

# THE SOCIAL ISSUES OF THE MUNAKAHAH IN THE PERSPECTIVE OF MAQASHID AL-SHARIA

Asmawi<sup>1</sup>

<sup>1</sup>Universitas Islam Negeri (UIN) Sayyid Ali Rahmatullah Tulungagung, [asmawi\\_mahfudz@yahoo.com](mailto:asmawi_mahfudz@yahoo.com)

## Abstract

This article aims to explain the perspectives of maqasid al-Syariah regarding the social issues of the munakahah in Indonesia. Munakahah refers to the Islamic rules related to family law, such as engagement, marriage, walimah, nafaqah, mawaris, and children's education. This research uses library research with content analysis as the analysis technique. The analysis began by explaining the theoretical description of the munakahah and its problems in Indonesian Muslim society. In the perspective of munakahah fiqh, the khitbah or marriage proposal, the consent agreement, qabul, guardianship, witnesses, dowry, walimah al-ursy, khulu ', dhihar, li'an, thalaq, and children's education (tarbiyat al-awlad) can be approached by using maqashid al- sharia to achieve the ideal goal of Islamic law as God's servants. Maqasid al-Syariah in Islamic law research puts fiqh maqashid as a discipline separated from ushul fiqh.

**Keywords:** Islamic Law, Munakahah, Maqashid.

## Introduction

Social issues often continue to develop and change as society grows. In the past, in the 80s, the problems in Indonesian society were not as complicated as the current situation, for example regarding the distribution of inheritance, family planning, the status of adopted children, the status of extramarital children, unregistered marriages, marriage registration and so on, in the context of Muslim family law as they tend to prefer the simple way of life. Communities with strong family tradition principles, for example, "mangan ora mangan lek kumpul" (gathering around with family is their priority even though they cannot afford meals), strong customary traditions in the distribution of inheritance, or "gono gini" (joint property), the social structure of society which is dominated by males (patriarchy), matchmaking issues, indeed, implement the principles as inherited from their parents. This pattern of life was the early Islamic law in Indonesia.

The social level considerably affects the earliest tradition of Indonesian society, for instance, formal education was only limited to certain groups of people. As a result, most communities preferred studying in non-formal institutions, such as elementary schools in a rural area, or studying Islamic knowledge in Islamic boarding schools which are not distant from homes. Consequently, this phenomenon affected the people's mindset in addressing some issues of life, included Islamic law. In the realm of family law, it can be exemplified, in the 70s-80s, the Indonesian people followed the ulama's statement or fatwa regarding the prohibition of family planning practices, which was a government program at that time. The fuqaha, Islamic jurists at that time thought that family planning was included in the category of murder (qatl al-nasl). As it is based on the textual basis of the texts, no comprehensive public understanding of medical practice regarding family planning exists. Therefore, the ulama's fatwa about the prohibition of family planning (KB) emerged, and the community also followed the statement. However, over time, people's understanding of family planning was approached with various perspectives, namely Islamic law, sociology, public health, medical, finally the law on family planning varied according to the legal reasons used by Islamic legal experts at that time. Family planning can finally be punished by Sunnah, permissibility, or haram following the legal considerations used when carrying out ijtihad at that time. For instance, in the decade of the 70s-80s, it shows that traditional or customary practices and the dynamic mindset of society also influence the dynamics of the development of Islamic law at a particular time or area.

Besides, fiqh-oriented practice as the main reference in solving legal problems at that time became dominant when Islamic legal experts (faqih) with their abilities resolve problems of Islamic law. Above was given the explanation that most Indonesian people at that time, when they did not get access to good education, they ended up getting an education from the surrounding environment, whose dominant curriculum was the science of Religion, in this case, the Kitab Kuning. So, the book in this case is fiqh-oriented which becomes the main perspective in solving the problems of Islamic law.

In the contemporary context, the mindset, traditions, and abilities of the community and legal experts are generally adequate, with such wide access to education. Starting from primary to higher education, informal or non-formal institutions. Also, people's lifestyle with the disclosure of information and technology also affects the existing lifestyle in society. Discussions of humanitarian issues covering socio-religious issues, human rights, gender, democratization, and other social problems have become daily consumption of the Indonesian people. Accordingly, the problems of Islamic law can be addressed in a better, more comprehensive, easier way because access to knowledge, information and technology, the development of Islamic legal thinking is so dynamic among Indonesian Muslim communities.

The problem of Islamic family law (ahwal al-syakhshiyah) is an interesting issue to study, considering that this is a common problem in society. Although the theme of the study seems classic, when approached with various perspectives, it finally becomes interesting to be discussed and researched. One approach that is the main issue in this research is maqashid al-syariah, in looking at the problems of marriage law (munakah). Fiqh munakahah or in Indonesian terms is so-called the law of marriage. The focus of this research is the stages of marriage or marriage procedures in Islamic teachings. Starting from the process of khitbah (marriage proposal), the marriage registration at the Office of Religious Affairs (KUA) or known as rafa', the marriage contract (ijab qabul), walimah al-ursy or wedding celebration, about the husband's nafaqah (financial support) to the wife, divorce (thalaq) and the problem of child education (tarbiyat al-awlad). All the

problems of this munakahah procedure are then examined from the perspective of maqashid al-sharia.

## METHOD

This paper is a type of library research in which the data are obtained from books or fiqh related to maqashid al-sharia and munakah fiqh following the field of munakahah study. For example, in the field of ushul maqashid al-syariah, the book written by al-Ghazali, al-Mustasfa, al-Syathibi al-Muwafaqat fi Ushul al-Syariah, al-Juweini al-Burhan, Izudin Ibn Abd Salam, is used with his book Qawaid al-Ahkam. fi Mashalih al-Anam, Abu Zahra Ilm Ushul Fiqh, Abd. Wahab Khalaf, Ushul al-Fiqh al-Islami. and jurisprudence books deserve to be used as references in the study of munakah. Apart from books, several writings are also used in international and national journals, especially those related to maqashid al-sharia and munakah.

In this research, the structure of writing begins with an academic crisis that occurs in the theme of munakahah and maqashid Syariah. Then it is followed by the literature review about maqashid Sharia according to ushuliyah in medieval and modern centuries, supported by an explanation of the social problems of munakahah or the stages of marriage in the perspective of maqashid al-sharia. It is hoped that this research can contribute to the field of munakah, especially with contemporary Islamic legal thoughts, Islamic legal philosophy, or ushul al-fiqh.

## LITERATURE REVIEW

Fiqh munakahah is Islamic law that regulates the family relationship between husband and wife, which includes the contract, witnesses, guardians, walimah, nafaqah, hadhanah, khulu', dhihar, li'an, thalaq. This munakahah in fiqh books is usually placed after the ba'y or ahkam al-buyu 'chapter. A chapter of fiqh which regulates business in Islam. This study focuses on the problems of ahwal al-syakhsyah. This theme is difficult to find references in classical or medieval fiqh books. This theme only appeared in the modern era of the 19th century AD, to be precise during the reign of the Ottoman Turks. The first person to discuss it in a separate study is Muhammad al-Qudri Pasya, an expert on Islamic law in Egypt. He was the first to codify it in a book entitled Al-Ahkam al-Syar'iyah fi al-Ahwal al-Syakhsyah (sharia laws in the family). This codification of family law includes discussion of marriage, divorce, wills, experts (whether a person is capable of taking legal action), inheritance and grants. Then along with the scheduling period, the themes of ahwal al-syakhsyah were expanded to matters of justice (qadha). In the context of Indonesia, the birth of Law no. 3 of 2006 concerning the authority of the Religious court, and laws. No. 20 of 2009 the power of the Religious Courts is added to the Islamic economy.

The perspective of Maqashid al-Syariah (the goal of Islamic law), was born after the thought of Imam Mazhab, to look for alternative methods of finding new Islamic law, as the existing methods cannot be used to solve the problems of Islamic law. The highest goal of the application of Islamic law is the realization of benefits (al-maslahah), such as jalb al-naf'i wa daf'u al-dharar (attracting good and rejecting damage or harm). al-Ghazali then made a formula to continue thinking about maslahah by stating, (d. 505 H) there are five goals (maqshud) of sharia, maintaining religion (hifdlu al-din), (hifdlu al-nafs) soul, (hifdlu al-aql) reason, (hifdlu al-nasl) descent and (hifdlu al-mal) treasure. Indeed, some Islamic legal experts include maqashid sharia as a separate element in understanding Nash, both al-Qur'an and al-Sunah, after the linguistic and meaningful approaches. The figures who use the maqashid Sharia in completing Islamic law are Imam al-Juwaini, Imam al-Haramain al-Juwaini who can be said to be the first theorist (ulama ushul al-fiqh) who emphasized the importance of understanding of maqashid al-syari'ah in establishing Islamic law. He states that a person cannot be said to be capable of establishing laws in Islam, until he understands the true purpose of Allah in issuing His commands and prohibitions. According to him, the purpose of Islamic law is related to basic human needs (asl) and is divided into three, namely dlaruriyah (primary), hajat al-amat (secondary) and makramat (tertiary). The thoughts of al-Juwaini were then passed on by his students. Al-Ghazali then studied the objectives of Islamic law into five main things in priority, namely religion, soul, mind, descent, and property. Then the scholar of the Syafii school, Izzudin abd Salam, from the Maliki school of thought is al-Syathibi, who at length discusses the purpose of Islamic law in his book al-Muwafaqat, then the figure of Ibn Atsur, Ala al-Fasi, Jasir Awdah. These experts actually also practice one of the four schools of thought,

but also make breakthroughs by using maqashid al-sharia that has never been used by the imam of the madzhab they follow.

From the thoughts of those who agree, the use of maqashid al-sharia divides the objectives of Islamic law into three, namely *dlaruriyah*, *hajiyah* and *tahsiniyah*. *Dlaruriyah* aspect is the aspect of fulfilling human's urgent needs, if it is not fulfilled, then a servant will experience damage in his life. Otherwise, something becomes the basis for fulfilling human life. In this connection the *ushuliyun maqashid al-sharia* pioneers usually divide into five basic needs or what is called *kulliyat al-Khamas*, namely the preservation of religion (*al-din*), the preservation of the soul (*al-nafs*), the preservation of reason (*al- ' aqlu*), preservation of descendants (*al-nasl*), and preservation of property (*al-mal*). These five basic needs are the most basic things in human life, which must be fulfilled, if not fulfilled then humans will suffer. So that Islam prohibits violations of these five basic things that result in human damage. Among other things, apostasy is prohibited because it will destroy human religion, it is prohibited to kill which causes damage or loss of human life, prohibited from adultery because it will damage the offspring, prohibited from stealing because it will damage property, drunk is prohibited because it will destroy human reason. In addition, sometimes some discuss one more basic human thing, namely (*al-irdlu*) the maintenance of human dignity, so that it is prohibited to defame the good name of others. In this case, if you add one basic human need, it becomes *kulliyat al-sittah* (six basic things).

The second of the objectives of Sharia is *hajiyah*, which is the aspect of human needs that must be fulfilled if it is not fulfilled then people will experience difficulties, although not until damage people. In this case, human needs that fall into this level are the existence of banking institutions that manage and regulate the distribution of the economy in a particular country. If a country does not have a financial institution that can distribute the economy, people will experience difficulties. For example, economic resources do not work, development funding is not available, people who want to develop a business do not lend capital, development finally stops, and what happens is chaos in life in society. People who have assets cannot develop their business, secure their money, also people who lack business capital will continue to experience economic stagnation forever because no one facilitates them in developing their business.

Another example that must exist in the Hajj group is the existence of electricity, an internet network, in the present context it is absolutely necessary, if there is no internet network, the current electricity network of human life will experience difficulties in carrying out activities, whether economic, educational, political, social, , culture, almost all aspects of human life today require electricity and telephones. More examples of the dimensions of the Hajj in our daily lives that must be fulfilled are widely available. It is also possible that this also experiences dynamics along with the development and change of society in which Islamic law develops.

The third level is *tahsiniyah*. Judging from the name, this level complements the level above it. This means that the fulfillment of needs in order to perfect and make human life better, more beautiful. *Ushul ulama* usually limit it to issues related to noble morals. This connection with *tahsiniyah*, in today's language, may be related to increasing social status, prestige and others. For example, meeting the need for four wheels or a car, which one does not actually have to have, but in order for his life to be better, comfortable, beautiful, having a car is a necessity at the *tahsiniyah* level. But sometimes the needs of different people are different depending on their social status, occupation and capital capacity. The higher a person's social status, the need for *tahsiniyah* level is different from that of individuals who are only ordinary citizens and have low social status. Another example of *tahsiniyah* is wearing complete jewelry for women, wearing branded sarongs, luxury cars, all of these are included in the category of *tahsiniyah*, which complements one's needs.

Those are the three levels of *maslahah* in the maqashid Sharia theory initiated by *ushul* scholars in order to make it easier for someone to answer the problems of their society. From day to day, the problems of Islamic law faced by Muslims are increasingly complex and very dynamic in line with the dynamics of society itself. Especially related to human rights, economic and banking practices, politics, gender, education, domestic violence, violence against children, neglect of the elderly, street children, agriculture, fisheries, livestock, forestry, land, etc., all problems as a result of the rapid dynamics of human movement, from simple humans to modern humans, from village traditions to urban individualism, from religious puritanism to secularism, religious pluralism, radicalism, terrorism, drugs and so on. This complexity then demands a method that can quickly be used to find answers to the problems above. So, the concept of *maslahah* which is then

simplified to maqashid Sharia can be an alternative method of exploring Islamic law to answer problems among society.

## SOCIAL PROBLEMS

The social problems of Islamic law in the field of munakah in the perspective of maqashid al-sharia can solve more specific problems or cases, for example cases concerning dowries, ljab qabul, contract, guardianship, walimah al-ursy, divorce (thalaq), khulu ', dhihar, nafaqah, children's education, grants and so on. The urgent field of family law to be resolved by Islamic law is the issue of child education. This problem is categorized as currently occurring in the world of children's education, including discrimination against religious backgrounds, gender, economy, social status. This paper begins with something that happens, regarding the qualifications of students which are the entry requirements for being a student or student, in some educational institutions mentioning the requirements for having a certain religion. This is of course a problem in itself seen from the perspective of inclusivism of science and the right to education and teaching for all mankind, regardless of ethnicity, taste or belief. Seen from the perspective of maqashid al-sharia, problems like this can be analyzed, that protecting religious beliefs is a must, namely being hifdhu al-din, on the other hand the right to get teaching is defined as fulfilling the concept of hifdhu al-aqli which must also be implemented. Then the question is which should be prioritized between the interests of protecting religion and maintaining human intellectualism. In terms of priority (awlawiyah), keeping religion indeed takes precedence over the right to gain knowledge. However, it is possible that these two things can be combined or integrated together given the characteristics of open and inclusive knowledge, objectively, regardless of ethnicity, certain beliefs can study science freely. By accepting students with different beliefs, it will fulfill basic human rights, namely religious beliefs, and science.

Also, the problem is those undergraduate female students usually experience confusion to determine their next steps, will they be silent or get married, or pursue their higher education by continuing their master's degree? Or will they enter Islamic boarding schools, to khidmah (serve) in society to become social activists, whether religious organizations or youth organizations, or work as simple as waiting for a more decent job? This problem can be approached by the maqashid al-sharia by using priority fiqh. In the view of fiqh, there are several axioms or rules, for example the rules of dlaruriyah (urgency), hajiyah (importance) and tahsiniyah (perfection). Among the various scholarly plans, from marriage to social action, which category is urgent? or is it important? or is included in the category of tahsiniyah only to improve upon the previous conditions? This is the answer to the scholars themselves who know which states that Qardhawi's glasses are the Awlawiyah fiqh (priority) category of these three things.

These three priority categories such as empowering religion, soul, mind, descent, and property are urgent priorities (dlaruriyah) must be carried out immediately. The level of hajiyah (important) that is below it, is a real condition that is important to do, even if it is not fulfilled, humans do not suffer damage. For example, a new scholar who does not have a wife does not have to have a house, a lot of savings, large land, a car and so on. However, studying doctoral degree for a lecturer is important to do immediately meet his qualification needs. The third level is tahsiniyah, which completes the fulfillment of the first and second levels. For example, having a lot of savings, wearing clothes and daily equipment as a strengthening of existence and trust,

Based on the three things above, scholars can measure the priority of their respective needs, but what is clear is that every human being has stages of needs as part of the dynamics of his life. Junior scholars have different needs from seniors, but all scholars have scientific potential, namely self-objectification. This means living and fulfilling the needs of life in a realistic, objective manner, according to the potential of each environment. In the agricultural environment, it is empowered with agricultural affairs, in the madrasa environment or Al-Qur'an Education Park, it is empowered by schools, in the business environment, taking action in the trade sector, in the political environment entering into political activities, in the religious environment maximizing the potential of the surrounding religion. Arabic rules say

...وقدم الاخص في الاتصال

(put those around you first). So intelligence in choosing the priority scale of this need, which we then call priority fiqh (fiqh awlawiyah), the term Yusuf Qardhawi. Theories of this kind are important as a direction for graduate, alumni of Islamic boarding schools who have just graduated or have graduated, not to let something urgent become unimportant, or something that is

complementary becomes very important because they are not careful in determining the priority scale of needs, for example an undergraduate after receiving a diploma. There is another rule *الاهم ثم الهم* (take the very important, then the important one and so on).

Another social field is that the teachings of munakahah have become a common understanding that the requirements of marriage in Islam are in the context of carrying out religious orders, *hifdhu al-din*. This means that people who undergo *fiqh munakah* are obedience to Allah's orders and the Sunnah of the Prophet. In other languages it is called *ta'abudiyah*. In addition, someone who carries out marriage also has a goal in order to maintain his existence in the midst of society (*hifdhu al-nafsi*). Carrying out one's marriage will also have implications, have a clearer mind than unmarried people, in this case it is called *hifdhu al-aqli*. In marriage, it aims to bring about the regeneration of life for someone (*hifdhu al-nasl*), the existence of a marriage bond between a man and a woman will cause a relationship of rights and obligations, mutual inheritance of property, in this case it is called *hifdhu al-mal*. Finally, it can be understood that marriage in the eyes of *maqashid al-sharia* can carry out *kulliyat al-khams* as a whole. Not only that, a marriage can also maintain one's honor or increase social status in society. In the eyes of *maqashid al-sharia*, it can be called *hifdhu al-irdhi* (maintaining honor).

Another current social problem is how we can maintain the balance of this world, with the corona epidemic that is experienced by all countries in the world. With the Covid 19 pandemic, it seems that many of the world's inhabitants have died by the disaster, with millions of people around the world. So the urgency of *fiqh munakahah* found its momentum as a rational scientific study in order to provide understanding to the public and academics about the importance of marriage. Here is an academic discussion, the potential is omnipotent in the present context, in the midst of the corona outbreak, which is showing no sign of abating day by day. In the study of marriage begins by discussing the steps that are usually taken for those who want to get married, among these steps is to sort and select (ferment) potential mates from friends, distant relatives, neighbors, acquaintances, who are likely to find a match, to live together (in a language that is others do match verification). In the language of the Qur'an, it is called *ta'aruf*. If you have found a suitable one, immediately followed up by proposing it, in *fiqh studies* it is called *khitbah*.

*التماس الخاطب المخطوبة لينكح اليها*

(A request from a man to the proposed woman, to marry her). This sermon or application program is important to know the condition of each party. Usually the two parties meet face to face, followed by all close relatives, the candidate is brought together to exchange rings, the man can see the girl and the male candidate can see the future bride, according to the applicable *fiqh* rules. Then a process is held on the day of implementation, technically, the dowry agreement.

With the *khitbah* model run by such a community, there is a synergy between traditional custom or *urf* and *fiqh*, aiming at finding out answers about the willingness or agreement of each of the two families, for the marriage. This program, in the view of *fiqh maqashid*, occupies the *hajiyah* level. This means that this produces knowledge, acquaintance, of the objective situation of each family as something important or a need. By knowing each other, it will be easier for each other (*taradlin*) to get married. The situation is different if the bride and groom or the family do not know each other, then in a situation like this can use the rules,

*الحاجة تنزل منزلة الضرورة*

The need for a proposal and getting to know each other becomes urgent considering that the marriage will be carried out to live together forever, meaning that the marriage agreement will be lived forever (*muabad*).

The next stage is the administrative process at the Office of Religious Affairs (KUA), namely registering, completing administrative documents, when they are complete, an *ijab kabul* consent procession is scheduled to be recorded by KUA employees. In this repertoire of Islamic law, the concept of *murafaah fiqh* emerged, efforts to make reports to undergo the marriage procession. In the world of KUA, the term *rapa 'is* now known by the general public. The Arabic term means reporting, or having an event for marriage. *Rapa 'activity* is the clarification of the identities of all people involved in the *Ijab Qabul* event, they are really according to what is reported, whether in reality or the administration. For example, the documents of the two prospective brides are not the people who are forbidden, the guardian is correct, the witness is true and so on. Seen from the viewpoint of *maqashid*, *rapa 'also* occupies a *hajiyat* position which is placed at the *dharuriyat* level, very important, to avoid mistakes, lies, negligence of the two parties who are going to undergo marriage. Especially today with world conditions with the

complexity of the problems of the people. Health problems, nasab problems, economic capability, intellectuality. Everything is an attempt to exist honestly and objectivity.

The next step is the implementation of the consent granted. Namely the agreement that was pronounced by both parties. In it contains the submission from the guardian to the groom with a certain agreement. Also, a man accepts the surrender by paying the agreed dowry. This marriage contract, which contains the consent of the qabul, is harmonious in marriage and cannot be negotiated or neglected. Ijab qabul in maqashid sharia is included in the dlaruriyah level, which is very important or urgent, meaning that if there is no consent in qabul or is no marriage contract according to the teachings of fiqh then it is invalid, also called the absence of marriage. The name of the occurrence of marriage can be said to exist when the marriage contract is carried out itself, or there is a law of agreement. In Islamic legal terminology it is stated,

النكاح عقد يستحل به الوطء

(Marriage is a contract or agreement to justify a husband and wife relationship). The essence of marriage is the contract itself, everything related to the legal marriage contract is the same as the contract itself, such as guardian, witness, consent granted. In the perspective of maqashid al-sharia, this kind of thing can be grouped into dlaruriyah (very important), because the marriage contract and a set of processions associated with it determine the validity or invalidity of a marriage.

Next is the walimat al-ursy or wedding celebration to share news with relatives, friends and neighbors. In the chapter on fiqh, the discussion of walimat al-ursy is usually put in a discussion with the book of bayani ahkam al-nikah. The law of walimah itself is sunnah, according to the advice of the Prophet, "Anas bin Malik RA told, that the Prophet SAW saw a yellow mark on Abdur Raham bin Auf's cloth, so he asked, What is this? " He answered, O Messenger of Allah, I have just married my daughter to a dowry of gold palm seeds. Rasulullah replied, may Allah bless him for you and make a walimah even with a goat.

.... اعلنوا النكاح

(tell your marriage). The purpose of the walimah commandment is thanks to Allah who has given us a partner. Also tell other people that the bride and groom are not alone, that they have the right to them. So other people who do not want to have a relationship with the bride and groom must be based on sharia social ethics. From the point of view of maqashid walimah as a complement to the wedding procession, in the language of Islamic law it is called the level of tahsiniyah (improvement of the beauty and goodness of marriage. Or it can be called walimah is part of the morality of a Muslim after receiving the blessings of Allah SWT., It aims to express gratitude.

By undergoing all the marriage processes, the greatness of Allah in the teachings of marriage can truly be seen as the saying of the Qur'an:

ومن آياته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها وجعل بينكم مودة ورحمة إن في ذلك لآيات لقوم يتفكرون

Meaning:

And among the signs of His power is He created for you wives of your own kind, so that you are inclined and at ease with them, from being made among you a sense of love and affection. Indeed, in that there are signs for people who think (Al-Rum: 21).

Another social problem that requires answers in Islamic law in the field of munakah is about nafaqah. Moreover, the world now follows the philosophy of materialism, The matter of material is something that is prioritized in the traditions of modern society, sometimes it becomes a separate problem in family life. Nafaqah in the concept of fiqh is the husband's obligation to pay for all the needs of his wife, children, and the family that is his responsibility, for example his parents and assistants. This Nafaqah includes food, clothing, and a proper place to live to sustain the life of those who are dependent on the husband. Along with the times, of course the qualifications of the nafaqah also undergo dynamic changes, considering that one's needs also change. In the Middle Ages, basic necessities including clothing, food, shelter were already able to meet basic human needs. Other needs, such as transportation, means of communication, decoration, were not yet an urgent need for humans who lived at that time. In this modern and millennial era, basic human needs have certainly experienced development and change. The question is how are the qualifications of basic needs in nafaqah? The answer to this question can be answered with a three-level approach to maqashid al-sharia, namely dlaruriyah (urgent need), hajiyah (essential needs), and tahsiniyah (needs are to improve and perfect). At the level of dlaruriyah needs are food, clothing, shelter, education and all urgent needs, if a family is not fulfilled, there will be damage and destruction of the life of a family. This is proven by the number of divorce cases in

court filed on the grounds that basic needs in a family are not fulfilled. In this case, all the needs in terms of fulfilling *kulliyat al-khams* (five main things in human life). The level of Hajj needs includes important needs, and if they are not fulfilled then a person's life will experience difficulties. Among them are means of transportation, communication equipment, cooking equipment, household furniture, medicines for early aid in case of illness, religious equipment, a set of laptops or computers and so on. The level of complementary needs (*tahsiniyah*) includes vitamins for health, fruit as a supplement to the menu, nutritious side dishes, maintenance costs to the salon, car transportation, television, there is a helper who serves all the housework and so on.

In addition, at each level of the *maqashid*, what can measure are the elements in the family, or there is an element of relative need between one human and another, especially in relation to the status of the husband. In *fiqh*, the husband's status is usually divided into three, namely *al-musir*, *al-mu'tadil*, and *al-mu'sir*. The explanation is *al-mu'sir* is a person who has the convenience of fulfilling needs, in other terms is a rich person. He is called that because he has a job that earns him enough, or even more. In such circumstances in fulfilling needs, the standard size will be ideal. Whether in fulfilling *dlaruriyat*, *hajiyat* or *tahsiniyat* needs, the term *mu'tadil* is a status for a husband who has an income or ownership that is only sufficient for his daily needs. In other terms we call it "simple". So in fulfilling his needs he is obliged to fulfill only at the level of *dlaruriyah* and *hajiyah* levels, without any obligation to fulfill needs that are *tahsiniyah* (complementary). The third status category is *mu'sir*, that is, someone who does not have sufficient income to meet basic needs in a family. In this case, the husband who is at the *mu'sir* level should meet urgent needs (*dlaruriyah*) only.

In addition, the issue of *ahwal al-syakhshiyah* that must get attention is about *thalaq*, considering that the divorce rate in the Religious Courts is increasing day by day, with various factors causing it, both economic, ideological, socio-cultural and so on. This of course requires a way out so that what is decided by the judge in court reflects justice for those in dispute, as well as a reflection of the judiciary's policy (*qadla* '). For example, there is a divorce law case on the grounds that the husband has not been able to fulfill his economic responsibilities. From the perspective of *fiqh*, a wife may or has the right to sue her husband (*khulu* ') on the grounds that the husband is not able to fulfill his physical *nafaqah*, namely the economic needs of the family. On the other hand, the husband and wife also have an obligation to care for their children. From the point of view of *maqashid al-sharia*, the family economy is at a level including the *dlaruriyat* category, namely *hifdlu al-nafs*. But from the point of view of children's education, nurturing, psychological development, they are categorized as *hifdlu al-nafs* and *hifdlu al-nasl*. So, divorce for economic reasons can have implications for the deterioration of children's educational and psychological development, but when maintaining a family with economic insufficiency it will also destroy *hifdlu al-nafs*, the fulfillment of the physical and mental needs of humans. So, with *maqashid*'s point of view, the slightest risk is actually to maintain the marriage bond. In accordance with the rules (*idha taaradla mafsadatani ru'ya a'dzamuhuma bi irtikabi akhafihima*, when two conflicting hazards occur, the greater one is guarded and the lesser danger is exercised). With the rationalization of this principle, the answer can be found in the eyes of *maqashid*, namely maintaining the marriage bond.

That is the problem of unlucky marriage, with an emphasis on the problem of marriage procedures that are usually carried out by a Muslim, starting with the marriage proposal (*khitbah*), the marriage contract or *qabul* agreement, *al-ursy walimat*, the problem of *nafaqah*, the problem of divorce, the problem of children's education (*tarbiyat awlad*). All cases have been given the viewpoint of *maqashid al-sharia*. Besides, indeed, with the perspective of *maqashid al-sharia* it is easier to solve problems in Islamic law. Finally, *maqashid Sharia* in the realm of Islamic law is not only a point of view, but also can be upgraded to become a separate methodology in solving cases in Islamic law. So far, in *ushul fiqh* there are several well-established methods used by *ushuliyun* to solve problems in Islamic law, namely the *lafdhiah* method which contains the rules of language. For example, the discussion about *lafadh am*, typical, *muradif musytarak*, *mijmal mubayan*, *muhkam mutasyabihat*. The second is the *maknawiyah* method which contains studies on *qiyas*, *maslahah*, *istihsan*, *urf* or *adat*, *sad al-dzariah*, *istishab*.

By making *maqashid sharia* an independent method, in addition to existing methods, it encourages the realization of opportunities for the dynamic development of new Islamic law. Given the problems of Islamic law that occur in society, the dynamics are also very rapid. Both in the field of worship, *jinayah* (criminal), *siyasa* (politics), *dusturiyah* (legislation), *bi'ah* (environment), land, gender, human rights, democracy and so on. The use of *maqashid sharia* as



this method, besides opening up opportunities for the dynamics of Islamic law, will also add new disciplines in the study of Islamic law. This means that the maqashid method will later develop into an independent scientific discipline (*mustaqilan fi nafsih*), not part of the science of *ushul fiqh*. This can be realized when maqashid, fulfills the qualifying elements of knowledge. The elements of science in the discussion of philosophy consist of things, namely axiology, epistemology and axiology.

The axiological dimension of maqashid al-sharia is the essence that exists about the maqashid itself. The epistemological dimension of maqashid is to discuss the origin of maqashid, maqashid history, sources of maqashid knowledge. Then the dimension of maqashid sharia axiology is a discussion of the value of the function of maqashid Sharia in the realm of Islamic law. Further research on this last discourse should be done, so that maqashid Sharia becomes an independent science, not just a method in Islamic law, which is actually part of *ushul fiqh*.

## CONCLUSION

The highest goal of Islamic law is the realization of the benefit of the servant, which is then simplified by *ushuliyun* into three needs, namely urgency (*dlaruriyah*), importance (*hajjah*), and complement (*tahsiniyah*). In the field of *munakahah fiqh*, starting from the *khitbah*, the consent agreement, *qabul*, guardianship, witnesses, dowry, *walimah al-ursy*, *khulu'*, *dhihar*, *li'an*, *thalaq*, children's education (*tarbiyat al-awlad*), can be approached by using maqashid al-sharia, so that Islamic law can achieve its ideal goal, namely the goodness of God's servants. Maqashid sharia in Islamic legal research, can be followed up by placing maqashid fiqh as a separate science, not just a method part of the discussion of *ushul fiqh*.

## References

- Abd Wahhab Khallaf, 'Ilm-Ushul al-Fiqh, ttp: Maktabah al-Da'wah al-Islamiyah, t.t. cet. ke-8.
- Wahbah al-Zuhaili, al-Fiqh al-Islam wa Adillatullah, Beirut: Dar al-Fikr, 1989, VI
- Al-Ghazali, al-Mustashfa min 'Ilm al-Ushul, Beirut: Dar al-Fikr, tt, I.
- Abu Zahra, Ilm Ushul al-Fiqh, Beirut: Dar al-Fikr, tt.
- Al-Juwaini, al-Burhan fi Ilm al-Ushul, Kairo: Dar al-Ansar, 1400 H, I
- Yusdani "Pemikiran Hukum Islam Satria Effendi", dalam jurnal Al-Mawarid, Edisi XVII Tahun 2007.
- Izzudin Ibn Abd. Salam, Qawaid al-Ahkam fi Mashalih al-Anam, Beirut: Dar fikr, tt, I.
- Al-Syathibi, al-Muwafaqat fi Ushul al-Syariah, Beiru: Dar al-Kutub Ilmiyah, tt, II.
- Muhammad Thohir Ibn Atsur, Maqasyid al-Syariah al-Islamiyah, Dar al-Nafais, 2001.
- Al- Fasi, Maqasyid al-Syariah Wa Makarimuha, Dar al-Gharb al-Islami, 2003.
- Ibn Muhammad al-Andalusi, Alfiyah Ibn Malik, (Tp).
- Yusuf Qardhawi, Fi Fiqhil Aulawiyat, Kairo: Maktabah Wahbah, 2006.
- Ahmad Zahra, Tradisi Intelektual NU, Yogyakarta, LKIS.
- Rasyid Ridla. Tarikh Syekh Muhammad Abduh, Kairo: Dar al-Iman, tt.
- Abdul Qadir. "Konsep Ta'aqquli dan Ta'abbudi dalam Konteks Hukum Keluarga Islam" Asas:, Jurnal Hukum dan Ekonomi Islam, Vol.VI, Januari, 2014.
- <https://www.kompas.com/tren/read/2020/12/04/110300665/renggut-nyawa-1-5-juta-orang-ini-10-negara-dengan-kematian-akibat-covid-18?page=all>.
- Nawawi Banten, Tawsiykh ala Ibn Qasim, Semarang: Thoha Putra, tt.
- Departemen Agama Republik Indonesia, al-Qur'an dan Terjemahnya Jakarta: Depag RI, 1998.
- Hasbi Ash-Shiddieqy, Peradilan dan Hukum Acara Islam, Semarang: Pustaka Rizki Putra, 1987.
- Al-Husaini, Kifayat al-akhyar, Semarang: Thoha Putra, tt, II.
- Ibn Qasim al-Ghazi, Fath al-Qarib al-Mujib, Surabaya: al-Hidayah, tt.
- Nawawi Banten, Tawsiykh ala Ibn Qasim, Semarang: Toha Putra, 2000.
- Imam Muslim, Shahih Muslim, Dar al Kutub al- Ilmiyah, 1994, V.
- Abu Zahra, Ilm Ushul al-Fiqh al-Islami, Beirut: Dar al-Fikr, tt.
- Imam Muslim, Sahih Muslim, Dar al Kutub al-Ilmiyah, 1994, V.
- Abu Zahra, Ilm Ushul al-Fiqh al-Islami, Beirut: Dar al-Fikr, tt.