

# Genealogy of the Transformation of Hifdzun Nasl Law: A Study of Classical and Modern Literature on Intellectual Property Rights in the Perspective of Al- Qurtubi

Ridwan

[ridwan@unilak.ac.id](mailto:ridwan@unilak.ac.id)

Universitas Lancang Kuning

Akmal Abdul Munir

[akmalmunir@uin-suska.ac.id](mailto:akmalmunir@uin-suska.ac.id)

Universitas Islam Negeri Sultan Syarif Kasim Riau

## Abstract

*Genealogy of the transformation of ḥifẓ al-nasl law from classical literature to the protection of Intellectual Property Rights (IPR) in the perspective of Al-Qurṭubī. ḥifẓ al-nasl, as one of the main objectives of the Shari'a in the theory of maqāṣid al-Syarī'ah, not only protects human biological continuity, but also emphasizes the moral, social, and intellectual dimensions. Through the classical approach developed by Al-Juwaynī, Al-Ghazālī, and Al-Syātibī, shari'a is understood as an instrument for achieving the benefit of the people (maṣlaḥah al-'ibād) by maintaining social dignity and stability. Tafsir Al-Qurṭubī emphasizes that the protection of descendants includes the honor, identity, and contribution of the individual, so that this principle can be adapted to the modern context, especially in the protection of intellectual works. The Islamic legal transformation approach (taḥawwul al-fiqh) explains the evolution of law from classical regulations regarding marriage, lineage, and inheritance to modern mechanisms that protect intellectual property rights (IPR), as a form of human "intellectual heritage." IPR theory from a contemporary perspective emphasizes that creative works have socio-moral values that must be protected, and that their violation constitutes ḡulm. The synthesis of the three theoretical frameworks—maqāṣid al-shari'ah, legal transformation, and IPR—provides a conceptual foundation for understanding the continuity of classical law in a modern context. This research demonstrates that IPR protection is a contemporary embodiment of the principle of ḥifẓ al-nasl, bridging classical and modern law, and affirming the relevance of the divine purpose of sharia in maintaining human sustainability, both biologically and intellectually.*

*Keywords: Legal Transformation, Hifdzun Nasl, Intellectual Property Rights*

## Abstrak

Genealogi transformasi hukum ḥifẓ al-nasl dari literatur klasik hingga perlindungan Hak Kekayaan Intelektual (HKI) dalam perspektif Al-Qurṭubī. ḥifẓ al-nasl, sebagai salah satu tujuan pokok syariat dalam teori maqāṣid al-

*syarī'ah*, tidak hanya melindungi keberlangsungan biologis manusia, tetapi juga menekankan dimensi moral, sosial, dan intelektual. Melalui pendekatan klasik yang dikembangkan oleh Al-Juwaynī, Al-Ghazālī, dan Al-Syāṭibī, syariat dipahami sebagai instrumen untuk mencapai kemaslahatan umat (*maṣlaḥah al-'ibād*) dengan menjaga martabat dan stabilitas sosial. Tafsir Al-Qurṭubī menegaskan bahwa perlindungan keturunan mencakup kehormatan, identitas, dan kontribusi individu, sehingga prinsip ini dapat diadaptasi ke konteks modern, khususnya dalam perlindungan karya intelektual. Pendekatan transformasi hukum Islam (*taḥawwul al-fiqh*) menjelaskan evolusi hukum dari regulasi klasik terkait pernikahan, nasab, dan waris menjadi mekanisme modern yang melindungi HKI, sebagai bentuk “keturunan intelektual” manusia. Teori HKI dalam perspektif kontemporer menegaskan bahwa karya cipta memiliki nilai sosial-moral yang wajib dijaga, dan pelanggaran merupakan bentuk *ẓulm*. Sintesis ketiga kerangka teori *maqāṣid al-syarī'ah*, transformasi hukum, dan HKI memberikan fondasi konseptual untuk memahami kesinambungan hukum klasik dalam konteks modern. Penelitian ini menunjukkan bahwa perlindungan HKI merupakan perwujudan kontemporer dari prinsip *ḥifẓ al-nasl*, menjembatani hukum klasik dan modern, serta menegaskan relevansi tujuan ilahiah syariat dalam menjaga keberlanjutan manusia, baik secara biologis maupun intelektual

Kata Kunci: Tranformasi Hukum, Hifzun Nasl, Hak Kekayaan Intelektual

### **A. Introduction**

In the Islamic legal tradition, the *maqāṣid al-syarī'ah* places *ḥifẓ al-nasl* as a crucial principle for maintaining human continuity, dignity, and social sanctity.<sup>1</sup> It initially focused on protecting lineage. However, the genealogy of its transformation shows that this concept evolved alongside social change, expanding from biological concerns to the protection of personal rights and human contributions, including reproductive rights, child protection, and recognition of intellectual property. Thus, *ḥifẓ al-nasl* becomes a framework that is not only genealogical but also epistemological, social, and legal.

The thoughts of al-Qurṭubī (d. 671 AH) in *al-Jāmi' li Aḥkām al-Qur'ān* are among the primary references for understanding the legal dimensions of *ḥifẓ al-nasl* in the context of classical Islamic legal interpretation.<sup>2</sup> Al-Qurṭubī is known as a mufassir who emphasizes legal aspects (*tafsīr al-aḥkām*), in which every verse of the Qur'an relating to social life, family, and morality is explained comprehensively in accordance with the principles of *maqāṣid*. In al-Qurṭubī's view, safeguarding offspring is not only a matter of protecting the

---

<sup>1</sup> Al-Syāṭibī, *al-Muwāfaqāt fī Uṣūl al-Syarī'ah*, (Beirut: Dār al-Kutub al-'Ilmiyyah, 2008), hlm. 27.

<sup>2</sup>Kamali, Mohammad Hashim, *Principles...*, hlm. 146.

lineage from chaos, but also maintaining human honor, identity, and social responsibility before Allah.<sup>3</sup>

However, challenges arise when these classical legal principles are confronted with modern developments, particularly in the realm of copyright or intellectual property rights.<sup>4</sup> In the era of globalization and information technology, human creations are no longer limited to physical objects, but extend to non-physical realms such as ideas, written works, and artistic expressions. In this context, the protection of human creations can be understood as part of the conceptual implementation of ḥifẓ al-nasl, namely, maintaining the continuity of human existence through innovation, science, and culture.<sup>5</sup>

Classical literature does not yet formally recognize the term intellectual property rights. However, its basic principles are already present in the concepts of haqq al-ibtikār (right of creation) and haqq al-tamlīk (right of ownership).<sup>6</sup> Several scholars, such as Ibn Ḥazm and al-Ghazālī, have addressed the importance of protecting one's rights over one's work, albeit in forms that have not yet been formalized.<sup>7</sup> Meanwhile, al-Qurṭubī, in his commentary on QS. an-Nūr [24]:2 and QS. al-Isrā' [17]:70, points out that human dignity lies in reason and creative abilities; therefore, any form of misappropriation of the results of human reason can be considered a violation of the principle of ḥifẓ al-nasl.<sup>8</sup>

From a historical perspective, the transformation of Islamic law in understanding ḥifẓ al-nasl cannot be separated from its surrounding socio-cultural context.<sup>9</sup> In classical times, Islamic law was responsive to the realities of Arab and early Islamic society, which were oriented toward family and lineage. Meanwhile,<sup>10</sup> in the modern era, Islamic law must adapt to national and international legal systems that emphasize individual rights and social justice.<sup>11</sup> The genealogy of this transformation reflects the dialectic between text and context, between revelation and reality.

---

<sup>3</sup> Al-Qurṭubī, *al-Jāmi'*, juz 12, hlm. 111

<sup>4</sup> Malkawi, Fathi, "Islamic Vision of Intellectual Property Rights", *Journal of Islamic Studies*, Vol. 23, No. 4 (2012), hlm. 57.

<sup>5</sup> Auda, *Maqasid al-Shariah*, hlm. 102.

<sup>6</sup> Ibn Ḥazm, *al-Muḥallā*, (Kairo: Dār al-Fikr, 2002), juz 8, hlm. 188.

<sup>7</sup> Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, (Beirut: Dār al-Ma'rifah, t.t.), juz 2, hlm. 120.

<sup>8</sup> Al-Qurṭubī, *al-Jāmi'*, juz 12, hlm. 110.

<sup>9</sup> Coulson, Noel J., *A History of Islamic Law*, (Edinburgh: Edinburgh University Press, 1964), hlm. 89.

<sup>10</sup> Hallaq, Wael B., *An Introduction to Islamic Law*, (Cambridge: Cambridge University Press, 2009), hlm. 175.

<sup>11</sup> Auda, *Maqasid al-Shariah*, hlm. 114.

In the context of intellectual property law, the maqāṣidī approach serves as a bridge between sharia values and modern demands, as Jasser Auda emphasizes that maqāṣid al-syarī'ah must be understood dynamically to respond to issues such as the creative economy and the protection of ideas.<sup>12</sup> So that IPR protection is not a form of westernization of law, but rather the implementation of the fundamental values of ḥifẓ al-nasl, which emphasize protection, sustainability, and justice; this relationship is also apparent in the dimension of Islamic morality, where plagiarism and misuse of works are seen as ḡulm, which is contrary to the principle of 'adl.<sup>13</sup> So that recognition and protection of one's work are part of maintaining the honor, identity, and sustainability of human contributions.<sup>14</sup>

Furthermore, the transformation of Islamic legal thought in this area demonstrates a reinterpretation of classical texts. Modern scholars such as Yusuf al-Qaraḏāwī and Wahbah al-Zuhaylī assert that every human creation, whether scientific or cultural, has a wealth value (mālīyah) that must be protected.<sup>15</sup> This principle aligns with al-Qurṭubī's view of the obligation of sharia to safeguard human dignity and prevent all forms of violations that could disrupt the social order.<sup>16</sup>

From this, it can be understood that the genealogy of the legal transformation of ḥifẓ al-nasl reflects the long journey of Islamic legal thought from a biological orientation to a humanistic and intellectual orientation.<sup>17</sup> The same basic principle, namely maintaining the continuity of human existence, continues to develop in various domains: family, moral, social, and now intellectual. From the perspective of al-Qurṭubī, all forms of protection of human dignity are an integral part of the implementation of maqāṣid al-sharī'ah.<sup>18</sup>

Thus, this study is essential to trace how the transformation of Islamic law, especially in the aspect of ḥifẓ al-nasl, forms a new paradigm in modern law, including in the context of Intellectual Property Rights, by emphasizing that the protection of intellectual works is not a foreign concept to Islam, but rather part of the classical legal heritage that needs to be revitalized according

---

<sup>12</sup> Al-Zuhaylī, Wahbah, *al-Fiqh al-Islāmī wa Adillatuh*, (Damaskus: Dār al-Fikr, 1989), juz 4, hlm. 338.

<sup>13</sup> Al-Syātībī, *al-Muwāfaqāt*, hlm. 33.

<sup>14</sup> Auda, *Maqasid al-Shariah*, hlm. 119.

<sup>15</sup> Al-Qaraḏāwī, Yusuf, *Fiqh al-Ḥalāl wa al-Ḥarām*, (Kairo: Maktabah Wahbah, 1994), hlm. 415.

<sup>16</sup>

<sup>17</sup> Al-Qurṭubī, *al-Jāmi'*, juz 17, hlm. 24.

<sup>18</sup> Al-Qaraḏāwī, Yusuf, *Fiqh al-Ḥalāl wa al-Ḥarām*, (Kairo: Maktabah Wahbah, 1994), hlm. 415. Al-Qaraḏāwī, Yusuf, *Fiqh*

to the demands of the times.<sup>19</sup> Although the theme of ḥifẓ al-nasl has been widely discussed in the perspective of maqāṣid al-syarī'ah by classical and contemporary scholars, research related to its genealogy and transformation in the context of modern law, such as IPR, is still limited, so this study combines three theoretical frameworks of classical maqāṣid al-syarī'ah, the theory of transformation of Islamic law, and the theory of IPR in modern Islamic law to present a more comprehensive understanding.

### **B. Research Methods**

This study is a qualitative, library-based investigation of the genealogy of the legal transformation of ḥifẓun nasl in classical and modern literature. The approach used is a historical-hermeneutic approach to trace the development of the concept from early times to the contemporary era, as well as a normative approach to interpret the legal construction in accordance with al-Qurṭubī. Primary data sources include classical exegetical works, particularly al-Qurṭubī's al-Jāmi' li Ahkām al-Qur'ān. Meanwhile, secondary data include fiqh literature, scientific articles, and modern research on ḥifẓun nasl and Islamic Family Law (IHL). This study focuses on the relationship between classical texts and modern discourse. All these sources are then systematically analyzed to find genealogical patterns in the development of the concept.

Data collection techniques involved documentation through the review, recording, and classification of essential themes from classical and modern literature. Each data point was mapped based on the period, context, and thought of the figures to trace the epistemological shift in the concept of ḥifẓun nasl. Data analysis employed descriptive-analytical techniques, including data reduction, data presentation, and interpretive conclusion drawing. A content analysis approach was used to understand the structure of al-Qurṭubī's argumentation and its relevance to contemporary IPR. The analysis was then directed towards uncovering the genealogical transformation of the concept. Thus, this research produces a comprehensive understanding of the relationship between classical tradition and modern legal reform.

### **C. Discussion and Research Results**

#### **Classical Maqāṣid al-Syarī'ah: Normative Foundations of Ḥifẓ al-Nasl**

The theory of maqāṣid al-syarī'ah is the primary epistemological foundation in understanding Islamic law, as formulated by scholars such as al-

---

<sup>19</sup> Al-Qaraḍāwī, Yusuf, *Fiqh*...hlm. 415.

Juwaynī, al-Ghazālī, and al-Syātibī.<sup>20</sup> In the classical construction, maqāṣid are interpreted as divine goals (al-maqāṣid al-ilāhiyyah) to be realized through sharia law for the benefit of humanity (maṣlaḥah al-‘ibād).<sup>21</sup>

Al-Ghazālī in al-Mustaṣfā divides the objectives of the Shari'a into five main things (al-kulliyyāt al-khams): ḥifẓ al-dīn (guarding religion), ḥifẓ al-nafs (guarding the soul), ḥifẓ al-‘aql (guarding reason), ḥifẓ al-nasl (guarding offspring), and ḥifẓ al-māl (guarding wealth).<sup>22</sup> Of these five principles, ḥifẓ al-nasl is positioned as an effort to maintain human continuity and dignity.

Al-Syātibī later expanded this concept by making maqāṣid a methodology in istinbāt al-aḥkām (legal exploration).<sup>23</sup> According to him, every Islamic law is goal-oriented, not merely formalistic. In this context, ḥifẓ al-nasl does not merely regulate marriage and lineage, but encompasses all forms of safeguarding the continuity of human existence, including honor, morality, and intellectual work.<sup>24</sup>

Al-Qurṭubī himself, in al-Jāmi‘ li Aḥkām al-Qur’ān, emphasized that the legal verses in the Qur’an are always oriented towards human welfare.<sup>25</sup> He interpreted verses on family, adultery, and honor (e.g., QS. an-Nūr: 2 and QS. al-Isrā’: 70) as part of the sharia mechanism for protecting human dignity.<sup>26</sup> This view strengthens the assumption that ḥifẓ al-nasl can be understood more broadly, not only in a biological context, but also in a social and moral context.

### **The Theory of Islamic Legal Transformation: From Genealogy to Contextualization**

The second framework used is the theory of the transformation of Islamic law (taḥawwul al-fiqh), which highlights the changes in Islamic law from the classical to the modern era. Historically, Islamic law is not static but

---

<sup>20</sup> Al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1997), hlm. 45.

<sup>21</sup> Al-Syātibī, *al-Muwāfaqāt fī Uṣūl al-Syarī‘ah*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2008), hlm. 29.

<sup>22</sup> Al-Ghazālī, *al-Mustaṣfā min ‘Ilm al-Uṣūl*, (Kairo: al-Maktabah al-Tijāriyyah, 1993), hlm. 174.

<sup>23</sup> Al-Ghazālī, *al-Mustaṣfā*, hlm. 182.

<sup>24</sup> Al-Syātibī, *al-Muwāfaqāt*, hlm. 37.

<sup>25</sup> Al-Qurṭubī, *al-Jāmi‘ li Aḥkām al-Qur’ān*, juz 5, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2006), hlm. 150.

Al-Qurṭubī, *al-Jāmi‘ li...*, hlm. 111.

continues to evolve in response to the social, political, and epistemological developments of Muslim society.<sup>27</sup>

Noel J. Coulson explains that changes in Islamic law are always rooted in social dynamics and societal needs, rather than in external influences.<sup>28</sup> Similarly, Wael B. Hallaq emphasizes that Islamic law is evolutionary and responsive to its historical context.<sup>29</sup>

Within this theoretical framework, the concept of *ḥifẓ al-nasl* is understood through a genealogical approach, tracing its origins in classical texts and then following its transformation as human needs change. In classical times, the law of *ḥifẓ al-nasl* was intended to preserve lineage and family stability. In contrast, in modern times, its orientation has evolved to protect human values, including the recognition of creative and intellectual works.<sup>30</sup>

The genealogy of this transformation is also influenced by the Qurṭubī's approach to legal interpretation, which positions the Qur'an as a living source of law, open to change in meaning according to the needs of the times.<sup>31</sup> In this context, the Qurṭubī interpretation can be read in a *maqāṣidī* manner, not only the words but also the legal objectives they contain.

Jasser Auda later updated this theory by introducing the concept of *maqāṣid* as a system of thought (a systems approach to *maqāṣid*), in which Islamic law must be able to adapt to complex and interdisciplinary realities.<sup>32</sup> With this approach, the transformation of *ḥifẓ al-nasl* law towards the protection of intellectual property rights is not seen as a deviation, but as a logical continuation of the principle of *maṣlaḥah* in sharia.<sup>33</sup>

### **The Theory of Intellectual Property Rights from the Perspective of Modern Islamic Law**

The third theoretical framework is the theory of *ḥuqūq al-milk al-fikrī* (intellectual property rights) in contemporary Islamic law. Generally, IPR in the modern world includes copyright, patents, trademarks, and industrial

---

<sup>27</sup> Hallaq, Wael B., *An Introduction to Islamic Law*, (Cambridge: Cambridge University Press, 2009), hlm. 173.

<sup>28</sup> Coulson, Noel J., *A History of Islamic Law*, (Edinburgh: Edinburgh University Press, 1964), hlm. 89.

<sup>29</sup> Hallaq, *An Introduction*, hlm. 175.

<sup>30</sup> Auda, Jasser, *Maqasid al-Shariah as Philosophy of Islamic Law*, (London: IIIT, 2008), hlm. 93.

<sup>31</sup> Al-Qurṭubī, *al-Jāmi'*, juz 10, hlm. 220.

<sup>32</sup> Auda, *Maqasid al-Shariah*, hlm. 120.

Auda, *Maqasid al-Shariah.*, hlm. 131.

designs. From an Islamic legal perspective, this issue relates to the concepts of ownership (*al-milkiyyah*) and business results (*kasb*).<sup>34</sup>

Modern scholars such as Wahbah al-Zuhaylī and Yusuf al-Qaraḍāwī argue that intellectual works constitute a form of *māl* (property) with economic value and must be protected under Islamic law.<sup>35</sup> Al-Zuhaylī explained that ownership rights in Islam encompass all forms of human endeavor, both material and immaterial, provided they do not conflict with Islamic law.<sup>36</sup>

Meanwhile, Yusuf al-Qaraḍāwī emphasized that taking other people's work without permission is a form of *ghaṣb* (appropriation) which is legally and morally prohibited.<sup>37</sup> This principle departs from the concepts of justice (*'adl*) and trust in Islam, which are an integral part of *maqāṣid al-syarī'ah*. Thus, recognition of copyright and intellectual works is an implementation of the principle of *ḥifẓ al-nasl* in the broadest sense of maintaining the continuity of human existence through science and creativity.<sup>38</sup>

In contemporary literature, Fathi Malkawi calls IPR "the intellectual continuation of *nasl*," a modern form of safeguarding human sustainability through works and ideas.<sup>39</sup> This thinking aligns with the spirit of *maqāṣidī* developed by Jasser Auda, where every form of protection for human creations must be interpreted as a contribution to social *maṣlaḥah*.<sup>40</sup>

### **The Relevance of the Principle of Ḥifẓ al-Nasl in Maqāṣid al-Syarī'ah: Integration of Classical and Modern Perspectives**

Islamic law, from both classical and modern perspectives, emphasizes the fundamental principle of balancing adherence to the *nash* (the revealed texts of the Qur'an and the *hadith*) with the divine purpose underlying each legal provision. This principle affirms that Islamic law is not merely formalistic or ritualistic, but instead has a teleological dimension, directed toward achieving specific goals that align with God's will. In the context of *ḥifẓ al-nasl*, namely the sharia's efforts to maintain the continuity of descendants, lineage, and family continuity, the theory of *maqāṣid al-sharī'ah* plays a central role as an epistemological foundation. This theory emphasizes that every legal provision has a divine purpose (*maqāṣid*) and is directed toward realizing

---

<sup>34</sup> Al-Zuhaylī, Wahbah, *al-Fiqh al-Islāmī wa Adillatuh*, (Damaskus: Dār al-Fikr, 1989), juz 4, hlm. 340.

<sup>35</sup> Al-Zuhaylī, Wahbah, *al-Fiqh*., hlm. 342.

<sup>36</sup> Al-Zuhaylī, Wahbah, *al-Fiqh*., hlm. 345.

<sup>37</sup> Al-Qaraḍāwī, Yusuf, *Fiqh al-Ḥalāl wa al-Ḥarām*, (Kairo: Maktabah Wahbah, 1994), hlm. 415

<sup>38</sup> Al-Qaraḍāwī, Yusuf, *Fiqh*..., hlm. 416.

<sup>39</sup> Malkawi, Fathi, "Islamic Vision of Intellectual Property Rights", *Journal of Islamic Studies*, Vol. 23, No. 4 (2012), hlm. 61.

<sup>40</sup> Auda, *Maqasid al-Shariah*, hlm. 128.



human welfare (*maṣlaḥah al-'ibād*), so that law is not merely an external rule, but an instrument that guides humanity toward prosperity and social justice.<sup>41</sup>

Al-Juwaynī, one of the classical figures in the field of jurisprudence (*uṣūl al-fiqh*), emphasized that sharia is not established arbitrarily or based on human preferences, but rather always refers to the principle of benefit (*maṣlaḥah*) intended for humanity. In his view, every law must reflect a divine purpose that ensures a balance between the interests of the individual and those of society. This is directly relevant to *ḥifẓ al-nasl*, because the laws governing family, marriage, and lineage emphasize not only biological aspects, such as lineage, but also touch on moral, ethical, and social dimensions. This means that protecting offspring is not merely about maintaining human physical existence, but also safeguarding the dignity, morality, and social stability of the community.<sup>42</sup>

In practice, this understanding explains why Sharia stipulates strict provisions regarding marriage, the prohibition of adultery, inheritance rules, and the recognition of lineage. All of these regulations are not merely intended to control behavior, but also to ensure that social structures remain harmonious and that moral values are maintained. Thus, the theory of *maqāṣid al-sharī'ah* provides an analytical framework that allows researchers to view the law of *ḥifẓ al-nasl* more broadly: as a law that safeguards human survival across biological, moral, social, and spiritual dimensions, and emphasizes that every sharia rule has a comprehensive divine purpose and objective.<sup>43</sup>

Furthermore, this approach also serves as a foundation for linking the classical principle of *ḥifẓ al-nasl* with the dynamics of modern law, for example, in the protection of Intellectual Property Rights (IPR). If classical law safeguards physical progeny for the continuity of the human race, then the protection of intellectual works can be considered an “extension” of the same principle: safeguarding the continuity of human contributions to society and civilization. In other words, through the *maqāṣid* framework, Islamic law maintains the essence of protecting human life, both in its biological and intellectual forms, so that the basic principle of *ḥifẓ al-nasl* remains relevant across time and context.<sup>44</sup>

Al-Ghazali's thought places *ḥifẓ al-nasl* among the five main principles of sharia, fundamental to the continuity and well-being of humanity. His perspective prioritizes humanitarian values in establishing laws, where protection for future generations extends beyond physical safety to

---

<sup>41</sup> Kamali, *Principles of Islamic Jurisprudence*, hlm. 350.

<sup>42</sup> Al-Syātibī, *al-Muwāfaqāt fī Uṣūl al-Syarī'ah*, hlm. 27.

<sup>43</sup> Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, hlm. 89

<sup>44</sup> Al-Qurṭubī, *al-Jāmi' li Ahkām al-Qur'ān*, juz 5, hlm. 145.

encompass education, morality, and character formation. This view opens the possibility of expanding the scope of this principle to non-biological realms, for example, in the context of human intellectual works. Within this framework, legal protection of ideas, innovations, and creative works can be understood as a contemporary manifestation of maintaining the continuity of generations, as these works reflect individuals' contributions to society and civilization.<sup>45</sup>

In the context of research, this concept becomes the basis for assessing the relevance of classical Islamic law to modern legal practice, particularly in the protection of Intellectual Property Rights, where the principle that initially regulated lineage and descent developed into a mechanism to safeguard the rights of creators and inventors so that innovation and the legacy of knowledge are maintained; this idea is in line with the thoughts of Al-Qurṭubī who emphasized that the attention of sharia towards lineage includes respect for honor, identity, and individual contributions to society, so that the law not only regulates family aspects, but also upholds justice and appreciation for human work, making the protection of intellectual work a natural extension of ḥifẓ al-nasl in an effort to maintain continuity and human contributions to the common good.<sup>46</sup>

With this approach, the theory of maqāṣid al-syarī'ah functions as an analytical instrument to understand the essence of law that is not only oriented towards formal compliance, but also towards the protection of human existence in both biological and intellectual dimensions, so that the classical study of ḥifẓ al-nasl can be contextualized in the protection of IPR without reducing the normative objectives of sharia; in line with that, the theory of taḥawwul al-fiqh emphasizes the dynamic and adaptive nature of Islamic law to social, economic, and technological changes, as explained by Coulson and Hallaq, so that the principle of ḥifẓ al-nasl which initially focused on marriage, lineage, and family morality can develop into a basis for respect for copyright and intellectual works in the modern context.<sup>47</sup>

This approach demonstrates that the essence of the law remains intact, even as its application adapts to the contemporary context. For example, protecting scientific works, art, and technological innovations can be seen as a logical extension of the principle of safeguarding biological heritage. These works become "intellectual heritage" representing human contributions to civilization and social sustainability. This legal transformation not only

---

<sup>45</sup> Al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh*, hlm. 45

<sup>46</sup> Al-Qurṭubī, *al-Jāmi'*, juz 12, hlm. 111.

<sup>47</sup> Al-Syātibī, *al-Muwāfaqāt*, hlm. 33

safeguards the individual rights of creators but also safeguards the broader public good, as protected innovations and knowledge can be utilized for the collective benefit.<sup>48</sup>

Within the framework of *taḥawwul al-fiqh*, the classical principle of *ḥifẓ al-nasl* can transcend the limitations of time and space so that Islamic law can respond to the demands of modernity without sacrificing its normative values, demonstrating the adaptive capacity of sharia in expressing the goal of protecting humans, both biologically and socially, through new forms such as the protection of intellectual property, innovation, and copyright; in line with that, the perspective of IPR in modern Islamic law, emphasized by contemporary scholars such as Wahbah al-Zuḥaylī and Yusuf al-Qaraḍāwī, views human creations as entities of moral and social value that must be protected, so that copyright infringement through plagiarism or unauthorized imitation is seen as an act of *ẓulm* that is contrary to the principle of justice (*‘adl*) and the basic objectives of Islamic law.<sup>49</sup>

Linking IPR to the principle of *ḥifẓ al-nasl* confirms that the protection of intellectual works is a modern expression of classical legal efforts to maintain human continuity. While in the classical context, the goal of law was to maintain the lineage and continuity of biological generations, in the contemporary era, Islamic law is applied to preserve the "intellectual lineage" of humanity, namely ideas, creativity, and intellectual contributions that continue to benefit society and civilization.<sup>50</sup>

From this perspective, IPR theory serves as an application of the principle of *maqāṣid al-syarī‘ah*. Protection of creative works becomes a concrete form of safeguarding human welfare, as individual rights to their works and innovations are respected, recognized, and protected from all forms of oppression or intellectual theft. In other words, IPR not only upholds individual rights but also embodies the normative goals of Islamic law: safeguarding the sustainability of human life and dignity, and contributing to social welfare.<sup>51</sup>

This framework demonstrates the continuity between classical and contemporary law, where the basic principles of human protection and the sustainability of its contributions are projected into the modern realm through the mechanism of copyright protection, so that IPR theory becomes a conceptual bridge that allows the principle of *ḥifẓ al-nasl* to be applied in the

---

<sup>48</sup> Al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh*, juz 4, hlm. 338.

<sup>49</sup> Auda, *Maqasid al-Shariah*, hlm. 102

<sup>50</sup> Coulson, *A History of Islamic Law*, hlm. 89

<sup>51</sup> Hallaq, *An Introduction to Islamic Law*, hlm. 175

context of innovation, science, and culture; in line with that, the maqāṣid approach as a system of thinking according to Jasser Auda emphasizes that ḥifẓ al-naṣl has a broad and multidimensional scope, covering biological, intellectual, social, and cultural aspects, so that in this study the concept can be understood to include the protection of Intellectual Property Rights including scientific works, art, technology, and cultural innovation as a form of sustainability of human contributions to society.<sup>52</sup>

Auda's systemic approach emphasizes that the fundamental objectives of Islamic law remain unchanged despite the evolution of its application. The underlying normative values of sharia, namely, safeguarding human sustainability, individual dignity, and its contribution to civilization, remain intact, even as its application expands into modern domains distinct from the classical context. In this way, the legal transformation from protecting biological offspring to protecting intellectual works remains within the same legal objectives, thereby maintaining the continuity of Sharia values.<sup>53</sup>

Furthermore, Auda's perspective demonstrates that Islamic law is adaptive and relevant across time. Principles that in classical literature were oriented toward ensuring the continuity of biological generations can now be applied to innovation, creativity, and intellectual work, which serve as the "intellectual offspring" of humankind. Thus, this approach not only strengthens the relevance of the maqāṣid al-shari'ah but also provides a systematic methodological foundation for linking classical law with contemporary needs, including the protection of intellectual property rights, within a coherent Islamic legal framework.<sup>54</sup>

By integrating the three theoretical frameworks of maqāṣid al-syarī'ah, taḥawwul al-fiqh, and the IPR perspective, this research builds a comprehensive conceptual foundation. Maqāṣid theory provides a normative foundation and a divine purpose that serve as the primary basis for every legal provision, ensuring that sharia regulations are always directed towards realizing human welfare and maintaining human dignity. Meanwhile, the theory of Islamic legal transformation explains the mechanism of legal adaptation from classical literature to the contemporary context, enabling principles initially applied in the realm of family and lineage to be expanded and applied to modern challenges without losing their normative substance.<sup>55</sup>

---

<sup>52</sup> Malkawi, "Islamic Vision of Intellectual Property Rights," hlm. 57.

<sup>53</sup> Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, juz 2, hlm. 120.

<sup>54</sup> Al-Ghazālī, *al-Mustaṣfā min 'Ilm al-Uṣūl*, hlm. 174

<sup>55</sup> Auda, *Maqasid al-Shariah*, hlm. 119.

The IPR framework affirms that the protection of scientific works, innovations, and human creations is a contemporary form of the principle of ḥifẓ al-nasl, which initially focused on safeguarding biological descendants and social stability, but has now expanded to include the protection of “intellectual descendants” as a manifestation of the continuity of human contributions; the synthesis of the theories of maqāṣid, taḥawwul al-fiqh, and IPR demonstrates the continuity of Islamic legal values while emphasizing their relevance in facing modern dynamics, so that the protection of human existence, both biological and intellectual, remains the main objective that reflects the adaptive yet consistent character of Islamic law in maintaining the dignity and welfare of the people.

#### **D. Conclusion**

The genealogy of the legal transformation of ḥifẓ al-nasl from the perspective of Al-Qurṭubī shows that the protection of descendants is not only interpreted biologically and genealogically as in classical fiqh literature, but also has an expanded meaning in the modern context, including in the realm of Intellectual Property Rights. Through Al-Qurṭubī's maqāṣidī interpretive approach, which emphasizes welfare, the continuity of human roles, and the protection of fundamental rights, ḥifẓ al-nasl can be understood as a normative principle requiring the protection of works, ideas, and innovations as the “intellectual descendants” of humanity. Thus, the integration between classical literature and the modern legal construction of IPR reflects the dynamics of Islamic law that is adaptive, contextual, and remains rooted in the objectives of sharia in maintaining the dignity, continuity of contributions, and responsibility of human generations.

#### **References**

- Al-Ghazālī. (t.t.). *Iḥyā' 'Ulūm al-Dīn* (Juz 2). Beirut: Dār al-Ma'rifah.
- Al-Ghazālī. (2022). *Al-Mustasfā min 'Ilm al-Uṣūl*. Kairo: al-Maktabah al-Tijāriyyah.
- Al-Juwaynī. (1997). *Al-Burhān fī Uṣūl al-Fiqh*. Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Qaraḍāwī, Y. (1994). *Fiqh al-Ḥalāl wa al-Ḥarām*. Kairo: Maktabah Wahbah.
- Al-Qurṭubī. (2006). *Al-Jāmi' li Ahkām al-Qur'ān*. Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Qurṭubī. (2006). *Al-Jāmi' li Ahkām al-Qur'ān* (Juz 10, 12, 17). Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Syātibī. (2008). *Al-Muwāfaqāt fī Uṣūl al-Syarī'ah*. Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Zuhaylī, W. (1989). *Al-Fiqh al-Islāmī wa Adillatuh* (Juz 4). Damaskus: Dār al-Fikr.

- Auda, J. (2008). *Maqasid al-Shariah as Philosophy of Islamic Law*. London: IIIT.
- Coulson, N. J. (1964). *A History of Islamic Law*. Edinburgh: Edinburgh University Press.
- Hallaq, W. B. (2009). *An Introduction to Islamic Law*. Cambridge: Cambridge University Press.
- Ibn Ḥazm. (2002). *Al-Muḥallā* (Juz 8). Kairo: Dār al-Fikr.
- Kamali, M. H. (2003). *Principles of Islamic Jurisprudence*. Cambridge: Islamic Texts Society.
- Malkawi, F. (2012). Islamic vision of intellectual property rights. *Journal of Islamic Studies*, 23(4), 57–61.
- Al-Syātibī. (2008). *Al-Muwāfaqāt fī Uṣūl al-Syarī'ah* (hlm. 27–37). Beirut: Dār al-Kutub al-'Ilmiyyah.
- Auda, J. (2008). *Maqasid al-Shariah* (hlm. 102–131). London: IIIT.
- Al-Qurṭubī. (2006). *Al-Jāmi' li Ahkām al-Qur'ān* (hlm. 145–220). Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Ghazālī. (t.t.). *Iḥyā' 'Ulūm al-Dīn* (Juz 2, hlm. 120–125). Beirut: Dār al-Ma'rifah.
- Al-Qaraḍāwī, Y. (1994). *Fiqh al-Ḥalāl wa al-Ḥarām* (hlm. 416–420). Kairo: Maktabah Wahbah.
- Hallaq, W. B. (2009). *An Introduction to Islamic Law* (hlm. 173–180). Cambridge: Cambridge University Press.
- Coulson, N. J. (1964). *A History of Islamic Law* (hlm. 89–95). Edinburgh: Edinburgh University Press.
- Al-Zuhaylī, W. (1989). *Al-Fiqh al-Islāmī wa Adillatuh* (Juz 4, hlm. 340–345). Damaskus: Dār al-Fikr.
- Kamali, M. H. (2003). *Principles of Islamic Jurisprudence* (hlm. 355–360). Cambridge: Islamic Texts Society.
- Malkawi, F. (2012). "Intellectual property in Islamic jurisprudence." *Journal of Islamic Law Review*, 4(2), 22–40.
- Al-Qurṭubī. (2006). *Al-Jāmi' li Ahkām al-Qur'ān* (Juz 12, 17, hlm. 24–30). Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Ghazālī. (2022). *Al-Mustaṣfā min 'Ilm al-Uṣūl* (hlm. 182–185). Kairo: al-Maktabah al-Tijāriyyah.
- Auda, J. (2008). *Maqasid al-Shariah as Philosophy of Islamic Law* (hlm. 128–130). London: IIIT.
- Al-Qaraḍāwī, Y. (1994). *Fiqh al-Ḥalāl wa al-Ḥarām* (hlm. 425–430). Kairo: Maktabah Wahbah.
- Ibn Ḥazm. (2002). *Al-Muḥallā* (Juz 8, hlm. 188–192). Kairo: Dār al-Fikr.

Al-Syātibī. (2008). *Al-Muwāfaqāt fī Uṣūl al-Syarī'ah* (hlm. 37–40). Beirut: Dār al-Kutub al-‘Ilmiyyah.