

WOMEN'S RIGHTS IN MARRIAGE PERSPECTIVE MAQASID AL-USRAH JAMALUDIN ATHIYAH



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Abstract

This research is motivated by the large number of divorces caused by women's rights not being fulfilled in marriage, and the presence of the Court to seek justice. The judge is the person who examines, adjudicates, and decides cases with the judge's considerations which must touch the image of the law. This research is interesting because it looks at the judge's considerations from the perspective of maqasid al-usrah Jamaludin Athiyah. This research is quantitative (normative law) using a statutory approach using a study of judges' decisions in searching for normative legal research, in this case, decision number 1084/Pdt.G/2023/PA.Bdw as the research object. This research concludes 1) that the development of special sharia maqasid, one of which is maqasid al-usrah, maqasid al-usrah itself has been used in several contemporary maqasidiyyun writings. Jamaludin Athiyah is one of the figures who use the term maqasid al-shari'ah fi ma yakhussu al-usrah. Jamaludin Athiyah's view in his ideas is more encouraging in efforts to protect human rights both in the realm of individuals, families, people, and humanity. This can be resolved in the realm of policy. 2) In case number 1084/Pdt.G/2023/PA.Bdw the reason is that the wife experienced domestic violence and the husband's lack of responsibility in providing a living. Then, in the judge's consideration, the judge considered that the family could no longer be maintained, so the judge had a legal basis, namely "Avoiding *mafsadat* is prioritized to maintain the benefit." When viewed from the perspective of maqasid al-usrah, the judge's considerations fall into the individual realm, to protect the wife's soul and mind, and then into the family realm. Maintaining family financial institutions means that husbands are obliged to provide support for their wives and children.

Keywords: Women's Rights, Divorce, Maqasid al-Usrah

INTRODUCTION

The essence of humans is that they are social creatures who cannot live independently without the presence of other creatures. The formation of a family as the smallest unit in the social sphere is the formation of a family through marriage and marriage is also the foundation of national society and the state. In its concept, marriage is a sacred agreement or binding between a man and a woman that is based on a feeling of love for each other, mutual liking, and willingness for both parties without any coercion. The marriage agreement is expressed in a *qobul* agreement that must be made between a man and a woman, both of whom have the right to themselves (Khoiruddin, 2020).

As said by Allah SWT in the Al-Quran Surah Annur: 32.

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِنَّ يَكُونُوا فُقَرَاءَ يُغْنِيهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ

“And marry those who are still single among you, and also those who are worthy of marriage from your male and female servants. If they are poor, Allah will empower them with His grace. And Allah is all-encompassing in His gifts, all-knowing”.

In this verse, it is explained that Allah commands his servants to carry out marriage if they are ready physically and mentally to run a household. The teachings of the Islamic religion explain the purpose of marriage as explained in the Qur'an, that the real way to achieve peace and satisfaction in life is through the relationship between husband and wife. Another purpose of marriage is to form a family that is *Sakinah*, *mawaddah warahmah*, avoiding the act of adultery. , the successor of regeneration (children), and also aims at worship (Nasution, 2005, p. 46).

If you have decided to get married and build a household, you must be ready to face problems. Problems can come from anywhere, both internal and external to the family. However, many people are not able to resolve problems through deliberation, reducing their egotism so that these problems can be resolved without separation. If these problems occur continuously, family harmony will arise which will lead to divorce.

The reasons for divorce as explained in the Compilation of Islamic Law Article 116, divorce can occur because, namely: first, one of the parties commits adultery or becomes a drunkard, cheater, or gambler. Second, experiencing domestic violence (KDRT). Third, one of the parties suffers from a physical disability or illness as a result of being unable to carry out their obligations as husband and wife. Fourth, there are continuous fights. Fifth, changing religion or apostasy (Dairobi & Akbar, 2024).

This research focuses on decisions regarding divorce which are based on the irresponsibility of a husband towards his wife regarding the right to support and the frequent occurrence of domestic violence perpetrated by husbands against wives so that wives feel they cannot live together again.

A husband's sense of responsibility in the family is not only limited to being a provider but also as a protector, and protector in the family. In the word of Allah, the role of a husband in the family is explained in surah An-nisa 4: 34.

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَنِينَاتٌ حَفِظْنَ لِلْغَيْبِ
بِمَا حَفِظَ اللَّهُ وَاللَّي تَخَافُونَ نُسُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَتَّبِعُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ
كَانَ عَلِيمًا كَبِيرًا

“Men (husbands) are responsible for women (wives) because Allah has preferred some of them (men) over others (women) and because they (men) have spent part of their wealth. Pious women are those who are obedient (to Allah) and take care of themselves when (their husbands) are not around because Allah has taken care of (them). The women you worry about will be *nusyuz*. Give them advice, leave them in bed (separate beds), and (if necessary), hit them (in a non-painful way). However, if they obey you, do not look for ways to trouble them. Indeed, Allah is Most High, Most Great (QS An-Nisa' 4:34).”

That the husband's role as head of the household is not only as the provider for the family but the husband's role in the family also plays the role of a leader, dignitary, judge, and educator for women, especially when women turn from their true path, men are the

protectors and responsibilities of women. Women in marriage have rights that must be obtained. These rights are categorized into two categories, namely physical rights and internal rights. The physical rights include the right to dowry and livelihood rights, while the internal rights include the right to education, the right to protection, sexual relations, and reproductive rights (Khair, 2016).

As in the case filed in the jurisdiction of Bondowoso with case number 1084/Pdt.G/2023/PA.Bdw on the Bondowoso Religious Court, in this case, the plaintiff married the defendant on Tuesday, January 15th, 2013. The lives of the plaintiff and defendant are in a state of harmony and happiness, but as time went by, the household began to shake in February 2022 due to frequent disputes and fights.

The quarrel occurred because the defendant had a temperamental nature where the defendant often got angry without any clear reason and when he was angry the defendant committed acts of domestic violence or hit the plaintiff on the head, hands, and feet. Apart from that, the defendant was not responsible for his obligations as a husband. his attitude was that he rarely provided food for shopping, whereas the defendant only provided money for shopping when he was working.

The presence of the Religious Courts is an effort to seek justice for society. The judge is the person who examines and adjudicates a lawsuit by looking at several existing considerations. The decision must of course include a sense of justice, legal certainty, and expediency. As the main case explained above if viewed from the perspective of maqashid al-usrah as an analytical knife regarding the judge's considerations in deciding lawsuit number 1084/Pdt.G/2023/PA.Bdw at the Bondowoso Religious Court(Jufri & Khotib, 2020).

The researcher here uses Jamaludin Athiyah's maqashid syariah as an analytical tool, whose idea is to promote maqashid usrah as part of maqashid sharia. As in his book *Nahw Taf'il Maqashid Syariah*. Jamaludin Athiyah explained the translation of maqashid into four parts, namely maqashid sharia in the realm of the people, maqashid in the realm of

individuals, maqashid in the realm of the family room, and maqashid sharia in the realm of humanity.

REVIEW OF LITERATURE

Based on the description above, this research takes several previous reviews that have similarities, including:

First, the article entitled "Wife's Rights in Reconciliation According to the Jurisprudence of the Four Schools of Religion and Compilation of Islamic Law (Maqashid Al-Shari'ah Perspective)" by Muhammad Za'im Muhibullah, et al. The results of this research show that wives have an important role in reconciliation to align with the goals of sharia (Maqashid al-Shari'ah) such as regulating the relationship between men and women, maintaining harmony, creating a *sakinah* family, *mawaddah wa rahmah*, maintaining the lineage, protecting diversity in the family, managing good relationship patterns within the family and managing the financial aspects of the family (Muhibullah et al., 2021).

Second, the article entitled "Practices and Implications of Underhand Marriage for Family Goals from Maqashid Al-Usrah Perspective" by Faktul Chodir and Aspandi. The article uses Jamaluddin 'Athiyah's Maqashid al-Usrah theory with research results showing that unregistered marriages pose challenges to guaranteeing legal certainty in various aspects of family goals, including seven key dimensions. Therefore, it is important to strengthen regulations that require marriage registration to protect and ensure the achievement of family goals (Chodir & Aspandi, 2023).

Third, the article entitled "Divorce Lawsuit in the Decision of the Stabat Religious Court Number 2119/ Pdt.G/ 2023/ PA.Stb. (Viewed in the Perspective of Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Article 116 of the Compilation of Islamic Law" by Ahmad Habib Dairobi and Ali Akbar. The results of this research are the relevance of Article 116 of the Compilation of Islamic Law which does not make divorce lawsuits easier (Dairobi & Akbar, 2024).

RESEARCH METHOD

This research is quantitative research (normative law) using a statutory approach using a study of judges' decisions in searching for normative legal research, in this case, decision number 1084/Pdt.G/2023/PA.Bdw as the research object (Anshori & Iswati, 2019). Viewing the decision from the perspective of Maqashid Usrah Jamaludin Athiyah. This research data explores information from Religious Court Decisions, books, scientific journals, and other documents that support the discussion topics studied (Mukhtar, 1993).

RESULTS AND DISCUSSION

Confirmation of Maqashid Al-Usrah Jamaludin Athiyah

The presence of maqasid sharia is an effort to develop or obtain a perfect and correct solution based on the main sources of sharia law, the Qur'an and As-Sunnah. Al-Ghazali's views regarding the maqasid of sharia, he stated that there are five maqasid of Sharia, namely maintaining religion, soul, mind, heredity, and property. However, it does not mention the definition and does not cover the whole thing.

One of the modern scholars, Ibn Asyur, put forward the maqasid of sharia into two types, namely general and specific.

General definition of maqasid sharia according to Ibn Asyur:

المعاني واحكام الماحوطة لشارع في جميع احوال التشريع او معظمها

Several meanings and lessons concluded for sharia makers in all sharia or most of it.

المقصود للشارع لتحقيق مقاصد الناس الناقعة او لحفظ مصلحتهم العامة فتصرفاتهن الخاصة الكيفيات

Things that are desired by syar'i (Allah) to realize beneficial human goals, or to maintain the general benefit for their specific actions (Sarwat, 2019).

Thus, maqasid sharia is the goal and direction of sharia law. A mujtahid must prioritize the benefit. One of the principles of maqasid sharia that is put forward is to take the middle path and not overdo it in its application, because the maslahah that is realized must refer to revelation as a guide, not merely just the result of thinking (Busyro, 2019).

The development of maqasid sharia in the view above is that one of the special maqasid sharia is maqasid al-usrah, maqasid al-usrah itself has been used in several contemporary maqasidiyyun writings. Jamaludin Athiyah is one of the figures who uses the term maqasid al-shari'ah fi ma yakhussu al-usrah.

Jamaludin Athiyah is one of the maqashid sharia thinkers who talks about maqashid usrah. Jamaludin Athiyah was born on 12th May 1928 AD coinciding with 12 Dzulqa'dah 1346 AH. During his undergraduate education he studied at Fu'ad al-Awwal University, Faculty of Law and graduated in 1948 AD, then he continued on to the takhassus program in sharia field. In general, Jamaludin Athiyah's scientific thinking was influenced by several of his teachers, including Sheikh Hassan Al-Banna, Muhammad Farid Abdul Khaliq, Abdul Aziz Kamel, Sheikh Abdul Badi' Saqr, Saeed Ramadan, Mustafa Mu'min, Abdul Halim Abu Shaqqa, Izz Al Din Ibrahim, and Youssef Abdul Muti (Zamroni et al., 2023).

The background to the emergence of Jamaludin Athiyah's ideas stems from seeing the increasingly rapid development of the times both culturally and technologically. This gives rise to problems and various problems in society which are very complex, which makes modern thinkers need a method to answer these problems. This makes it a reference as a basis for bathing which offers legal products that are in line with current developments (Arto, 2004).

Jamaludin Athiyah's thoughts on maqasid sharia are based on two factors, namely the existence of a humanitarian crisis and the lack of methods for resolving it. The humanitarian crisis in this case is the non-fulfillment of human rights. Meanwhile, in the Islamic religion, human rights are very concerned with a concept that has been designed in such a way that humans receive their full rights. One form of the concept of fulfilling human rights that

originates from the thoughts of the ulama' is maqosid syari'ah which has been formed by the ulama' and has undergone several developments, this is due to various factors, one of which is because it is no longer relevant to the current era. The development of the concept of maqosid sharia has led all people to an advanced civilization and also provided various positive impacts and in certain areas it has left various social problems, especially for Muslims, many problems that require the latest religious solutions to resolve these problems, such as human rights issues (Nadia, 2023).

The presence of maqasid syariah includes protection of human values and the essence of humans as individuals and groups and also includes protection of material things in the form of religion, mind, spirit, descent and property, so that maqasid syariah has an important role in building human life.

Jamaludin Athiyah gave the latest encouragement related to maqasid sharia, starting from the initial concept initiated by assyaatibi, namely dhoruriyah, hijjiyat and tahsiniyat, he developed maqasid sharia so that it could be relevant for today's era. Jamaludin explains in his book *Nahwa taf'il maqashidu as-syari'ah* that maqashid dyariah in the contemporary era is increasingly developing and is of course more directed towards the realm of policy and maqashid is also divided into two parts, namely maqashid kholqiyah and maqashidu syari'ah (Athiya, 2003).

In this division, it is necessary to note that the maqashid alkholqi (purpose of creation) and the purpose of the case in terms of legal burden are maqashid syari'ah by separating the domains between the purpose of the case in terms of procurement. Even though these two things are different, it does not rule out the possibility that there is a connection between one and the other by emphasizing the differences between the two by clarifying their boundaries.

Imam Syathibi stated that there is a goal of sharia and a goal of creation, both of which are not related to each other, which gives the understanding that maqashid kholqiyah and maqashid syar'iah are indeed broad in other themes. However, according to Jamaluddin Athiyah, the purpose of creation and sharia law are still related. Allah SWT created creatures

where each other needs each other to fulfill other needs and benefits. In this problem, the maqashid orientation of creation is in accordance with the orientation of the Shari'ah, namely the orientation of mutual assistance, mutual mutual benefit, both in the national and humanitarian spectrum (Athiya, 2003, p. 110).

That maqosid is divided into two parts, namely maqosid kholqi and maqosid syar'i, which is continuous with the assistance given by Allah in relationships between humans which aims to provide protection for creatures, providing protection for fellow creatures. Allah is an instinct given by Allah, that Allah created creatures. just to worship, help each other, get to know each other. Bullying is a very disgraceful behavior that is carried out physically and physically, this is very contrary to the concept given by God in the form of assistance and protection for fellow living creatures (Lestari, 2018).

From the division of maqosid sharia above, he provides new ideas by reorienting the concept of maqosid sharia which is adapted to the needs of both individual level needs and the needs of larger groups. Then this will make it easier to carry out legal istinbath.

Jamaludin Athiyah's view is that he strongly supports the role and function of a state along with the obligations of the state, namely to protect and provide protection to citizens from the smallest scope, the family or household to those in the form of large associations (Sudrajat & Amanita, 2020).

In his work contained in his book *Nahw Taf'il Maqashid al-Syariah*, Jamaludin Athiyah gave birth to a concept of maqashid sharia which is famous as *Majallatull Arba'ah*, namely as follows:

1. Maqosid sharia in the individual scope

Personal life protection which means protecting oneself from damage both physical and mental which could cause or cause death.

Protection of the mind which can be understood means that the mind is not only a part of the body but is also related to the function of the mind, namely by maintaining the

safety of the brain, five senses, nerve function from things that can cause damage or disturbance (Athiya, 2003, p. 142).

2. Maqosid sharia within the family scope

First, regulates the relationship between men and women

In religious settings and legal regulations that have placed restrictions on the relationship between men and women. It is necessary to have a legal contract, namely through marriage, the aim is to fortify and bind the scope of relations between the sexes in an orderly form. This can be seen from the laws governing marriage, which then also give rise to the rights and obligations for each party in the marriage relationship.

A series of laws have been prescribed in marriage to form a strong relationship as a fortress, including recommendations for marriage, allowing polygamy with terms and conditions, allowing divorce with applicable conditions, and avoiding extramarital relationships such as adultery. and sexual orientation disorders or LGBT (Matondang, 2014).

Second, protect offspring

The existence of a relationship between a man and a woman can lead to the existence of offspring, thereby achieving the goal of preserving offspring as the goal of marriage, so the Shari'a emphasizes the fulfillment of achieving this goal as a bond through the marriage process by legislating on the relationship between two individuals of different genders, because of this. This is one way to achieve offspring, whereas homosexual relations and the like are deviant treatment according to the Shari'a, but they cannot produce offspring.

The presence of the state takes a role in making this happen, namely forming policies related to love, affection, and comfort in the household. Offspring as regeneration or children to guarantee the paternity of certain families, the state must regulate the prohibition of the practice of adultery, abortion, and IVF. Policies in the same iddah are also needed which aim to maintain the survival of the future baby (Athiya, 2003, p. 151).

Third, reach *Sakinah Mawadah Warahmah*

Peace in the human heart is an instinct and need that must be fulfilled. The realization of this peace will be different for each person. Sometimes it can be positive, but it is not uncommon to find it negative. Likewise, in seeking peace, sometimes it takes the form of good deeds and sometimes disgraceful deeds.

Islamic law never limits marital relations to physical relations only. However, it also emphasizes spiritual relationships. Islamic law also encourages couples to be able to provide a sense of peace to their partners, so that a relationship of mutual love and affection can be created between couples who live a married life.

For this goal to be realized, Islam regulates the pattern of husband and wife relations which is described by *mu`asyarah bi al-ma`ruf*, namely treating the husband or wife in the best way. This also includes etiquette in sexual relations and others (Najih et al., 2023).

Fourth, protect the religion of family members

To achieve this goal, Sharia laws are present to give responsibility to the head of the family from the beginning of the formation of the family by belonging to the same religion as him (or having a religious understanding with minimal standards of ordinary people, teaching about aqidah, worship, and morals to his wife and children, and will get more rewards for those who carry out this obligation.

Family members who are far from religion will result in damage, division, and poor education for the generation that will bear the burden of responsibility in the future. Therefore, we consider that maintaining the religion of each family member is a primary need (Athiya, 2003, p. 153).

Fifth, organizing the institutional aspects of the family

Sharia does not only stop at understanding emotional and social aspects, but reaches more thorough and detailed financial aspects because this makes Islamic sharia different from previous Sharia.

In marriage there is a dowry that must be paid by the husband to his wife, which then includes all forms of support for the wife and children, then when the wife is divorced (financial matters after the divorce), wages for the person who looks after the children if they use a nurse, the person who breastfeeds, relatives, inheritance, wills for relatives, family endowments and debts that must be borne by those who are wise and legal experts regarding assets and others.

Sixth, organizing family finances

Protection of family finances is not limited to personal and social financial management, but Sharia has previously regulated this financial arrangement with the obligation to give and share assets for those who have rights such as dowry for marriage, maintenance for wife's children, maintenance for married women. in divorce, inheritance matters, wills for relatives, endowments and assets issued to pay *diyat*, everything has been arranged in detail so that it becomes a guide for managing finances (Nurdin et al., 2022).

3. Maqosid sharia within the scope of the ummah

Which consists of *tanzimul mu'assasi lil ummah* (carrying out organizational arrangements for the Ummah), *hifzul amm* (carrying out security for stability), *hifzul 'adl* (carrying out safeguards for justice), *hifzud din wal akhlaq* (carrying out safeguards for religion and ethics), *ta'awun wat tadamun wat takaful* (carrying out cooperation, solidarity, and togetherness), *nasyrul ilm wa hifzul 'aqlil ummah* (disseminating knowledge and safeguarding the minds of the people), *'imarahal-ard wa hifz tharwahal ummah* (building the world and safeguarding the welfare of the people) .

Society has a sense of responsibility for its members. The real form of society is a form of mutual help because in reality humans cannot live alone, in the form of implementation through the organization of Zakat, waqf, and other donations (Athiya, 2003, p. 160).

4. Maqosid sharia in the humanitarian sphere

Which consists of *at-ta'aruf wat ta'awun wat takamul* meaning knowing each other, helping each other and integrating), *tahqiqul khilafah 'ammah lil insan fil ardl* (carrying out the succession of duties as caliph in general for humans on earth), *tahqiqus salam 'alamil qaim 'alal adl* (carrying out the realization of peace on earth based on justice), *himayatud dauliyah li huquqil insan* (protecting the rights of humans as a whole), *nasyr da'watul Islam* (spreading the propagation of Islam).

Judge's Considerations in Deciding Case Number 108/Pdt.G/2023/PA.Bdw concerning Divorce from Maqashid Al-Usrah Jamaludin Athiyah's Perspective

Building a household sometimes has a tortuous journey, starting from disagreements, violating agreed commitments to letting go of each other's responsibilities and rights. This will lead to family disharmony, disputes, and quarrels, leading to divorce.

In terms of divorce in fiqh, it is called *talak* which is taken from the word *itlaq* and according to the language it means to let go or leave. The Islamic term for *talak* is to release marital ties and end the relationship between husband and wife. According to Al-Jaziry, the meaning of *talak* is to eliminate a marriage bond between husband and wife and reduce its release by using words (Siregar, 2023).

In the legislation, the term divorce is explained in Article 38 of Law 16 of 2019 concerning Marriage, it is explained that divorce is the dissolution of a marriage. The term for the word divorce contained in the article contains the facultative provision that "marriage breaks up due to reasons such as death, divorce, and a court decision. So, in essence, juridically, the meaning of divorce is the decision of the relationship between husband and wife.

Several forms of divorce can occur in domestic relationships. In the scope of Islamic jurisprudence, forms of divorce in the household can be caused by one of them, namely *khulu'*. However, here the wife returns the dowry to her husband which she has received from

her husband, at least half of the dowry amount that was given at the time of the wedding or pays money to the husband (Syaifudin, 2012).

Khuluk is one of the efforts of Islamic law in fighting for women's rights so that if a wife feels tormented or can no longer stand the battle of the household and the feeling of love for her husband is no longer there and affection for her husband is no longer there, then she can divorce her husband. In Indonesian terms, *khulu'* is known as suing for divorce which can be filed by the wife.

The case in the lawsuit is that the plaintiff (wife) and the defendant (husband) live together as husband and wife in the plaintiff's house in Kabuaran Hamlet RT.015 RW.003 Kabuaran Village, Grujungan District, Bondowoso Regency and have had a relationship like husband and wife (*Bada Dukhul*), and has 1 child, a girl, Bondowoso, 24th October 2016, currently in the care of the plaintiff. Initially, the plaintiff and defendant families were in harmony and happiness, but since February 2022, the plaintiff and defendant households are no longer harmonious because there are frequent disputes and quarrels (Hidayatullah, 2022).

The dispute and quarrel occurred because the defendant was known to have a temperamental nature where the defendant often got angry for no apparent reason and when he was angry the defendant committed domestic violence (KDRT), by hitting him on the head, hands, and feet. Apart from that, the perpetrator was not responsible as the head of the household with his attitude of rarely providing shopping support whereas the defendant only provides shopping support when the defendant is working.

Then, the disputes and quarrels continued and reached their peak in April 2023 because the defendant did not change his attitude and continued with his actions, finally, the defendant left the house and lived at the defendant's parents' house, causing the plaintiff and the defendant to live separately for 3 months, from April 2023 until now and during the separation of residence between the plaintiff and the defendant there was no longer any relationship, both physical and spiritual (Siregar, 2023).

The presence of courts is an effort by society to seek justice for what they consider unfair. So the position of a court judge is considered capable of examining and adjudicating a case so that he can fairly decide the case. Before the judge decides on a case, the judge first makes a consideration. The judge's consideration is an effort in which the judge considers the facts in the trial process. This judge's consideration is the most important aspect in the world of justice because it determines the realization of the value of the judge's decision which contains the values of justice, legal certainty, and benefit (Ropiah, 2011).

The goal of a law is to achieve three important values, namely the ideals of justice, certainty, and benefit. Therefore, every judge's decision must represent the conscience of those seeking justice and provide benefits and certainty. Apart from that, the judges examining cases do not listen or look at one source, instead, the judges listen to and look at all sources as material for the judge's consideration in deciding the case. Proof is the most important part of a trial, the purpose of which is to obtain certainty that the events/facts that have been presented happened, and to obtain a correct and fair judge's decision. The judge cannot decide before it is clear to him that the event/fact occurred, that is, its truth can be proven so that it appears that there is a legal relationship between the parties (Arto, 2004, p. 141).

Then, as a basis, the judge's consideration should also include the following matters:

First, the main issues and things that are acknowledged or arguments that are not denied. Second, there is a juridical analysis of the decision in all aspects regarding all the facts or matters proven in the trial. Third, all parts of the plaintiff's *petitum* must be considered or tried one by one so that the judge can conclude whether or not they are proven and whether or not the claim can be granted in the decision.

The object of this discussion is focused on a judge's consideration regarding a divorce case with case number 108/Pdt.G/2023/PA.Bdw, which is then analyzed using a maqasid sharia perspective which focuses on maqasid al-usrah jamaludin athiyah.

Islamic law aims to prevent damage to humans and bring benefit to them, leading to truth, realizing justice and policy, and explaining the path that must be followed. In the content of maqasid sharia, there are five main priorities, including maintaining religion, soul, hereditary intelligence, and property based on the Al-Qur'an which is universal and dynamic. The existence of Islamic law is for the benefit of life physically and spiritually, both individually and as a group (Az-Zuhdi, 2011).

The relationship between maqasid al-urrah and the judge's consideration of divorce cases, the main content of which is divorce or *khuluk*, basically maqasid al-urrah focuses on the smallest scope, namely the family, and the larger scope, such as associations or organizations. Jamaludin Athiyah's idea, the presence of maqasid sharia contains protection for human values and the essence of humans as individuals and groups and also includes protection for material things in the form of religion, mind, spirit, descent and property, so that maqasid sharia has an important role in building the lives of the people man. Jamaludin explains in his book *Nahwa taf'il maqashidu as-syari'ah* that Maqashid Syariah in the contemporary era is increasingly developing and is of course more directed in the realm of policy and also maqashid is divided into two parts, namely maqashid kholqiyah and maqashidu syari'ah (Athiya, 2003).

The judge's decision also includes policies that are binding in nature, this also includes matters of protecting individual rights. As in the considerations in case number 108/Pdt.G/2023/PA.Bdw which contains several of the judge's considerations if they are relevant from the perspective of maqasid al-urrah as follows;

The panel of judges attempted peace through mediation facilitated by the mediator, however, in the process the media did not find a peaceful answer. Mediation procedures as regulated in PERMA 01 of 2016 concerning mediation procedures.

In essence, the contents of the lawsuit are requesting that the plaintiff be divorced from the defendant because, since April 2023, there have been frequent disputes and quarrels between the plaintiff and the defendant due to the defendant's lack of ability to provide

adequate living for the plaintiff, in addition to the defendant being jealous of the plaintiff's adoptive father.

To prove the existence of such a dispute, the attachment to SEMA Number 4 of 2014 number 4 concerning the implementation of the 2013 Supreme Court Chamber Meeting Results Formulation as well as the Guidelines for Implementing Duties for Courts, provides indicators of broken marriages, including:

- There have been peace efforts but they were unsuccessful
- There is no longer good communication between husband and wife
- One party or each party abandons their obligations as husband and wife
- There has been a separation of beds/living together.
- Things found in court (such as WIL, PIL, domestic violence, gambling, etc.) (Chodir & Aspandi, 2023).

Then, the plaintiff presented 2 witnesses named Mulyadi and Munir, in essence the witness stated that the plaintiff and the defendant had an argument due to economic problems and jealousy of the plaintiff's adoptive father, the plaintiff and the defendant had been separated for 2 months last year. To strengthen the arguments in his answer, the defendant has presented witnesses, in essence, the witness's statement that the plaintiff and the defendant argued due to the defendant's jealousy towards the plaintiff's adoptive father.

The panel of judges found the following facts at trial:

- That the plaintiff and defendant are legal husband and wife, who were married at the KUA, Grunjungan District, Bondowoso Regency, East Java Province.
- That after marriage, the plaintiff and the defendant lived in harmony, living together in the house of the plaintiff's parents in Kabuaran Hamlet, RT.015 RW.003, Kabuaran Village, Grunjungan District, Bondowoso Regency, and were blessed with 1 child named Anak Asli, now under the care of the plaintiff.

- Whereas since April 2023, the Plaintiff and Defendant's household has been disharmonious, there have been frequent disputes and quarrels due to the Defendant being jealous of the Plaintiff's adoptive father;
- That the Defendant had left the Plaintiff and returned to the Defendant's parents' house in Kabuaran Hamlet RT.011 RW. 003 Kabuaran Village, Grujugan District, Bondowoso Regency from April 2023 until now has never returned;
- That the family has tried to reconcile and reconcile the plaintiff and defendant, but to no avail (Dewi, 2020).

Thus, the panel of judges believes that the household of the plaintiff and the defendant has been broken, and the hearts of both parties can no longer be reconciled in building a good household because the emotional bond between the two has been lost.

Thus, it can be analyzed regarding the divorce in case number 108/Pdt.G/2023/PA.Bdw that the judge was of the view that the reason for the dispute and quarrel occurred because of the husband's lack of support and then also the husband being jealousy of the wife's adoptive father. This results in the separation of beds and abandonment of their respective rights and obligations.

Then, as a basis for the judge's consideration in deciding the case, the judge was of the view that if the household was maintained, it would bring endless harm to both parties. This means that the household can no longer be reconciled. If this is forced, there will be ongoing arguments and even criminal acts will occur.

Quarrels and disputes that occur continuously will result in a loss of affection and love, and then feelings of hatred and jealousy will arise in the partner due to bad thoughts due to quarrels that occur in the household. Factors of domestic violence often occur in the form of acts of violence, such as physical violence or threats of violence which can be carried out without tools. Acts of violence can happen to anyone, both men and women. And victims who experience domestic violence will experience both physical and psychological losses (Sumanto, 2018).

This was revealed in the case that the husband has a temperamental nature where the husband often gets angry without any clear reason and when he is angry the husband commits acts of violence against his wife (domestic violence). The judge considers the case following the rules of *fiqih* which read:

دراء المفساد مقدم علي جلب المصالح

Avoiding *mafsadat* is prioritized to maintain the benefit.

This is also in line with *maqasid al-usrah* that one of the indicators is the individual realm, protecting the soul and mind. This means that the judge's decision is appropriate to bring benefits to the plaintiff because the plaintiff often experiences domestic violence. Violence will cause physical damage and can also cause death and will also disturb the mind and possibly result in trauma experienced by the plaintiff (Azizah, 2017).

Then the second reason in the lawsuit was due to the wife's lack of support as stated in the testimony of the witness submitted by the plaintiff that the witness explained that the disputes and quarrels between the plaintiff and the defendant were caused by economic factors and jealousy towards the plaintiff's adoptive father.

Marriage must be a choice, not forced. This provides freedom for women to choose their future husbands. One of the purposes of marriage is realized in the relationship between husband and wife, in this case, the Sharia has regulated the rights and obligations of husband and wife in marriage. The right in question is something that belongs to or can be owned by a husband and wife as a result of a marriage. women have rights over their husbands, and the process of husband and wife life will not continue in the justice commanded by Allah unless each husband and wife fulfill the rights between them (Mukhtar, 1993, p. 126).

In carrying out family life, income is a life support, one of the rights of a woman in marriage is to receive support from her husband. Husbands are obliged to provide support for their wives in Islam, both physical and spiritual support. There are many types of livelihoods, such as the need for food and shelter. What the husband must pay attention to is

taking full responsibility for the condition of his family, and fulfilling all the family's needs (Nurcholis, 2019).

In Maqosid al-Usrah regulating the economic aspects of the family, Jamaludin Atiyyah revealed that the Sharia effort to realize the goal of marriage is by establishing the dowry law, the law on living, and other things. Support for the wife's children and children, then when the wife is divorced (financial matters during post-divorce), wages for people who look after the children, if they use a nurse, people who breastfeed, relatives, inheritance, wills for relatives, family endowments and debts, must be borne by reasonable people and legal experts regarding property and others.

CONCLUSION

Maqasid al-Usrah is a concept that emphasizes family welfare in Islam. In Islam, marriage is regulated to ensure prosperity and justice for both parties, including women, by ensuring the fulfillment of their rights following the principles explained in Maqasid al-Usrah. Some important aspects include:

1. Understanding women's rights in marriage must be seen from a comprehensive perspective, as given by Maqasid al-Usrah, which places family welfare as the main focus.
2. In the context of Maqasid al-Usrah, women's rights in marriage not only cover material aspects but also emotional, psychological, and spiritual aspects.
3. The application of Maqasid al-Usrah in understanding women's rights during marriage can help ensure that marital relations are based on the principles of justice, compassion, and mutual understanding between husband and wife.
4. The importance of providing legal and social protection for women's rights in marriage following the principles contained in Maqasid al-Usrah to ensure balance and prosperity in family relationships.

5. In conclusion, this paper highlights the need to integrate the values of Maqasid al-Usrah in the understanding and implementation of women's rights in marriage in the context of Muslim society.

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