit *zina* willfully, as detailed in the scholarly traditions.

Contemporary perspective: Prostitution is a form of commodification of the human body that reduces human beings to objects. This diminishes both spiritual values and communal spirituality." This perspective is central to various social and philosophical debates. For a

⁷ Kementerian Agama Republik Indonesia Dirjen Bimas Direktorat Urusan Agama Islam dan Pembinaan Syariah, *Al-Qur'an Dan Terjemahannya* (PT. Sinergi Pustaka Indonesia, 2012).

⁸ Jasser Auda, *Membumikan Hukum Islam Melalui Maqashid Syariah*. Penerjemah Rosidin dan Ali Abd el-Mun'im,. Bandung: Mizan Pustaka, 2015, hlm 215

deeper dive into how different frameworks interpret these moral, ethical, and sociological challenges⁹

From a critical regulatory perspective, prostitution laws must integrate moral rehabilitation through spiritual education. This approach aims to address the root causes of the sex trade and effectively prevent the perpetuation of human exploitation.

Classic Perspective: Classical Islamic jurisprudence (Fiqh) prohibits prostitution because it has the potential to trigger violent conflicts and murders resulting from turf wars over influence in the criminal underworld. For further context on how traditional Islamic scholars view the moral and social implications of this prohibition.¹⁰

From a contemporary perspective, protecting the soul from prostitution goes beyond merely preventing criminal acts; it safeguards individuals from the spread of Sexually Transmitted Diseases (STDs), HIV/AIDS, and the severe psychological trauma experienced by sex workers.¹¹

Key Elements of this Perspective: Public Health Focus: Highlights the severe physical health risks involved, such as the transmission of HIV/AIDS and other STDs. Mental Well-being: Acknowledges the often-devastating psychological damage and trauma associated with the sex trade. Holistic Care: Shifts the narrative from simple crime prevention to overall human protection and subject support.

From a critical regulatory perspective, localization policies disguised as health surveillance contradict this principle because they institutionalize women's physical and psychological vulnerability.¹²

Classical Perspective: The *ulama* (Islamic scholars) strictly forbid actions that blur moral boundaries and degrade human dignity.

From a contemporary perspective, prostitution frequently involves dependency on illicit drugs and alcohol, which impairs cognitive and mental functions.

Research indicates that individuals in the sex trade may use these substances to cope with psychological distress, trauma, or the demands of the lifestyle. This substance dependence can further damage brain regions that regulate decision-making, memory, and impulse control. For comprehensive information on how substance use disorders affect cognitive functioning¹³

Regulatory Critical Perspective: Prohibition regulations must be accompanied by mental rehabilitation to restore the reasoning and rationality of the perpetrators caught in the syndicates' grip.

The classical perspective views prostitution as the primary gateway to *zina* (unlawful sexual intercourse), which obscures genealogical lines (*ikhtilat al-ansab*), destroys the family structure and lineage system (*nasab*), and undermines the sanctity of marriage.¹⁴ This view is central to the traditional Islamic jurisprudence (*Maqasid al-Shariah*) framework, which emphasizes the strict preservation of lineage (*nasab*) to maintain sociological order and family clarity.¹⁵

⁹ the Cambridge Core Sex Economy Analysis or read the Prindle Institute for Ethics Discussion.

¹⁰ Prostitution, Islamic Law and Ottoman Societies or read more about the ethical reasoning in Punishment for Prostitution Offenders.

¹¹ Jasser Auda, *Maqashid Syariah, terj. Malaysia: Angkatan Belia Islam*, 2014, hlm 204

¹² Muhammad Arifin, *Ushul Fiqh: Kaidah-kaidah Penerapan Hukum Islam*, Surabaya: Citra Media. 1997, hlm 97

¹³ you can review literature via the National Center for Biotechnology Information.

¹⁴ Yusuf al-Qardhawi, *Kaifa Nata'amal ma'a al-Qur'an al-'Azhim*. (Mesir: Dar Asy-Syuruq, 1999), hlm.99

¹⁵ You can explore more about how traditional Islamic law frames family preservation on the Islamic Bioethics Project or explore further academic perspectives regarding traditional jurisprudence on Repository PTIQ.

Contemporary Perspective: This practice threatens family resilience and leads to the emergence of children without a clear legal status (children born out of wedlock).

From a critical regulatory perspective, laws prohibiting prostitution must address root causes such as human trafficking and sexual exploitation, which frequently target women and children. To explore further research and legal frameworks concerning this issue, consult the following resources:

Legal Analysis on Human Trafficking: Review academic research¹⁶ on Human Rights and Exploitation.¹⁷ Digital Context: For insights into how online environments intersect with these issues,¹⁸

Classical Perspective: Classical scholars, including Imam Al-Bukhari, prohibited earnings derived from prostitution (known as *mahr al-baghi*). This prohibition is rooted in the classification of such income as *al-suht* (illicit or corrupt gain) and *batil* (void/invalid under Islamic law). The foundation for this consensus is a widely cited narration (hadith) in which the Prophet Muhammad specifically forbade the price of a dog, the earnings of a prostitute, and the payment given to a fortune-teller. In the context of Islamic jurisprudence, accepting payment for sexual transactions is universally deemed unlawful, and the wealth acquired from it is considered impure.¹⁹

Contemporary Perspective: Prostitution often becomes a hotbed for money laundering and economic exploitation.

From a critical regulatory perspective, the law must include asset forfeiture sanctions for pimps and network facilitators to ensure that the financial flow from illegal transactions is permanently halted."

Key Context: Target: Imposes financial crippling on the illicit industry by targeting the organizers (pimps) and those providing structural/digital support. Mechanism: Asset forfeiture laws (both civil and criminal) are utilized globally to seize the proceeds of crime. **Goal:** Deters illegal networks by cutting off their economic lifelines, recognizing that these operations are driven by profit.

The "Critical Perspective: Discourse of Maqasid in Modern Regulation" is a critical examination of how Maqasid al-Shari'ah (the higher objectives of Islamic law) shapes contemporary legal and public policies. It shifts focus from rigid, literal text (*legalism*) to value-oriented governance that emphasizes human welfare, social justice, and ethics in modern regulatory frameworks.²⁰

Core Dimensions of Modern Maqasid: The discourse evaluates modern regulations, ranging from state laws to financial and environmental policies, through the lens of five fundamental universal objectives: Protection of Faith (*Hifz ad-Din*): Ensuring religious freedom, tolerance, and ethical morality. Protection of Life (*Hifz an-Nafs*): Shaping public health regulations, human rights, and safety laws. Protection of Intellect (*Hifz al-'Aql*): Promoting education, information transparency, and scientific progress. Protection of Lineage (*Hifz an-Nasl*): Strengthening family laws, child protection, and bodily autonomy. Protection of

¹⁶ Trafficking and Prostitusi dalam Perspektif Hukum di Indonesia for a comprehensive overview of how Indonesian law handles these intersections.

¹⁷ Read the Tinjauan Yuridis Mengenai Perdagangan Orang study to understand the historical and structural legal frameworks addressing human trafficking and the protection of vulnerable groups.

¹⁸ you can review the Penegakan Hukum Terhadap Tindak Pidana Eksploitasi analysis.

¹⁹ Nur Akifah Janur, Atirah Atirah, *Diskursus Hak Asasi Manusia Dalam Kurikulum Mata Kuliah Hukum Pidana*, (Jurnal Qisthosia: Jurnal Syariah dan Hukum Volume 3 Nomor 1, Juni 2022), hlm.18

²⁰ Abdul Rahman, Sri Karmila Dol, *Penerapan Undang-Undang Cipta Kerja dan Undang-Undang Perlindungan Anak Bagi Pekerja Anak di Sektor Industri*, Qisthosia (Jurnal Syariah & Hukum, Vol. 4 No.2, Desember, 2023), hlm.187

Wealth (*Hifz al-Mal*): Reforming economic and Islamic financial systems to ensure fair wealth distribution and prevent exploitation.

Critical Reconstructions in Modernity: Scholars emphasize a methodological shift in how these objectives are interpreted. Instead of merely viewing them as a "protective" mechanism for the status quo, contemporary critical thought proposes an epistemological reconstruction. From Protection to Development: Scholars like Jasser Auda push for a paradigm shift that equates *Maqasid* with "global human development", ensuring laws adapt to the dynamic complexities of the 21st century. *Maqasid* as a Social Planner: It acts as a rational, philosophical tool for social planning and addressing universal challenges such as climate change and equitable global finance.

Practical Applications: Governments and institutions are integrating this framework for actionable, holistic governance. Islamic Finance: Malaysia's financial regulators and institutions use *Maqasid* to steer Islamic banking away from mere procedural compliance and toward ethical, sustainable, and impact-driven outcomes. Public Policy: Global frameworks increasingly draw on *Maqasid* to bridge human rights values with Islamic ethics, such as in formulating strategies against extremism.

Systemic Legal Approach: Figures such as Jasser Auda emphasize a systemic approach in *maqasid* [the higher objectives of Islamic law. Regulations should not merely punish sex workers (who are often victims/marginalized groups), but must focus on breaking the chain of demand (clients) and the overarching system (pimps/syndicates). For a deeper dive into this philosophical framework,²¹

Government tolerance of covert localization for the sake of regional revenue fails to implement *Maqasid al-Shari'ah* comprehensively, as it sacrifices human dignity (*hifz al-nafs* and *hifz al-nasl*) for superficial economic welfare. Modern scholars like Ibn 'Ashur expanded the essential objectives of Islamic law (*Al-Daruriyyat*) by including the protection of honor and personal dignity (*hifz al-'ird*). Consequently, prostitution is viewed as one of the most fatal violations of a woman's honor and moral integrity in this framework. For further reading on how contemporary Islamic legal philosophy addresses modern moral challenges through these objectives,²²

Many contemporary scholars adopt a framework of *Maqasid* (higher objectives of Islamic law) that emphasizes human rights, gender equality, and social justice. In the context of the prohibition of prostitution, regulations must be balanced to protect human dignity, prevent exploitation, and address the socioeconomic root causes of the practice.

Evaluation of *Taysir* (Facilitation) and *Raf' al-Haraj* (Removal of Hardship) The principles of *Taysir* (ease) and *Raf' al-Haraj* (removing difficulty) in Islam are meant to make compliance with religious law possible during times of necessity or hardship, not to legitimize immoral, destructive, or prohibited actions (*maksiat*). Misapplication: Applying "facilitation" to justify the existence or high prevalence of prostitution is a distortion of the concept of *Raf' al-Haraj*.²³ The True "Hardship": Prostitution causes greater, systemic social hardship, thus eliminating it is actually a requirement for achieving true *Raf' al-Haraj* (removing the harm of immorality).

Conclusion: A society with high prostitution rates is experiencing a severe crisis in *Maqasid Syariah* protection, as the practice destroys the foundational pillars of family, morality, health, and social order.

²¹ you can explore Auda's systemic approach to Islamic jurisprudence and ethics in his work, *Maqasid Al-shariah as Philosophy of Islamic Law*.

²² explore the Springer Nature Treatise on *Maqasid Al-Shari'ah*.

²³ Asafri Jaya Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi*. Jakarta: PT Radja Grafindo Persada. 2007, hlm 207

Scholarly views and fatwas from Islamic councils, including perspectives aligned with the International Islamic Fiqh Academy and prominent regional bodies like the Indonesian Ulema Council (MUI), strongly condemn high-rate prostitution as a severe crisis that dismantles the essential pillars of *Maqasid Shariah* (the higher objectives of Islamic law). The consensus is that prostitution destroys the protection of lineage (*hifz al-nasl*), morality (*hifz al-'irdh*), health (*hifz al-nafs*), and social order, necessitating urgent intervention.²⁴ Here is an examination of the decisions and views regarding this crisis:

Reaffirmation of Prohibition and Moral Damage: Prostitution as Zina (Adultery): Prostitution is uniformly classified as *fahisyah* (gross immorality) and a form of *zina*, strictly prohibited under the Quran and Sunnah. **Destruction of Social Fabric:** Scholars emphasize that widespread prostitution is not just an individual sin but a systemic threat that destroys the foundation of family, health, and morality. **Maqasid Shariah Crisis:** It constitutes a direct attack on *Hifz al-Nasl* (protection of offspring/lineage) by blurring family lines, and on *Hifz al-'Aql* (protection of mind) by normalizing immorality.²⁵

Legal and Structural Responses (Fiqh Council Views): Preventive Measures (*Sadd al-Dhari'ah*): Scholars emphasize that everything leading to illegal sexual acts must be prohibited. This includes cracking down on pimps, pornographic content, and the normalization of sexual exploitation. **Criminalization and Penalties:** In line with *fiqh jinayah* (Islamic criminal law), acts of prostitution are considered severe crimes requiring, at minimum, strict disciplinary action and, in many interpretations, penalties of *hadd* (fixed punishment) for adultery.²⁶

Regulation of Public Space: Local councils and Islamic authorities (e.g., in Indonesia) often push for municipal bylaws to ban the provision of places for immoral acts and to close localization areas (red-light districts).

Progressive Social Approach: Rehabilitative and Protective: Rehabilitation Over Mere Punishment: Modern scholars and councils increasingly focus on the rehabilitation of sex workers, treating them not only as criminals but also as victims of poverty and exploitation, in accordance with the need to protect human dignity. **Protection of Children:** Scholars emphasize the urgent need to ensure the welfare, education, and health of children born into or living within environments of prostitution, protecting their right to a proper upbringing (*hadhanah*).²⁷

Zakat for Reintegration: Some scholarly interpretations allow for the distribution of *zakat* to prostitutes, particularly if they are poor and seek to repent, classifying them under the categories of *miskin* (poor) or *riqab* (those freeing themselves from the bondage of a degrading life) to facilitate their return to a normal life.

Pragmatic Fiqh: *Sadd al-Dharar* (Closing the Harm): Minimizing Harm: In situations where immediate elimination of prostitution is not possible, some scholars, such as KH Sahal Mahfudz, have used the principle of *sadd al-dharar* (taking the lesser of two evils) to manage the situation through strictly controlled, hidden, or transitional measures designed to eventually abolish it rather than allowing unchecked proliferation. **Rehabilitation Efforts:** The goal of these approaches is to protect public health (by reducing the spread of disease) and to provide opportunities for rehabilitation.²⁸

In summary, the consensus is that prostitution is a major sin. The scholarly view prioritizes a twofold approach: strict prohibition and criminalization of the acts (enforcing

²⁴ Ahmad Mursi Husain Jauhar, *Maqashid Syariah* terj. Khikmawati. Jakarta: Amzah., 2013, hlm 213

²⁵ Y. Abdi, *Prostitusi: Kisah 60 Daerah di Indonesia*. Malang: Airlangga University Press, 2019, hlm 219

²⁶ Bachtiar, R., & Purnomo, E.. *Bisnis Prostitusi*. Yogyakarta: Pinus, 2007, hlm 207

²⁷ Bonger, W. A. (Dalam Mudjijono, 2005). *Pengertian Prostitusi sebagai Gejala Sosial*.

²⁸ Koentjoro. *Pelacur dan Pelacuran: Sebuah Pengantar*. Yogyakarta: Yayasan Bentang Budaya, 1996, hlm 96.

moral boundaries) combined with holistic, rehabilitative, and socioeconomic support to remove individuals from the industry (protecting the human soul and dignity).

A society with High Rates of Prostitution that is experiencing a Severe Crisis in the Protection of Maqasid Shariah, as the Practice Destroys the Foundational Pillars of Family, Morality, Health, and Social Order

A society with high rates of prostitution faces a severe crisis in the protection of Maqasid Shariah (the higher objectives of Islamic law), as this practice directly violates the fundamental, *الخمس الضروريات* (*al-daruriyat al-khamsah*) designed to protect human life and dignity. Prostitution is classified as adultery (*zina*) in Islamic law, which is seen as a destructive force against the core pillars of family, morality, health, and social order. The crisis affects the foundational pillars of Maqasid Shariah in the following ways:²⁹

Destruction of Family Structure (*Hifzh al-Nasl*): Ambiguity of Lineage: Prostitution destroys the clarity of lineage, which is paramount in Islam, leading to legal and moral ambiguity regarding child rearing, inheritance, and kinship. **Weakening of Marriage:** As an alternative to lawful marriage, it weakens family resilience, contributing to broken homes and social disharmony.

Collapse of Morality and Honor (*Hifzh al-'Ard*): "Selling of Honor": Prostitution is viewed as *bai'ul irdhi*, or the selling of honor, which is a total violation of human dignity. **Moral Decay:** The normalization of prostitution erodes ethical standards, impacting not only those involved but also the wider social environment, especially when it occurs in residential areas.

Threat to Life and Health (*Hifzh al-Nafs*): Physical and Mental Health Risks: The high-risk nature of the practice leads to the spread of sexual diseases and exposes individuals to extreme violence and exploitation. **Human Trafficking:** In many cases, prostitution is linked to trafficking, which is a form of modern slavery and a serious violation of the right to safety and freedom.

Breakdown of Social Order (*Hifzh al-Mal & Al-'Aql*): Economic Exploitation: Prostitution thrives on economic vulnerability, treating the body as a tool for financial gain and violating the sanctity of human life. **Increased Criminality:** The underground networks associated with prostitution often lead to increased crime rates and the need for intense law enforcement to combat the spread of these practices.

Violation of Religion (*Hifzh al-Din*): Disregard for Religious Norms: The prevalence of prostitution shows a disconnect between society and religious, moral, and legal guidance, where the prohibition of adultery is disregarded for money or sexual satisfaction.

Conclusion on the Crisis: Prostitution is regarded as a severe violation of Islamic law, requiring strict punitive measures—such as 100 lashes for unmarried individuals or stoning for married individuals (*muhsan*)—to deter the act and protect the sanctity of human life. To overcome this crisis, Islamic scholars emphasize the need for rehabilitative approaches that remove individuals from the profession, restore their honor, and strengthen family systems.

A society with high rates of prostitution is considered to be experiencing a profound crisis in the protection of Maqasid Shariah (the higher objectives of Islamic law), particularly regarding the protection of lineage, dignity, and human life. In this context, prostitution is seen not merely as a transaction but as an act that destroys foundational social pillars by treating the body as a commodity, fostering crime, and undermining the sanctity of the family unit.³⁰

The crisis is analyzed through the lens of destroying the following pillars: **Destruction of Family Structure:** Prostitution disrupts the legal, monogamous, and responsible structure of

²⁹ Segrave, M., & Pickering, S.. *Sex Trafficking*. Routledge, 2012, hlm 213

³⁰ Suyanto, B.. *Anak Perempuan Yang Dilacurkan: Korban Eksploitasi di Industri*., 2002, hlm 202

the family, which is the cornerstone of a stable society, by promoting illicit sexual relationships outside marriage. Erosion of Morality and Dignity: Prostitution is interpreted as "selling honor", which dehumanizes individuals and reduces human bodies to goods for sexual gratification.³¹

Health and Life Risks: High rates of prostitution directly lead to the spread of sexually transmitted infections (STIs), unwanted pregnancies, and increased risks of violence against women. Collapse of Social Order: Prostitution is viewed as a source of social corruption, often linked with organized crime, pimps, and illegal drug trafficking.

Antithesis: The Ideal Society (Protection of Maqasid Shariah): The opposite of this scenario is a society that upholds Maqasid Shariah, characterized by: Strong Familial Bonds: The family is considered the basic unit of society, founded on legal marriage, protecting lineage, and providing stability. High Moral Standards: The society protects the sanctity of personal honor and promotes modest behavior, preventing the objectification of human beings.³²

Protection of Public Health: Sexual relations are restricted to marriage, minimizing the spread of diseases and protecting the physical and mental health of the population. Social Order and Safety: A society where law and ethics ensure that the community is free from exploitation, ensuring that individuals, especially women, are not driven by poverty or coercion into unsafe situations.

In an ideal, Shariah-compliant society, the state and community work together to foster economic and moral education to prevent the factors that drive prostitution, such as extreme poverty and low moral awareness.

A society experiencing high rates of prostitution faces a severe, multifaceted crisis in the protection of Maqasid Shariah (the higher objectives of Islamic law). Prostitution is deemed to destroy the foundational pillars—*daruriyyat* (essentials)—of family, morality, health, and social order. This scenario represents a failure to uphold the core Maqasid, particularly in the following areas:

Destruction of Lineage and Family (Hifz al-Nasl): Destruction of Lineage: Prostitution violates the sanctity of marriage and creates uncertainty in lineage (*nasab*), which is considered dangerous to the maintenance of offspring. Family Breakdown: The practice destroys the foundations of family life, leading to the disintegration of traditional marital structures and the neglect of children.

Collapse of Morality and Honor (Hifz al-'Ard): Loss of Public Morality: High prostitution rates indicate a crisis of public morals and low spiritual awareness within society. Demeaning Human Dignity: Prostitution is seen in the Islamic perspective as a practice that demeans women and violates human dignity, which is a key component of protecting honor (*hifz al-'irdh*).

Crisis in Physical and Social Health (Hifz al-Nafs): Physical Threats: Prostitution poses severe health risks, including the spread of STDs, thereby threatening the protection of life and physical well-being (*hifz al-nafs*). Psychological and Emotional Toll: The practice is often intertwined with exploitation, trafficking, and violence, violating the psychological and emotional safety of the individuals involved.

Breakdown of Social Order and Security: Spread of Vice: It acts as a catalyst for other social ills, contributing to moral decay and public disorder. Failure of Social Protection: The prevalence of this practice often indicates a failure in the society's ability to provide economic empowerment, leading to poverty-driven involvement in sex work.

³¹ Soedjono D.. *Pelacuran Ditinjau Dari Segi Hukum Dan Kenyataan Dalam Masyarakat*. Bandung: Karya Nusantara, 1997, hlm 97

³² Mudjijono.. *Kritik Hukum Islam Atas Sanksi Pidana Pelaku Prostitusi*. Jakarta: LP3ES, 1992, hlm 92

Synthesis of the Crisis: The crisis is not merely a legal infraction but a systemic breakdown. It represents a shift from *Maslahah* (public interest) to *Mafsadah* (corruption/harm). A holistic approach to addressing this, in line with *Maqasid*, involves strengthening family resilience, moral education, and economic empowerment to eliminate the root causes, while providing rehabilitation for individuals.

Integrated Islamic ethics, when applied through the framework of *Maqasid al-Shari'ah* (the higher objectives of Islamic law), aims to protect the essential pillars of human life—religion, life, intellect, lineage, and property—from destructive forces. Prostitution, considered a severe violation of Islamic law, directly threatens these pillars by destroying family structure, moral integrity, public health, and social order.

Prostitution as a Crisis in Maqasid Shariah Protection: Prostitution, or *zina* (adultery/fornication), is considered a major sin and is strictly forbidden (haram) in Islam. Its prevalence creates a "crisis" in the *Maqasid Shariah* framework across several key areas: Protection of Lineage (*Hifz al-Nasl*). Prostitution destroys the structure of the family and creates uncertainty about family lineage. Protection of Morality and Honor (*Hifz al-'Ard*): It is viewed as a "sale of honor" that degrades human dignity, especially that of women.³³

Protection of Health and Life (*Hifz al-Nafs*): Prostitution poses severe risks of disease and violence against women. Social Order: It is a form of social deviation that harms the wider community.

The Integrated Maqasid Approach to Solutions: The *Maqasid* approach does not focus solely on punishment but also on rehabilitation, addressing root causes (such as economic desperation), and restoring moral values. Preventive Measures (*Sadd al-Dhara'i*): The law prohibits not just prostitution itself, but also actions leading to it, to prevent the decay of society. Economic Empowerment: Because many are forced into prostitution due to economic hardship, a *Maqasid* approach supports using Zakat for rehabilitation and providing skills/capital for alternative livelihoods.³⁴

Rehabilitation of Human Dignity: The goal is to move from simply punishing sex workers to transforming them, protecting their souls and dignity through social and economic integration. Minimizing Harm (*Irtikabu akhaffu adh-dhararain*): Some contemporary, moderate views (such as those of KH Sahal Mahfudz) discuss localized, tightly controlled, or rehabilitative measures to minimize the greater damage to society while aiming to eliminate the practice over time.³⁵

In essence, an integrated ethical approach uses the *Maqasid* framework to not just condemn, but to actively protect the foundational pillars of society by addressing the root causes of the moral and social crisis created by prostitution.

An Approach to the Higher Objectives/Purposes of Islamic Law of Prostitution on Analysis

The approach of the Higher Objectives/Purposes of Islamic Law (*Maqāṣid al-Sharī'ah*) to prostitution is that it is strictly forbidden (haram) because it violates the fundamental, essential human needs (*al-darūriyyāt al-khamsah*) that Sharia aims to protect. The *Maqāṣid* framework views prostitution as a destructive act (*mafsadah*) that degrades human dignity and threatens the social and moral order.

³³ Wahid, A., & Irfan, M.. *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi atas Hak Asasi Perempuan*. Bandung: Refika Aditama, 2011, hlm 211

³⁴ Abdulloh Munir, "Analisis Maqāṣid al-Sharī'ah terhadap Kebijakan Penutupan Lokalisasi Prostitusi Dolly." *Doktoral Thesis, UIN Alauddin Makassar*, 2020, hlm 202

³⁵ Syarif, Muhammad, "Punishment for Prostitution Offenders in the Review of Maqashid Syariah." *Al-Hiwalah: Journal of Shariah Economic Law*, 3(2), 2024, hlm 204

Prostitution in the Framework of *Maqāṣid al-Sharī'ah*: Under the five pillars of *Maqāṣid al-Sharī'ah* (protection of religion, soul, mind, lineage, and property), prostitution impacts the following: Protection of Lineage (*Hifẓ al-Nasl*): Prostitution is considered a form of *zina* (adultery/fornication), which obscures lineage, destabilizes family structures, and spreads sexual diseases, thus violating this core principle. Protection of Honor/Dignity (*Hifẓ al-'Ird*): Prostitution is interpreted as "selling honor" (*bai'ul irdhi*), a severe insult to human dignity, particularly that of women.³⁶

Protection of Soul/Life (*Hifẓ al-Nafs*): Prostitution is associated with trafficking and exploitation, which violates the sanctity of human life and dignity. Protection of Wealth (*Hifẓ al-Māl*): Income derived from prostitution is considered illicit (*haram*).

Key Perspectives in the Maqāṣid Approach: Prohibition and Criminalization: Because prostitution violates these essential pillars, Islamic law prohibits it. Contemporary applications, such as the use of Article 27 of the IET Law in Indonesia regarding decency, are viewed as aligning with this prohibition. Harm Reduction and "The Lesser Evil" (*Irtikābu Akhaffu adh-Dhararain*): In addressing the complex social reality of prostitution, some scholars, such as KH Sahal Mahfudz, have argued that while prostitution is prohibited, policy approaches might need to consider *irtikābu akhaffu adh-dhararain* (taking the lightest harm from the dilemma of two harms) to manage or reduce the greater harm, such as unregulated or hidden prostitution.³⁷

Rehabilitation and Protection: A Maqāṣid approach also includes empowering sex workers through economic and social rehabilitation, for example, considering them eligible for zakat to help them leave the profession, which protects their dignity and soul. Combating Human Trafficking: The Maqāṣid approach strongly opposes prostitution when it involves trafficking, viewing it as modern slavery that must be eradicated.

In summary, the *Maqāṣid* approach seeks to eliminate the destructive effects of prostitution on individuals and society by upholding moral standards and protecting human dignity, while also recognizing the need for practical, compassionate solutions that address the root causes, such as poverty.

The approach of the Higher Objectives/Purposes of Islamic Law (*Maqāṣid al-Sharī'ah*) regarding prostitution results in a strict prohibition, framing it as a major violation of the foundational goals of Islamic jurisprudence, primarily the protection of religion, honor, lineage, and life. While classical Islamic law (*fiqh*) treats it under the rules of adultery (*zina*), a *Maqāṣid* approach often leads to nuanced legal implications focusing on harm reduction, rehabilitation, and the elimination of structural exploitation. Here are the key legal implications from this perspective:³⁸

Definitive Prohibition based on Five Objectives (*Maqāṣid*): Protection of Lineage (*Hifẓ al-Nasl*) and Honor (*Hifẓ al-'Irdh*): Prostitution is viewed as "selling honor" (*bai'ul irdhi*) and a direct threat to the family structure, as it obscures lineage and compromises moral standards. Protection of Life (*Hifẓ al-Nafs*): It is recognized that prostitution often leads to violence, exploitation, and the spread of sexual diseases, which the law aims to prevent. Protection of Property (*Hifẓ al-Māl*): Earnings from prostitution are deemed *haram* (unlawful) and, under stricter interpretations, illegal to possess.³⁹

³⁶ Kusumawati, A., & Rochaeti, N.. Kriminalisasi Pengguna Jasa Prostitusi, *Jurnal Pembangunan Hukum Indonesia*, 2019, hlm 209

³⁷ Natasya,. *Prostitusi Online di Jakarta Selatan*, Jurnal Kesehatan Masyarakat, 2017, hlm 207

³⁸ Muhammad Syarif, Zakaria University, Zulhamdi, Husnaini Hasbi, Muhammad Nazir *Punishment for Prostitution Offenders in the Review of Maqashid Syariah*, Vol. 3 No. 2 (2024): Al-Hiwalah : Journal Syariah Economic Law

³⁹ Bambang Tri Bawono, Moh. Nurul Huda, Ahmad Hadi, Prayitno, 4Moh. Aris Siswanto, *Human Trafficking and the Relevance of Hifz al-nafs and Hifz al-'ird in Contemporary Islamic Legal Ethics*, MILRev : Metro Islamic Law Review ISSN: 2986-528X Vol. 4 No. 1 January-June 2025

Legal Reconstruction and Reclassification: Expansion of Liability: A *Maqāsid* approach, often combined with *Sadd al-Dharī'ah* (blocking the means to evil), pushes for legal reform to punish not only the sex worker but also the customers and intermediaries (pimps), as they all contribute to the damage. Focus on Criminalization: The legal trend is to shift from viewing it merely as a private sin to a public crime against social morals, as seen in Indonesian regional regulations (Perda).⁴⁰

Contextual and Social *Fiqh* (*Maslahah* Approach): Gradual Elimination: Some contemporary scholars, applying a "social *fiqh*" approach, argue that while prostitution is haram, immediate, total closure of localization sites without rehabilitation can cause greater harm (*mafsadah*). Rehabilitation Focus: The legal focus shifts to, or incorporates, providing, rehabilitating, and supporting sex workers to leave the profession, rather than only applying punitive measures.⁴¹ Zakat for Reintegration: There is a scholarly view that charity (zakat) can help individuals leave the prostitution industry, in line with protecting their souls and enabling them to return to an honorable life.

Conflict with Contemporary Realities: Digital Age Enforcement: The *Maqāsid* approach justifies extending decency norms to online prostitution, applying Electronic Transaction laws to curb the digital expansion of these activities. Tension with Human Rights: Legal practitioners face challenges balancing the *Maqāsid*-based prohibition of adultery with human rights concerns, often resulting in debates over the proportionality of punishments for service users.⁴²

In summary, the legal implication of using *Maqāsid al-Sharī'ah* is a shift from purely retributive justice to a more comprehensive, welfare-oriented approach that aims to eliminate the practice while addressing its root causes—economic, social, and moral—to safeguard public interest (*maslahah*)

CONCLUSION

The primary findings of the study on prostitution, using the higher objectives of Islamic law, reveal two important points.

First, the practice of prostitution directly violates the five essential human needs in Islamic law, known as *al-darūriyyāt al-khamsah*. In terms of the preservation of religion (*ḥifẓ al-dīn*), prostitution contradicts the moral and ethical values promoted by Islamic teachings. It encourages behavior that distances individuals from spiritual obedience and moral responsibility. In terms of the preservation of life (*ḥifẓ al-nafs*), prostitution endangers physical and mental health because it increases the risk of sexually transmitted infections and exposes individuals to violence, exploitation, and psychological harm. In terms of the preservation of intellect (*ḥifẓ al-'aql*), prostitution is often linked to substance abuse, trauma, and emotional pressure, which can impair rational judgment and human dignity. In terms of the preservation of lineage and family (*ḥifẓ al-nasl*), prostitution weakens the institution of marriage, creates uncertainty in family lineage, and disrupts the moral upbringing of future generations. In terms of the preservation of wealth (*ḥifẓ al-māl*), prostitution often involves economic exploitation, human trafficking, financial dependency, and the misuse of wealth through unlawful means.

⁴⁰ KUHP Pasal 296 & 506 (mucikari), UU No. 44 Tahun 2008 (Pornografi). DAN UU No. 1 Tahun 2023 (KUHP Baru, Pasal 420-421)

⁴¹ Haddad Ulum Harahap, *Receiving Proceeds from Sexual Transactions for Prostitutes in the Perspective of Hadith and Economic Ahkām*, Vol. 4 No. 2 (2025); Jurnal Ilmiah Gema Perencana

⁴² Moh Ashif Fuadi, Moh Mahbub, Irma Ayu Kartika Dewi, Martina Safitry, Sucipto Sucipto, *The Historical Study of Prostitution Practices and Its Fiqh Analysis*, June 25, 2022 // DOI: 10.30659/jdh.v5i2.20827

Second, the perspective of *Maqāṣid al-Sharī'ah* rejects any attempt to legalize or normalize prostitution. Activities and income derived from the sex trade are considered harmful to the moral, social, and spiritual order of society. Prostitution contradicts the principle of *maṣlaḥah mursalah*, which aims to secure public benefit and prevent harm. Therefore, its prohibition is necessary to protect human dignity, preserve social welfare, and prevent broader moral and legal damage within society.

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