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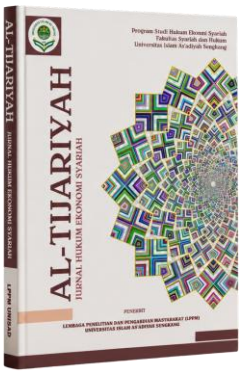

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Substantive Justice Between Two Paradigms: A Comparative Study of Justice Values in Critical Legal Studies and Maqashid al-Syariah in Islamic Economics

Keadilan Substantif Antara Dua Paradigma: Kajian Komparatif Nilai Keadilan Critical Legal Studies dan Maqashid al-Syariah dalam Ekonomi Syariah

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Abstract

This study examines the comparative justice values between Critical Legal Studies (CLS) and maqashid al-syariah within the context of Islamic economics. CLS, as a critical legal movement, views law as a socially constructed instrument laden with power interests, arguing that justice must be understood substantively and emancipatorily. Conversely, maqashid al-syariah positions justice (al-'adl) as the transcendental objective of Islamic law rooted in divine revelation. Employing a normative legal research method with conceptual and comparative approaches, this study finds that both paradigms share a fundamental commitment to substantive justice, yet differ markedly in their sources of values, epistemological foundations, and orientations. Their convergence is most evident in the shared critique of Islamic economic formalization that has lost its spirit of maslahah. This study argues that CLS can function as an external critical instrument that strengthens rather than replaces the normative framework of maqashid al-syariah in analyzing and reforming Islamic economic practices in Indonesia.

Keywords: Critical Legal Studies, Maqashid al-Syariah, Substantive Justice, Islamic Economics, Comparative Law

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Abstrak

Penelitian ini mengkaji perbandingan nilai keadilan antara aliran Critical Legal Studies (CLS) dan konsep maqashid al-syariah dalam konteks ekonomi syariah. CLS sebagai gerakan hukum kritis memandang hukum sebagai konstruksi sosial yang sarat kepentingan, sehingga keadilan harus dimaknai secara substantif dan emansipatoris. Sementara itu, maqashid al-syariah menempatkan keadilan (al-'adl) sebagai tujuan transendental hukum Islam yang berpijak pada wahyu. Dengan menggunakan metode penelitian hukum normatif melalui pendekatan konseptual dan komparatif, penelitian ini menemukan bahwa kedua paradigma berbagi komitmen terhadap keadilan substantif, namun berbeda secara mendasar dalam sumber nilai, epistemologi, dan orientasi. Titik temu keduanya paling nyata dalam kritik terhadap formalisasi ekonomi syariah yang kehilangan ruh kemaslahatan. Penelitian ini berargumen bahwa CLS dapat difungsikan sebagai alat kritik eksternal yang memperkuat bukan menggantikan kerangka normatif maqashid al-syariah dalam menganalisis dan mereformasi praktik ekonomi syariah di Indonesia.

Kata-kata Kunci: *Critical Legal Studies, Maqashid al-Syariah, Keadilan Substantif, Ekonomi Syariah, Perbandingan Hukum*

Introduction

The Islamic economic system in Indonesia has demonstrated remarkable growth. National Islamic financial assets reached IDR 2,883.67 trillion in 2024, growing 11.67 percent year-on-year, placing Indonesia at the top of the Global Islamic Economy Indicator alongside Malaysia and Saudi Arabia (Murtadho, 2026). Yet behind these impressive figures lies a fundamental question: does this quantitative growth translate proportionately into the realization of substantive justice the very spirit of Islamic economics?

Academic criticism suggests otherwise. Contemporary Islamic economics frequently falls into a legalistic technical-operational approach in which contracts are deemed valid according to fiqh, yet lose the spirit of maslahah. The phenomenon of "contract engineering" (hilah), which satisfies formal requirements while substantively departing from the objectives of justice, serves as a vivid reflection of this problem (Murtadho, 2026). Islamic financial products such as murabahah are often no more than Islamic packaging for conventional transactions that mimic interest-based credit mechanisms (El-Gamal, 2006). Scholars refer to this as the crisis between law in books and law in action in Islamic economics.

On the other hand, the Critical Legal Studies (CLS) movement born from dissatisfaction with legal formalism in the United States since 1977 offers analytical tools relevant to examining this phenomenon. CLS consistently deconstructs how ostensibly neutral and formal law conceals relations of power, interests, and ideological bias (Unger, 1986; Kennedy, 2004). Applied to Islamic economics, this approach has the potential to expose dimensions of power hidden beneath contracts that appear formally valid.

Meanwhile, maqashid al-syariah the framework of Islamic legal objectives developed by Al-Ghazali, Al-Syatibi, and Jasser Auda, places justice (al-'adl) and public welfare (maslahah) as the highest aims of every economic transaction and policy. This framework is inherently critical of law that merely satisfies formal requirements while disregarding the substance of justice.

The intersection between CLS criticism and the substantive orientation of maqashid al-syariah warrants deeper investigation. Both reject procedural-formal justice as the ultimate standard. Yet they diverge fundamentally in their sources of values, epistemological foundations, and proposed solutions. A systematic comparative study of these two frameworks in the context of Indonesia's Islamic economics remains scarce in the academic literature.

Based on this background, this study aims to: (1) analyze the concept of justice in CLS and maqashid al-syariah comparatively; (2) identify the fundamental points of convergence and divergence between the two paradigms; and (3) formulate how CLS can function as a complementary critical instrument in analyzing Islamic economic practices in Indonesia.

Research Method

This study employs normative legal research, which examines law as norms, concepts, doctrines, and theories developed within the discipline of law and Islamic economics (Marzuki, 2005). This method is chosen because the objects of inquiry are two theoretical frameworks CLS and maqashid al-syariah rather than empirical legal behavior in society.

The study utilizes two approaches. First, the conceptual approach, which analyzes the concepts of justice in CLS and maqashid al-syariah based on the doctrines of their key scholars. Second, the comparative approach, which systematically compares the two paradigms to identify their points of convergence and divergence in the context of Islamic economics.

The legal materials employed are secondary sources, including works of CLS scholars such as Unger (1986), Kennedy (2004), and Kelman (1987); classical and contemporary works on maqashid al-syariah such as Al-Syatibi (Al-Muwafaqat), Al-Ghazali (Al-Mustasfa), and Auda (2008); as well as scholarly journals in the fields of Islamic economics and legal theory. Analysis is conducted descriptively-comparatively elaborating each paradigm and then systematically comparing them across predetermined dimensions.

Results and Discussion

A. The Concept of Justice in Critical Legal Studies

Critical Legal Studies (CLS) does not formulate justice as an abstract universal value, but as the product of social processes always entangled with power relations. Roberto Mangabeira Unger (1986), one of CLS's principal architects, argues that law including the law governing the economy is never neutral. Law is politics; every legal norm reflects the interests of groups that dominate its formation.

Within the CLS framework, injustice in the economy is not merely an individual or technical problem, but a product of legal structures deliberately designed consciously or not to perpetuate specific socio-economic hierarchies. Duncan Kennedy (2004) asserts that legal education itself reproduces this hierarchy by teaching legal doctrine as though it were objective and value-free, when in fact it is embedded with class, racial, and gender bias.

The implications of CLS for economics are that markets including Islamic financial markets never operate in a space free from power. Contracts that appear voluntary and legally valid may in fact be expressions of unequal bargaining power between transacting parties. Mark Kelman (1987), through the concept of the indeterminacy of law, demonstrates that legal texts are always open to interpretation in accordance with interests including the texts of Islamic contracts, which are frequently interpreted to benefit financial institutions rather than clients.

Accordingly, justice in the CLS perspective is emancipatory and transformative: it is insufficient to understand it as compliance with established procedures. Rather, it must be pursued through the deconstruction of structures that generate inequality. This is what distinguishes CLS from positivist legal theory, which is satisfied with formal justice.

B. The Concept of Justice in Maqashid al-Syariah

Maqashid al-syariah constitutes a teleological framework of Islamic law that articulates the highest objectives of every Shari'a provision. Al-Syatibi in Al-

Muwafaqat formulates that the Shari'a was revealed to realize maslahah for humankind in this world and the hereafter, through the preservation of five essential elements (al-kulliyat al-khams): religion (al-din), life (al-nafs), intellect (al-'aql), lineage (al-nasl), and property (al-mal). It is the preservation of property that forms the normative foundation of Islamic economics.

In the economic context, maqashid al-syariah positions justice (al-'adl) not merely as a procedural principle, but as a substantive objective that must be reflected in every transaction. Jasser Auda (2008) develops the maqashid approach systemically, emphasizing that Islamic economic justice encompasses a distributive dimension the distribution of wealth through zakat, waqf, and the prohibition of riba as well as a procedural dimension honesty, transparency, and the absence of gharar in every transaction.

The critical strength of maqashid al-syariah lies in its capacity to distinguish between formal compliance and substantive compliance. A contract that is technically declared valid according to fiqh, but does not produce maslahah for the contracting parties or even produces exploitation may be criticized and potentially invalidated on the basis of maqashid. This constitutes a powerful internal critical mechanism within the Islamic legal system, one that parallels in its logic the CLS critique of legal formalism.

Unlike CLS, which is grounded in historical social construction, maqashid al-syariah rests on a transcendental foundation: divine revelation interpreted through the ijtihad of scholars. Consequently, the standard of justice in maqashid is more fixed in its principles, though flexible in application (tsawabit wa mutaghayyirat). This is a fundamental distinction from CLS relativism, which does not acknowledge any absolute standard of justice.

C. Comparative Analysis: Points of Convergence and Divergence

A systematic comparison between CLS and maqashid al-syariah is presented in Table 1. The most fundamental divergence lies in the source of justice values. CLS regards justice as a relative and contextual social construction shifting in accordance with the dynamics of dominant power and interests at any given time.

Maqashid al-syariah, by contrast, positions justice as a transcendental value derived from divine revelation; although its interpretation may evolve, its foundational principles remain constant.

This epistemological divergence carries significant practical consequences. The relativism of CLS tends to render it difficult to offer a consistently defensible standard of justice, a critique frequently levelled against the movement (Munir Fuady, 2011). Conversely, maqashid al-syariah possesses a clear standard, but faces implementation challenges in the contemporary era, particularly when confronting the complexity of modern financial instruments.

The strongest point of convergence lies in both paradigms' rejection of purely procedural justice. The CLS critique of legal formalism that the formal validity of a contract does not guarantee substantive justice is substantively parallel to the maqashid al-syariah critique of "contract engineering" that is valid according to fiqh but contrary to the spirit of maslahah. Both demand that law be evaluated not by compliance with procedure, but by its impact on real justice in society.

Table 1. Comparison of CLS and Maqashid al-Syariah in the Dimension of Economic Justice

Dimension	Critical Legal Studies (CLS)	Maqashid al-Syariah
Source of Justice Value	Social and historical construction; relative and contextual	Divine revelation (Qur'an and Sunnah); absolute and transcendental
Epistemology	Deconstruction, ideological critique, anti-formalism	Bayani, burhani, and irfani; integrative of text and reason
Focus of Justice	Structural distributive justice; exposing power relations	Holistic justice: religion, life, intellect, lineage, and property
Orientation	Emancipatory; radical social transformation	Public maslahah (welfare); balance of worldly and hereafter
Stance toward Positive Law	Critical, deconstructive; rejects neutrality of law	Selective; accepts if consistent with maqashid, rejects if contrary
Primary Weakness	Tendency toward relativism; limited in offering concrete solutions	Contemporary implementation challenges; risk of akad formalization
Point of Convergence	Both reject purely procedural justice and demand substantive justice	Both reject purely procedural justice and demand substantive justice

D. Application in Indonesian Islamic Economics: A Critical Analysis

The phenomenon of formalization in Indonesia's Islamic economics provides the most appropriate arena in which to apply these two analytical lenses simultaneously. Research by Murtadho (2026) reveals that the rapidly growing Indonesian Islamic financial industry confronts a fundamental problem: the dominance of a legalistic technical-operational approach, in which contracts are deemed valid according to fiqh but have lost the spirit of maslahah.

From the CLS perspective, this phenomenon can be analyzed as a manifestation of how interested parties — major Islamic financial institutions, regulators, and scholars involved in the legislative process — unconsciously shape Islamic norms in ways that favor their own positions. The murabahah product, which is economically identical to conventional interest-bearing credit, is the most glaring example: it is formally valid because it passes procedures established by a sharia supervisory board, yet its substance is indistinguishable from what is prohibited (El-Gamal, 2006). CLS would describe this as the victory of formalism over substance.

From the maqashid al-syariah perspective, such products can be critiqued using the standard of maslahah: does the product genuinely provide benefit and protect property (hifz al-mal) for clients, or does it instead become a new instrument of exploitation? The maqashid approach provides a clear normative standard for answering this question — something CLS lacks.

The integration of both approaches produces a more comprehensive analytical model. CLS functions as a deconstructive tool: it dismantles hidden assumptions, exposes power relations, and questions who benefits from existing norms. Maqashid al-syariah functions as a reconstructive standard: after CLS has identified what is wrong, maqashid points toward the direction in which reform should be oriented. The two are complementary, not competitive.

E. The Limits of Integration: What Cannot Be Taken from CLS

Although CLS offers valuable analytical tools, there are firm boundaries that cannot be crossed when integrating it with maqashid al-syariah. First, the ontological relativism of CLS — its rejection of any absolute standard of justice —

cannot be simply adopted, as maqashid al-syariah is grounded in the conviction that Divine justice is the supreme standard that admits no negotiation.

Second, CLS's tendency to view all law as an expression of power and interests if applied without a filter to the Shari'a risks eroding the normative authority of revelation itself. Islamic law cannot be divorced from the historical context of its interpretation, but this does not mean that divine revelation can be reduced to a mere social construction.

Third, the agenda of radical social transformation championed by certain CLS thinkers rooted in the neo-Marxist tradition is not fully compatible with the vision of gradual social change embraced by maqashid al-syariah through the mechanisms of ijtihad and scholarly consensus (ijma'). Social change in Islam must observe the maxim la darar wa la dirar no harm shall be inflicted in the process of reform.

Conclusion

First, CLS and maqashid al-syariah both reject justice that is merely procedural and formal. Both demand substantive justice that is genuinely experienced by all segments of society. This convergence renders dialogue between them not only possible but also productive particularly in critiquing Islamic economic practices ensnared in formalism.

Second, their fundamental divergence lies in their sources of values and epistemology. CLS rests on a relative social construction, while maqashid al-syariah rests on transcendental divine revelation. This divergence is irresolvable and must be acknowledged clearly: CLS cannot replace maqashid as the normative standard of Islamic economics, but it can function as an external critical tool that complements it.

Third, in the context of Indonesia's Islamic economics, the integration of CLS as a deconstructive tool and maqashid al-syariah as a reconstructive standard produces a comprehensive analytical model. This model is capable of identifying formal distortions in Islamic economic practice while simultaneously charting the direction of reform grounded in authentic Islamic values. The development of this

integrative analytical framework constitutes an urgent academic agenda, particularly amid the rapid growth of Indonesia's Islamic financial industry, which still harbors profound questions regarding genuine distributive justice.

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