

# The Reconstruction of the Concept of Universal Jurisdiction within the Framework of Islamic International Law: A Maqāṣid al-Sharī'ah Approach to Global Justice

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**Abstract:** This study reconstructs the concept of universal jurisdiction within the normative and conceptual framework of Islamic international law by employing a Maqasid al-Shariah based approach to global justice. The research is motivated by a persistent epistemic and normative gap between contemporary international criminal law and the ethical philosophical foundations embedded in Islamic jurisprudence, particularly regarding the prosecution of transnational crimes. Through a qualitative, normative, and comparative legal methodology, this study examines primary sources of *siyar* (Islamic international law), classical jurisprudential writings, and contemporary international legal instruments governing genocide, war crimes, and crimes against humanity. The findings demonstrate that the higher objectives of Islamic law most notably the preservation of life (*hifz al-nafs*), dignity (*hifz al-ird*), and justice (*al-adalah*) offer a robust teleological and ethical foundation capable of reinforcing the legitimacy, universality, and moral coherence of universal jurisdiction. By integrating the Maqasid al Shariah paradigm into modern international criminal accountability mechanisms, this study proposes a more inclusive, value oriented, and human centered model of global justice that transcends territorial and political constraints. The research ultimately argues that Islamic international law, when interpreted through its higher objectives, can substantively enrich contemporary debates on universal jurisdiction and contribute to the development of a more equitable global legal order.

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## Introduction

Warfare has historically been legitimized as a mechanism for expanding the territorial authority of rulers in their respective eras. The prevailing legal systems of those periods embraced the principle that “the victor is sovereign,” thereby granting the winner the power to determine future policies. Colonizers and perpetrators of grave crimes often and in many instances almost entirely operated with considerable latitude, enabling their actions to unfold with minimal or ineffective constraints. Such conditions frequently created spaces of impunity that allowed them to commit various violations without adequate accountability mechanisms, thereby reinforcing structural power asymmetries and weakening protections for victims and affected populations (Johanes, 2018).

This reality aligns with broader global developments over the past two decades, which demonstrate that the international justice system has yet to provide a proportionate response to the world's most serious transnational crimes. Offenses such as genocide, war crimes, and acts of aggression continue to occur in different regions, while positive international law mechanisms have not consistently demonstrated the capacity to address them effectively (Schabas, 2020). This situation is exacerbated by internal legitimacy crises within the international enforcement regime, particularly regarding the application of universal jurisdiction. The dominance of Western states in norm formation, the selective practices of the International Criminal Court (ICC), and the overarching influence of global political power have collectively produced unequal standards of justice (Mutua, 2011). The accumulation of these issues underscores a growing global justice deficit within contemporary international legal order.

Historically, the concept of universal jurisdiction emerged from the post World War II Western humanist tradition, which sought to ensure that perpetrators of serious crimes could be held accountable irrespective of territorial or nationality constraints (Cassese, 2002). Yet in practice, modern application reveals its susceptibility to geopolitical bias. In many instances, universal jurisdiction has been invoked by powerful states against weaker ones, while violations involving dominant geopolitical actors often escape global accountability mechanisms (Akande, 2013). As a result, the notion of "universality" has increasingly lost its ethical meaning and has instead shifted into an instrument of power rather than a tool of substantive justice. To date, no systematic study has reconstructed the concept of universal jurisdiction from the perspective of Islamic international law, particularly through a *maqāṣid al-sharī'ah* approach, leaving a significant analytic and conceptual gap.

Within the realm of international law, a number of scholars including Antonio Cassese (2002), Roger O'Keefe (2015), and Orakhelashvili (2011) have explored the legal foundations, scope, and challenges of implementing universal jurisdiction. Meanwhile, Islamic legal scholarship has developed extensive literature on *maqāṣid al-sharī'ah* (Auda, 2008), global justice, and the law of war (*siyar*), all of which emphasize the protection of human beings across borders. However, research integrating the concept of universal jurisdiction with the *maqāṣid* framework remains extremely limited. Existing *maqāṣid* studies tend to focus on issues of international human rights, ethical governance, or interreligious relations, rather than reconstructing principles of global legal enforcement. Consequently, no paradigmatic synthesis has been attempted between the two major legal systems modern international law and Islamic international law with respect to universal jurisdiction.

This theoretical gap highlights the need for an epistemological reconstruction of universal jurisdiction. Such reconstruction must go beyond terminological reinterpretation and instead develop a new paradigm grounded in *maqāṣid al-sharī'ah* values. The *maqāṣid* approach offers a universalistic framework rooted in transcendent human principles such as justice (*'adālah*), the preservation of life (*ḥifẓ al-nafs*), the protection of human dignity (*ḥifẓ al-'ird*), and the safeguarding of humanity more broadly

(ḥifẓ al-insāniyyah) (Auda, 2008). These values provide a moral and spiritual foundation that transcends state interests and reposition the locus of universality from political arenas to the broader domain of human welfare.

Based on this problem mapping, the present study formulates two central research questions. First, how can the concept of universal jurisdiction in Islamic international law be reconstructed through a maqāṣid al-sharī'ah approach to strengthen global justice? Second, which maqāṣid principles are most relevant for constructing a more ethical, inclusive, and human-centered model of universal jurisdiction? These questions clarify the analytical direction and highlight the study's expected theoretical contribution.

This research proceeds from the hypothesis that reconstructing universal jurisdiction within the framework of Islamic international law through a maqāṣid al-sharī'ah approach can yield a more holistic and ethically grounded paradigm of global justice compared to prevailing positive international law frameworks. Thus, maqāṣid-based reconstruction is proposed as a means of remedying structural deficiencies in the modern international legal system.

Accordingly, this study seeks to establish an epistemological synthesis between Islamic international law and modern international law. Through this approach, the article introduces a conceptual model termed Maqāṣid-Based Universal Jurisdiction, a normative framework oriented toward the protection of human dignity and universal justice. It further aims to restore human values within a global legal order currently facing a profound crisis of moral legitimacy. This contribution positions the study not only within the discourse of Islamic legal scholarship but also as an effort to enrich global debates on redefining cross-border justice.

## **Research Method**

This study employs a normative legal research approach, or doctrinal legal research, as its primary aim is to reconstruct the concept of universal jurisdiction through an examination of international legal doctrine and the normative values of *maqāṣid al-sharī'ah*. The normative approach is selected to permit an in-depth analysis of the principles, foundational norms, and argumentative structures within both international law and Islamic law (Soekanto & Mamudji, 2011; Marzuki, 2017). Through this approach, the study not only outlines existing legal norms but also assesses their coherence with the epistemological reconstruction that constitutes the core objective of the research.

All data were gathered through library research, comprising international legal instruments such as the UN Charter, the Geneva Conventions, and the Rome Statute; decisions of international judicial bodies; and academic works addressing universal jurisdiction. In addition, the study incorporates a comprehensive review of *maqāṣid al-sharī'ah* literature as well as classical and contemporary Islamic legal texts on *siyar*. Data collection is guided by the principles of academic quality, validity, and thematic relevance, as emphasized in contemporary qualitative research methodologies (Creswell & Creswell, 2018).

The research employs documentary analysis as its primary data-gathering technique and an analytical method widely used in legal studies and the social sciences to interpret the content, structure, and contextual meaning of texts. Documentary analysis enables the researcher to uncover argumentative patterns, normative nuances, and conceptual constructs embedded within international legal doctrines and *maqāṣid al-sharīah* literature. This technique enjoys strong methodological legitimacy in contemporary scholarly research (Bowen, 2009), providing a solid scientific foundation for assessing coherence among diverse legal sources.

Data analysis is conducted using qualitative content analysis, a method of coding and thematic categorization that enables systematic interpretation of legal texts and academic literature. This approach is particularly effective in integrating two distinct legal traditions because of its focus on identifying central themes, concepts, and underlying normative values within a corpus of data. The analytical process proceeds deductively to map the relationship between universal jurisdiction structures and *maqāṣid* principles, and inductively to uncover universal ethical values embedded in *maqāṣid al-sharīah* (Schreier, 2012). Through this dual approach, the study develops a conceptual model emerging from a methodological dialogue between two global legal systems.

To ensure validity and reliability, the study employs theoretical triangulation by comparing findings derived from international legal doctrine, *maqāṣid al-sharīah* literature, and global justice theory. Triangulation is essential to ensure that the reconstruction process is not speculative but grounded in scientific consistency and multi-perspective integration, as recommended in advanced qualitative research (Flick, 2018). Through this strategy, the methodological framework provides a robust scholarly foundation for constructing *Maqāṣid-Based Universal Jurisdiction* as a new conceptual model in the discourse of global justice.

## **Discussion and Results**

### **The Conceptual Configuration of Universal Jurisdiction in Modern International Law.**

The development of the concept of universal jurisdiction in modern international law is rooted in the major transformations that followed the end of the Second World War. The shock generated by the scale of atrocities committed by the Nazi regime and the Japanese military compelled the international community to articulate legal mechanisms enabling the prosecution of individuals even when the crimes were committed outside the prosecuting state's territorial jurisdiction (Bassiouni, 1999). The Nuremberg and Tokyo Tribunals became pivotal milestones demonstrating that certain crimes possess a universal character and therefore cannot be shielded by the principle of state sovereignty. In the aftermath of these tribunals, the concept entered a phase of codification through the 1948 Genocide Convention and the establishment of various international legal regimes that designated serious crimes as matters of concern for the international community as a whole (Schabas, 2000).

Over time, the principle further evolved within treaty law and customary international law, particularly through the recognition that certain crimes – such as piracy, torture, and slavery have historically been viewed as offenses subject to prosecution by any state, irrespective of the *locus delicti* or the perpetrator's nationality (Cassel, 2001). Thus, the emergence of universal jurisdiction is not merely a post-war legal innovation; it is also a continuation of long-standing principles in the law of the sea and humanitarian law, which were later expanded within the framework of the modern nation-state system.

Despite its strong normative foundations, the practical implementation of universal jurisdiction reveals a significant gap between its ideal objectives and geopolitical realities. One of the most prominent critiques concerns the heavy reliance on Western states a consequence of their institutional capacity and legal resources resulting in an asymmetric application of universal jurisdiction (Macedo, 2006). This asymmetry is particularly visible in cases brought before the International Criminal Court (ICC), where the majority of defendants originate from Africa, while allegations involving powerful actors or their allies often escape legal scrutiny (Branch, 2011).

This constellation of dynamics is further reinforced by the politicization of universal jurisdiction, whereby major powers exert pressure on other states to prevent the prosecution of particular cases. The United States government, for instance, actively engages in political and diplomatic strategies to avoid international jurisdiction over its nationals a practice that raises serious questions regarding the moral consistency underpinning claims of universalism (Scharf, 2001). When universal jurisdiction is applied unevenly, it fosters the perception that the concept functions more as a strategic instrument of *power politics* than as a neutral mechanism for safeguarding humanity.

For countries in the Global South, such imbalances constitute a major source of distrust toward international legal institutions. The appearance of selective enforcement leads to the impression that universal jurisdiction reinforces global hierarchies rather than upholding justice impartially. In this context, the crisis of legitimacy deepens when the actions of powerful states remain beyond the reach of the very enforcement mechanisms they advocate (Mutua, 2015).

These critiques culminate in a fundamental issue: a global justice deficit that undermines the credibility of the contemporary international legal system. Normatively, universal jurisdiction is intended to create a sphere of global accountability for the most serious crimes; however, the realities of international politics often prevent the principle from being applied consistently (Teitel, 2011). The imbalance between legal norms and political power has resulted in numerous grave crimes going unpunished, particularly when perpetrated by actors from geopolitically influential states.

This justice deficit is further reflected in the divide between institutional capacity and global moral expectation. Many states lack the resources necessary to exercise universal jurisdiction, while those that do possess such capacity tend to apply it selectively. Consequently, the moral weight of universalism is diminished, transforming it into a procedural norm that does not always guarantee equal protection of humanity (Osiel, 2009). Under these conditions, the

mechanisms of positive international law appear unable to provide comprehensive responses to complex, transnational crimes.

This situation underscores the need for a rethinking of the conceptual foundations of universal jurisdiction. Reconstruction is required not merely to introduce new norms but to develop a more robust ethical horizon capable of grounding the principle of universality within a framework of substantive and non-selective justice. Accordingly, the search for an alternative ethical framework such as *maqāṣid al-sharī'ah* emerges as a necessary response to the deepening moral legitimacy crisis within modern international law (Kamali, 2019).

### **The Epistemological Foundations of Islamic International Law (*Siyar*) and Their Relevance to Global Justice.**

The universal principles within *siyar* are shaped through a normative construction that places justice (*al-'adālah*) as the primary orientation in governing relations among political communities. In the fiqh tradition, justice is not merely an ethical ideal but also an operational principle that regulates the protection of human beings Muslim and non-Muslim alike including in contexts of warfare and conflict resolution (Khadduri, 1966). Moreover, the preservation of human dignity (*'izzat al-insān*) functions as a moral constraint on acts of aggression, permitting the use of force only within the framework of safeguarding collective security (Hamidullah, 1979). The prohibition against arbitrary bloodshed (*ḥurmat al-dam*) is reinforced by rules of proportionality and the obligation to protect civilians, which collectively give *siyar* a firmer ethical structure compared to many pre-modern laws of war (al-Zuhayli, 1997).

The universal and transnational nature of *siyar* is reflected in the way this tradition regulates relations among political entities without reliance on territorial boundaries. From its inception, *siyar* was not constructed upon the assumptions of the nation-state system; rather, it is grounded in moral principles that transcend communal divisions (Khadduri, 1955). Accordingly, interregional relations in *siyar* are governed by moral obligations rather than geopolitical calculations, rendering the system relatively independent from domestic political interests (El-Fadl, 2014). In this sense, the supremacy of ethics over politics where justice and public welfare override power interests forms a supra-state character that demonstrates the potential universality of Islamic law in addressing global humanitarian concerns (Abou El Fadl, 2001).

In contemporary international law discourse, the relevance of *siyar* has grown, as it offers an alternative perspective on issues of global justice, particularly in light of the inability of positive international law to ensure equal treatment among states. *Siyar* contains a body of principles that may serve as an alternative normative framework for constructing a more egalitarian paradigm of universality, especially with respect to human protection in armed conflicts and the prosecution of grave human rights violations (Baderin, 2003). This relevance is reinforced by the expanding literature on the contributions of Islamic law to global ethical norms, including in the areas of human rights, civilian protection, and the moral responsibilities of states in preventing mass atrocities (An-Na'im, 2010).

The epistemological significance of *siyar* in the modern international legal landscape is evident from its compatibility with the idea of universality, particularly because the tradition conceives justice as an objective and non-derogable value. From a *maqāṣid al-sharī'ah* perspective, the principles of *siyar* concerning the protection of life, intellect, and human dignity are not only legal norms but also mechanisms for safeguarding global welfare (Auda, 2008). Consequently, the reconstruction of universal jurisdiction through the lens of *maqāṣid al-sharī'ah* finds a solid epistemic foundation, as the principles of *siyar* provide a normative basis that enables the application of universal legal standards without succumbing to geopolitical bias or structural injustice.

Taken as a whole, this discussion demonstrates that *siyar* is not only compatible with the concept of universality but also offers a more robust ethical foundation than the dominant positivist models. Through its transnational moral character and justice-oriented paradigm prioritizing human protection, *siyar* serves as an epistemological source capable of enriching the concept of universal jurisdiction and restoring the ethical essence of global justice. This framework likewise provides a rational basis for the need for reconstruction—namely, situating universality not merely as a legal mechanism but as a moral commitment rooted in cross-civilizational principles of humanity

#### **Maqāṣid al-Sharī'ah as a Normative Framework of Universality.**

Maqāṣid al-Sharī'ah represents a philosophical construction that foregrounds the protection of fundamental human rights as the primary objective of the Sharī'ah, thereby granting this concept the normative capacity to support the idea of legal universality within the broader context of global justice. In the Islamic legal tradition, maqāṣid is understood as a set of fundamental values aimed at establishing a system of welfare that transcends civilizations and surpasses the geopolitical boundaries of the modern nation-state (Ibn 'Āshūr, 2006). Principles such as the protection of life (*ḥifẓ al-nafs*), the preservation of human dignity (*ḥifẓ al-karāmah*), and the prevention of aggression (*daf' al-ẓulm*) furnish a normative basis for legal universality that does not depend on state consent but instead relies on inherent humanitarian values (Al-Qaradawi, 2007). Accordingly, maqāṣid provides a more stable moral framework for reconstructing universal jurisdiction, which has increasingly faced a crisis of legitimacy.

Beyond its function as an ethical norm, maqāṣid also offers a moral paradigm that places the human being at the center of justice. This framework differs sharply from the positivist foundations of international law, which anchor normative authority in agreements between states. Maqāṣid asserts that the value of justice is objective and independent of political power structures; thus, the enforcement of law against international crimes should not be subordinated to geopolitical calculations (Al-Raysuni, 2013). This suggests that a maqāṣid-based approach can restore the meaning of universality, which has become distorted within contemporary international legal regimes. By positioning moral values as the core source of legitimacy, maqāṣid ensures that legal enforcement is driven by humanity rather than power.

Methodologically, maqāṣid offers a distinct advantage because it enables a legal approach that is responsive, contextual, and not constrained by textual formalism. The maqāṣidic method emphasizes the primacy of higher moral objectives in every legal reasoning process, thus opening avenues for legal interpretation that can adapt to contemporary global challenges, including the complex and transnational nature of international crimes (Bouheraoua, 2015). This approach is particularly relevant in light of the modern international legal system's limitations in consistently responding to serious violations often shaped by global political structures. With its orientation toward maṣlaḥah 'ālamīyah (universal welfare), maqāṣid provides a perspective that enables a normative reconstruction of universal jurisdiction that is more just and inclusive (Lahsasna, 2013).

Maqāṣid al-Sharī'ah also possesses the potential to serve as an alternative normative framework capable of counterbalancing the moral vacuum within the positive international legal system. The values embedded in maqāṣid are grounded in universal human ethics rooted in the concept of fitrah, making them acceptable to the global community without reliance on culturally specific parameters (El-Mesawi, 2006). This positions maqāṣid not merely as an internal doctrine of Islamic law but as an epistemological contribution capable of enriching global discourses on universal justice. Through this orientation, maqāṣid can strengthen the moral legitimacy of universal jurisdiction, which has long been contested particularly by Global South states that critique its geopolitical biases.

Through its universal character, ethical structure, and methodological design, maqāṣid al-Sharī'ah provides a strong paradigmatic foundation for reconstructing the concept of universal jurisdiction in a more holistic manner. Maqāṣid is not only compatible with the values of global justice but also offers a moral perspective capable of addressing the normative deficits within the modern international legal order. This approach opens space for a more neutral, humane, and globally welfare-oriented enforcement of international law, thereby creating opportunities for reimagining universal jurisdiction in its truly substantive sense (Hallaq, 2013). In this respect, maqāṣid serves as a normative foundation capable of restoring the moral spirit of justice within the global legal system.

### **Islamic Critiques of Modern Universal Jurisdiction.**

Islamic critiques of the modern concept of universal jurisdiction primarily stem from ethical concerns, particularly the gap between claims of universality and the absence of a sufficient moral foundation. Contemporary theorists of global justice argue that today's international legal regime remains entrenched in power structures and thus fails to deliver substantive justice for all human beings (Cortell & Davis, 2020). Within the framework of Islamic law, this condition is seen as a form of universality devoid of ethical spirit, because it is not grounded in the principles of moral accountability and balance that constitute the core of Islamic legal thought. Al-Jabiri argues that when law becomes detached from universal moral values, it transforms into an instrument of power rather than a

vehicle of justice (al-Jabiri, 2009). This critique highlights that modern universal jurisdiction remains far removed from a holistic conception of justice.

Beyond ethical concerns, the weaknesses of modern universal jurisdiction are visible in its asymmetrical patterns of enforcement. International relations scholarship demonstrates that powerful states possess the capacity to shape the agenda of international law enforcement, while weaker states tend to become objects of enforcement rather than sovereign subjects (Hurd, 2017). This asymmetry produces a form of “jurisdictional inequality,” in which the principle of universality is applied selectively according to political calculations. From the perspective of Islamic law, such inequality is deeply problematic because the principle of justice in the Sharī’ah rejects any form of domination that results in moral or legal imbalance. This critique reinforces the argument that modern universal jurisdiction continues to carry structural biases that cannot be ignored without a paradigmatic correction.

From the viewpoint of Islamic epistemology, this inequality signals that universal jurisdiction has lost the spiritual foundation that demands equal protection for every human being. Abu-Sulayman stresses that the ethical framework of Islamic law emphasizes a transnational responsibility to preserve human dignity an obligation that does not depend on inter-state power relations (Abu-Sulayman, 1993). Islamic critiques are therefore not merely reactive to technical weaknesses in modern law enforcement, but are also philosophical in nature, demonstrating that genuine universality must be anchored in moral values that transcend global political and economic boundaries.

Furthermore, Islamic legal thought offers a normative proposition that universality should be understood as a moral commitment to human protection rather than solely as a legal authority. In this context, the principle of *human trusteeship* articulated by Kamali provides an ethical basis for viewing the protection of life, dignity, and fundamental rights as a universal responsibility that cannot be subordinated to geopolitical interests (Kamali, 2011). Islam views injustice as a global threat that must be addressed through shared moral values and collective welfare not through legal instruments vulnerable to political manipulation.

Thus, Islam holds significant potential to offer an alternative ethical framework that is more stable than the model of universal jurisdiction currently dominant in international law. Esposito notes that Islamic ethical values possess a transnational character compatible with the idea of global justice and can serve as a normative foundation for constructing a more balanced model of law enforcement (Esposito, 2018). This demonstrates that Islamic critiques not only expose the deficiencies of modern universal jurisdiction but also serve as a paradigmatic contribution to reorient universality toward substantive justice rather than the distribution of international power.

## **Reconstruction of the Concept of Universal Jurisdiction Based on the Maqāṣid al-Sharī’ah.**

### **1. Shift in the Locus of Universality**

The modern concept of universal jurisdiction is heavily shaped by the power configuration of major states within international politics. Its state-centric

character often leads universalism to be interpreted as a form of legitimized intervention by powerful states rather than as an ethical commitment to humanity. A shift in the locus of universality is therefore required to address this crisis of legitimacy. From a *maqāṣid* perspective, universality must not emerge from structural domination but from moral values that bind all human beings.

*Maqāṣid al-Sharī'ah* offers a normative foundation for this repositioning by grounding universality in the principles of protecting life, intellect, human dignity, and justice. These values are *transcivilizational* in nature and can thus serve as a basis for reducing the international legal system's dependence on exclusively Western constructs. As emphasized by Dusuki (2018), *maqāṣid* provides an ethical point of convergence between Islamic tradition and modern universal values, enabling it to function as an alternative moral foundation for the global legal order.

Accordingly, shifting the locus of universality means relocating the source of legitimacy from state power to transcendent moral principles. It also renders universal jurisdiction more inclusive of non-Western legal traditions while expanding the space for global civilizations to participate in shaping universal standards of justice

## **2. Ethical Parameters in the Reconstruction**

### **a. The Protection of Life as an Absolute Value**

The principle of *ḥifẓ al-naḥs* places the preservation of human life as the highest priority. A selective or politically driven application of universal jurisdiction clearly contradicts this principle. Within the *maqāṣid* framework, the protection of human life constitutes a non-negotiable moral foundation. As emphasized by al-Raysuni (2020), international legal mechanisms must genuinely safeguard humanity from major crimes such as genocide and war crimes.

### **b. Human Equality**

Equality serves as a direct critique of the international legal structure, which often grants impunity to powerful states. The principle of *al-musāwāh* requires that all perpetrators of international crimes be treated equally, regardless of military strength, geopolitical position, or political alliances. This concept aligns with the notion of egalitarian justice widely developed in global ethics literature.

### **c. Prohibition of Injustice and Aggression**

The principle of *lā ḡulma wa lā i'tida'* provides an ethical standard for rejecting the misuse of universal jurisdiction as a tool of intervention or political coercion. Universal jurisdiction must function as a means of preventing aggression, not as a justification for the aggressive policies of major powers.

### **d. Universal Public Interest**

*Al-maṣlahah al-'āmmah* requires that all actions within international law be oriented toward the protection of humanity as a whole. This principle supports the creation of universal jurisdiction mechanisms that are not subordinated to any political bloc but instead serve as guardians of global human welfare. This perspective is highlighted by Attia (2019), who positions *maṣlahah* as a principle that transcends national boundaries.

## **3. Maqāṣid-Based Model of Universal Jurisdiction.**

This model formulates a new conceptual structure that integrates *maqāṣid*-based ethics with the principles of international law to create a more just and non-hegemonic scheme of universal jurisdiction.

a. Non-Hegemonic

The *maqāṣid* model rejects an international legal structure dependent on the power of dominant states. Moral authority in law enforcement must arise from global ethical consensus rather than military or economic strength. This is essential to prevent the manipulation of universal jurisdiction as a tool of intervention.

b. Non-Selective

Enforcement standards must be consistent. Crimes committed by major powers—such as illegal invasions, blockades, or mass killings—cannot be exempted. Accordingly, the *maqāṣid* framework provides a *mechanism of ethical equalization* that demands non-discriminatory justice.

c. Value-Based Accountability

Value-based accountability means that universal jurisdiction assesses actions not only based on formal legal norms but also in light of transcendent values such as justice, humanity, and the protection of human dignity. This results in a more substantive form of accountability than positivist approaches.

d. Protection-Centered

The primary focus is the protection of human beings. *Maqāṣid*-based universal jurisdiction operates through the principle of harm prevention, making legal enforcement designed to avert major harm to humanity.

e. Transnational Moral Authority

This model envisions a transnational moral authority not confined to states or Western institutions. The international community, interfaith organizations, global human rights bodies, and non-Western legal traditions all play a role in building the legitimacy of universality.

#### **4. Normative Implications for International Law.**

a. Expansion of Legitimacy

By incorporating *maqāṣid* as a source of global values, universal jurisdiction attains broader moral legitimacy. It is no longer perceived as a Western instrument but as a product of civilizational dialogue. This enables the development of a more inclusive global legal order.

b. Decolonization of Norms

The application of *maqāṣid* provides a foundation for dismantling colonial legacies in international law. Decolonizing norms means challenging the assumption that moral standards originate exclusively from the West. As Bilgin (2021) argues, a just global legal order must recognize ethical contributions from diverse world civilizations.

c. Reorienting Justice from the State to the Human Being

Modern international law is profoundly state-centric, often at the expense of victims. The *maqāṣid* approach places the human person at the center of justice (human dignity-centered), thus reorienting international law to become more responsive to the suffering of victims of grave crimes.

#### **5. Consequences and Implementation Challenges.**

a. Theoretical Challenges

The integration of a *maqāṣid al-Sharī'ah*-based concept of universal jurisdiction with the framework of modern international law generates serious epistemological issues, as the two systems rest on fundamentally different paradigms. Modern international law is constructed upon the foundations of positivism and state consent as its primary sources of validity (Baderin, 2017), whereas *maqāṣid* is rooted in transcendent and meta-legal ethical values (Kamali, 2021). This tension produces a dilemma concerning how normative moral principles can be reconciled with formal legal mechanisms that rely heavily on state practice.

The issue of normative compatibility also constitutes a significant challenge. The international legal system tends to separate ethics from legality, while the *maqāṣid* structure rejects such a dichotomy and treats morality as a constitutive element of law (Delmas-Marty, 2019). This position is often questioned by some scholars who consider it difficult to integrate into a legal regime that prioritizes “value-neutrality.” Consequently, a more inclusive and dialogical methodological framework is needed to harmonize both approaches without generating normative conflict

#### b. Practical Challenges

At the level of implementation, the most dominant practical obstacle stems from the resistance of powerful states to non-selective mechanisms of universal jurisdiction. Numerous studies show that major powers oppose the strengthening of supranational jurisdiction because such mechanisms may expose their own military actions or foreign policy decisions to accountability (Bosco, 2020). This resistance indicates that a more ethical and inclusive form of universal jurisdiction faces serious obstacles from contemporary geopolitical dynamics.

In addition, institutional limitations also affect implementation effectiveness. The ICC, for instance, remains highly dependent on the support of member states in terms of funding, arresting suspects, and enforcing decisions (Akande, 2018). This structural dependence renders the Court vulnerable to political pressure and hampers the consistent application of universal jurisdiction. When the law requires non-selective enforcement but institutions lack adequate capacity or autonomy, a gap emerges between moral legitimacy and operational reality (Benton, 2021)

#### c. Opportunities for Transformation

Despite these challenges, strategic opportunities exist for reconstructing universal jurisdiction based on *maqāṣid* to contribute to the renewal of global justice discourse. Muslim-majority states have the potential to emerge as *norm entrepreneurs*, actors capable of introducing alternative ethical frameworks into international legal discussions (Abdullah, 2022). With a normative heritage emphasizing justice, moral equality, and human protection, *maqāṣid* can fill the ethical void within the global legal order.

Furthermore, the development of ideas on *post-Westphalian justice* has opened space for non-hegemonic paradigms in international law. This line of thought encourages a shift from state centrality toward a moral framework that places the human person at the core of global justice (Falk, 2019). Amid growing critiques of the coloniality embedded in international legal norms, there is

renewed interest in contributions from non-Western perspectives for constructing a more pluralistic and equitable global order (Acharya, 2021). In this context, *maqāṣid al-Sharī'ah* may serve as an ethical source of legitimacy that transcends state boundaries and enriches the epistemic pluralism of international law.

## 6. Affirming Humanity-Based Universality

The effort to reconstruct the concept of universal jurisdiction grounded in *maqāṣid al-Sharī'ah* occupies a strategic position within contemporary debates on international legal reform. Amid global criticism of the model of universality developed by Western institutions, there is an increasing need to formulate a more ethical, non-hegemonic paradigm that aligns with the diversity of the world's legal traditions. Scholars in critical legal studies such as Mutua (2001) have highlighted that modern universality contains embedded normative biases that produce inequalities in law enforcement practices. A *maqāṣid*-based reconstruction offers an alternative moral foundation that places the human being, rather than the state or configurations of power, at the center of universality. In doing so, it paves the way for a model of global justice that is not merely legal-formal but also ethically and emotionally grounded, echoing Koskeniemi's call for the humanization of international law.

The final integration of *maqāṣid* principles with the idea of universal jurisdiction demonstrates that *Sharī'ah*, in its purposive dimension, functions as a public ethical system oriented toward the fundamental protection of the human person. New-generation *maqāṣid* frameworks such as those articulated by Laldin and Furqani (2013) emphasize that the objectives of *Sharī'ah* must be understood dynamically, encompassing the protection of universal human values, social sustainability, and cross-civilizational justice. When *ḥifẓ al-nafs*, *ḥifẓ al-'ird*, and *ḥifẓ al-insāniyyah* are adopted as bases for legitimizing non-territorial action against grave crimes, universal jurisdiction gains a moral justification that transcends state boundaries and geopolitical interests. This approach transforms universality into a global ethical obligation to safeguard human integrity, in line with the notion of *holistic morality* emerging in contemporary global ethics (Pogge, 2008).

The primary contribution of integrating *maqāṣid* into the reconstruction of universal jurisdiction lies in its ability to provide a comprehensive and inclusive ethical framework. At the level of principles, *maqāṣid* aligns international legal norms with transcendent moral values, thereby enriching the legitimacy basis for prosecuting serious international crimes. At the methodological level, this approach offers a teleological foundation for legal action independent of territorial or political affiliations, grounded instead in the urgency of protecting human dignity universally. The emphasis on *maṣlahah 'ālamīyyah* as the justification for global action introduces a new framework that enables universal jurisdiction to avoid selectivity and the instrumentalization of state power. This perspective aligns with Buchanan's (2020) argument on the need to reformulate global legal institutions to prioritize justice rather than sovereignty.

More broadly, the *maqāṣid* approach opens significant avenues for renewing the structure of modern international law. By incorporating Islamic epistemology into global discourse, this reconstruction contributes to the

pluralization of normative sources in international law a crucial step toward overcoming the dominance of a single Western perspective. This resonates with De Sousa Santos's notion of *legal pluriversality*, which calls for a multi-sourced and non-monolithic international legal system. Moreover, the integration of *maqāṣid* enables a reorientation of the aims of international law from interstate political stability to the protection of human beings as the primary subjects of justice. This reorientation carries major implications for institutional reform, including expanding the legitimacy of international mechanisms such as the ICC so that they do not rely solely on the authority of states.

The synthesis between universal jurisdiction and *maqāṣid al-Sharī'ah* ultimately yields a paradigm that affirms humanity-based universality as the foundation of future global justice. This model not only bridges Islamic legal tradition with modern international law but also provides a new direction for constructing a global legal order that is more just, impartial, and representative of all humankind. Accordingly, this reconstruction offers both theoretical and practical contributions to advancing the transformation of international law toward a more ethical, plural, and humane form.

## Conclusion

This study affirms that the reconstruction of the concept of universal jurisdiction through the lens of *Maqāṣid al-Sharī'ah* provides a more comprehensive normative foundation for the enforcement of law against transnational crimes, which have long been entangled in political bias, epistemic fragmentation, and structural inequalities within the international legal order. The central hypothesis that *maqāṣid* values can restore the universality of jurisdiction on the basis of humanitarian ethics rather than mere geopolitical consensus is substantiated when linked to the global need for a more inclusive justice framework free from the domination of powerful states.

In response to the research question regarding how the integration between universal jurisdiction and Islamic international law can be strengthened, this study demonstrates that *Maqāṣid al-Sharī'ah* provides an evaluative framework that places the protection of life, human dignity, justice, and social balance as substantive, transnational objectives. Accordingly, the reconstruction of universal jurisdiction does not merely adopt existing positive norms but proposes a paradigm shift: from state-centric accountability to human-centric accountability. This opens the way for a concept of universality governed not by power contestation but by moral principles accepted across civilizations.

Furthermore, the study addresses the contribution of the *maqāṣid* approach to contemporary international law dynamics. The findings indicate that *maqāṣid* can serve as a corrective moral framework, enhancing ethical legitimacy and reinforcing the normative foundations of international institutions such as the ICC, particularly in confronting criticisms regarding selectivity, jurisdictional asymmetry, and limitations of political mandates. By offering a philosophically compelling and universally resonant basis, this reconstruction creates opportunities to consolidate Islamic values with global law without negating the secular character of the international system.

Overall, the study concludes that the reconstruction of universal jurisdiction through *Maqāṣid al-Sharī'ah* is not merely an integrative discourse but also produces a novel model of humanity-based universality. This model bridges the gap between moral legitimacy and legal effectiveness. Through this approach, Islamic international law functions not only as an alternative normative reference but also as a source of theoretical innovation for a global legal order that is more just, inclusive, and responsive to crimes that threaten humanity universally

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