

MARRIAGE AGREEMENT AS A EFFORT FORMING THE SAKINAH FAMILY

Ach. Zakiyuddin ¹, Ahmad Hasan Ridwan²

¹UIN Sunan Gunung Djati Bandung, Indonesia

²UIN Sunan Gunung Djati Bandung, Indonesia

* Correspondence: ach.zakiyuddin1982@gmail.com, ahmadhasanridwan@uinsgd.ac.id

Abstract

Premarital agreements are recognized by Indonesian positive law as binding on both parties, with the Marriage Registry Officer serving as the official witness. Furthermore, the aims of Islamic law and the secrets established by Allah for every Islamic law, including the marriage contract, are called *maqasid al-syari ah*. It may be inferred that the marriage contract is in compliance with *maqasid al-syari ah*, based on the study. Because it safeguards the constitutional rights of both the husband and the wife, a marriage contract may aid in the formation of a successful family. It is enough for "obedient" Muslims to refrain from transgressing Islamic law and the dread of punishment, but for "ordinary" Muslims, the Marriage Agreement is more effective and protective since it has a dual impact.

Keywords : Marriage Agreement, *Maqasid Al-Shariah*, Sakinah Family

Abstrak

Perjanjian pranikah diakui oleh hukum positif Indonesia sebagai pengikat kedua belah pihak, dengan Pejabat Pencatatan Nikah sebagai saksi resmi. Selanjutnya, tujuan hukum Islam dan rahasia-rahasia yang ditetapkan Allah bagi setiap hukum Islam, termasuk akad nikah, disebut *maqashid al-syariah*. Berdasarkan penelitian tersebut dapat disimpulkan bahwa akad nikah telah sesuai dengan *maqashid al-syariah*. Karena melindungi hak konstitusional suami dan istri, kontrak pernikahan dapat membantu pembentukan keluarga yang sakinah. Cukuplah bagi umat Islam yang "taat" untuk menahan diri dari melanggar hukum Islam dan takut akan hukuman, tetapi bagi umat Islam "biasa", Perjanjian Nikah lebih efektif dan protektif karena memiliki dampak bagi kedua belah pihak.

Kata Kunci : Perjanjian Pernikahan, *Maqashid Al-syariah*, keluarga Sakinah.

Introduction

Humans were created by Allah SWT like animals, who are free to act according to their instincts and interact with each other in any way they want. To maintain human dignity, Allah SWT has set rules.¹ In the Qur'an, there are regulations governing the relationship between a man and a woman depending on their desire to be bound by a marriage contract.

Law Number 1 of 1974 concerning Marriage in Indonesia defines marriage as "a physical and spiritual relationship between a man and a woman as husband and wife" based on the belief that God Almighty is the source of all happiness in the family.² Indirectly, Allah's command in Surah Al-Rum (30) verse 21 mandates the formation of this law as one of the goals of marriage in Islam. The Compilation of Islamic Law (KHI) thus states that marriage seeks to achieve a *sakinah*, *mawaddah* and *rahmah* household life.³

To maintain a permanent, lasting, and divorce-free marriage, both the bride and groom must sign a marriage contract. To avoid divorce, a marriage agreement is needed, therefore it is stated or mutually agreed upon by the husband and wife. If one of them violates the agreement, he will face legal consequences according to the laws of the country.

Marriage Law Number 1 of 1974 Article 29 stipulates that a written agreement between the two parties which is legalized by the marriage registrar, can be made before the marriage, as long as it does not conflict with law, religion, or decency.⁴ According to Islamic law (KHI), marriage contracts are subject to strict regulations.

In fact it is still rare for individuals to be bound by a marriage covenant; In fact, some people consider it immoral and forbidden. When the subject of the marriage contract is brought up, not only do the brides-to-be express their displeasure, but historically, this can lead to family problems because the marriage agreement is not materialistic. However, as the frequency of divorce increases, more and more individuals are choosing to enter into a prenuptial agreement in anticipation of a property division battle between separated spouses.

Maqashid al-syariah, which explains the gap between Indonesian Islamic law and local wisdom, will further broaden the understanding of the relevance of the marriage contract in Indonesian Islamic marriages. By using *Maqasid al-syariah* as a guide, this study aims to find a way so that the marriage contract can be accepted by the Muslim community in Indonesia by sticking to Islamic principles.

¹ Ibnu Mas'ud, *Fiqh Madzhab Safi'i* (Bandung : Pustaka Setia, 2007), 251.

² Sudarso, *Hukum Perkawinan Nasional* (Jakarta : Rineka Cipta, 2010), 9.

³ *Kompilasi Hukum Islam* (Bandung : CV Nuansa Aulia, 2015), 2.

⁴ Pasal 29 Ayat 1, undang-undang perkawinan menyebutkan : "Perjanjian tersebut tidak dapat disahkan bilamana melanggar batas-batas hukum, agama dan kesusilaan"

Method

This research is normative juridical research, namely research that refers to the norms contained in the legislation. This research was conducted by document study of materials related to the problem under study. In this study, the authors used descriptive qualitative data analysis, that is, after all the data had been collected, the authors explained it in detail and systematically so that they could be fully and clearly understood and the conclusions could be clearly understood.

Result and Discussion

Marriage Aggrement in Islamic Law

A prenuptial agreement or marriage is an agreement (agreement) between a prospective husband and wife to regulate the implications of their marriage, especially in relation to their assets.⁵ In the agreement, the parties agree to comply with what has been agreed by the Marriage Registrar. (PPN)⁶.

A "root" in Islamic law is a phrase used to describe the concept of a covenant. Bind (rope), conclude, connect, or connect is the meaning of al-'aqd, which is the root of the term zakat⁷. According to Soebekti's book, "Covenant Law", an agreement is a promise made by one person to another or a commitment made by two people to perform a certain action.⁸

The agreement between two prospective husband and wife to take care of each other's personal property before marriage is essentially the same as an agreement in general⁹.

Marriage agreements are not clearly regulated in Islamic law, so it is not clear whether they were made before or during marriage. Therefore, the madhhab experts, both Hanafy and Maliky, as well as Syafi'y and Hambaly, differ in the application of the marriage contract. Included in the marriage contract mentioned are the following:¹⁰

The wife's responsibilities to her husband, such as providing physical and spiritual support, as well as providing and lodging. This idea is universally agreed upon by all educational institutions.

The husband cannot take an agreement that his wife cannot leave the house (hijrah) with him, and the wife's agreement cannot be combined with him.

⁵ Haedah Faradz. "Tujuan Dan Manfaat Perjanjian Perkawinal", *Jurnal Dinamika Hukum* Vol. 8 No. 3 (September 2008), 252.

⁶ Abdul Rahman Ghazali, *Fiqih Munakahat* (Jakarta: Prenadamedia Group, 2003), 119.

⁷ Ahmad Warson Munawwir, *Al-Munawwir: Kamus Arab-Indonesia Progressif*, (1997), 953.

⁸ Soebekti, *Hukum Perjanjian*, (Jakarta: Intermedia, 2014), 1.

⁹ Wasman, & Wardah Nuroniyah, *Hukum Perkawinan Islam Di Indonesia*, (Yogyakarta: Cv. Mitra Utama, 2011), 171.

¹⁰ Wasman, & Wardah Nuroniyah, *Hukum Perkawinan ...*,178.

Imam Hambali is of the opinion that the husband must fulfill the end of the bargain, although Imam Shafi'i, Malik, and Hanafi are of the opinion that he should not.

If the husband wants a second marriage, he must first divorce his first wife. Given the Prophet's orders not to demolish the already erected dwellings, analysts believe this deal is voluntary.

There must be a dowry agreement stipulating that no money will be exchanged, the husband will not provide for his wife, he will provide for her, and she will only see her for a week. They decided that the agreement was null and void in its entirety, therefore it was not obligatory to implement it.¹¹

To be able to divorce a contract made after infidelity (muhallil marriage), it must be temporary or mut'ah marriage (eg one week or two weeks). Another option is an arrangement whereby the husband must first marry off his daughter to the woman's guardian without receiving a dowry (wedding syighar). The agreement is null and void due to its invalidity.

The four Imams of the Madzhab also agree that ta'liq-talaq is valid in the form of an oath or in the ordinary if it is performed within one's authority and meets one's certain standards.¹²

There is a fair difference of opinion among the scholars of madhhab regarding the permissibility of making a marriage contract, because there is no prohibition or requirement to do so. As a result, one has the choice to enter into a marriage contract or not.¹³

As long as there is no coercive party in the agreement, the law is needed to keep the promises that have been made. According to al-account, Bukhari this happened:

"Whoever requires himself for the purpose of obedience (to Allah and His Messenger), in a state of not being forced, then he is obliged to fulfill it."¹⁴

Said 'Umar ibn al-Khattab: *"Indeed, the decision of rights lies in the conditions that are set and in you what is determined."*¹⁵

This is confirmed by the Prophet of 'Uqbah bin 'Amir: *"The most appropriate conditions to be fulfilled are those relating to marriage."*¹⁶

It has been mentioned elsewhere that the responsibility to fulfill the terms of the marriage agreement depends on the form of the conditions. Scholars in this case categorize the situation as follows:¹⁷

The first requirement is a requirement that is directly related to the actual performance of marital responsibilities by husband and wife. For example,

¹¹ *ibid.*,178

¹² *ibid.*,179

¹³ Amir Syarifuddin, *Hukum Perkawinan islam* (Jakarta: Kencana, 2006), 146

¹⁴ Al-Bukhari, *Shahih al-Bukhari*, juz 3 (Beirut: Dar al-Fikr, 1401 H/ 1981 M), 185

¹⁵ *Ibid.*, 175.

¹⁶ *Ibid.*,185.

¹⁷ Amir Syarifuddin, *Hukum Perkawinan Islam ...*, 146.

husband and wife get along well, and the husband supports his wife and children; women must meet the biological demands of their husbands, and both husbands and wives are responsible for raising their children.

The second example is conditions that are contrary to the nature of marriage or which are clearly prohibited or which are detrimental to certain parties. When a husband and wife agree not to have children, the woman demands that her husband divorce the previous wives, the husband demands that the previous wives be divorced, and the husband demands that his wife work illegally, such as prostitution.

There are no specific restrictions and no conditions that contradict the terms of marriage, but there are no instructions from the shari'a on what to do. When a woman demands that her husband not marry her, or when household property becomes common property, these are just a few examples.

In the first type of marriage, all scholars believe that the prerequisites must be met.¹⁸ As the hadith of the Prophet from 'Uqbah bin 'Amir: *"The most appropriate conditions to be fulfilled are those relating to marriage."*¹⁹

A hadith attributed to the Prophet states that those who promise are required to guard the end of their bargain. However, this does not mean that if these conditions are not met, the marriage cannot be annulled by itself. The danger of the first option is that the aggrieved party, in this case the wife, can sue for the annulment of her marriage in court.

No one can break a marriage if a husband fails to pay conjugal alimony if the woman accepts the situation. If the woman considers that she is the aggrieved party because her husband does not keep his promise, she can request an annulment of the marriage.

Both academics agree that the agreement is not legally required to be respected in its formal form. In other words, even if he violates the agreement, the husband is freed from the consequences of his violation, even if Allah commands him to honor his commitments in Surah al-Maidah verse 1 and Surah al-Isra verse 34.

However, if these terms and conditions are contrary to sharia law, then they are not obligated to be respected. Prophet Muhammad, according to al-hadith, Tabraniy said this: *"Muslims must fulfill their conditions unless the conditions are agreed upon"*.

According to Abu Hurairah in Muttafaq 'alaih, the Prophet forbade the conditions required by the wife for her husband to divorce his ex-wife: *"Indeed, the Prophet SAW forbade a man to propose to his brother or buy something for his brother and forbade a woman to ask a man to divorce his wife so that she could fill his plate. Verily, Allah has provided him with sustenance."*²⁰ There are several examples, such as a woman

¹⁸ Al-Bukhari, Shahih al-Bukhari.... , 18.

¹⁹ *ibid.*, 185

²⁰ Amir Syarifuddin, Hukum Perkawinan ..., 148.

who declares her husband cannot marry her or that all household assets become common property.

In view of the above prohibition, treaty obligations may not be fulfilled. On the other hand, the commitment not to bear children is contrary to the essence of marriage, which is to give birth to offspring, and has violated the Prophet's desire to produce offspring.

The scholars differ on the third type of marriage agreement, namely in the form of conditions. The majority of scholars, including Syafi'iyah, are of the opinion that the wife's demand not to mix after marriage does not invalidate the marriage contract, but cannot be fulfilled. They argue that this includes the prohibitions described in the above hadith, but excludes what is specified in the word of Allah, which is also included in the hadith. This is their reason.²¹

However, this is in contrast to the Hanabilah scholars, who believe that this criterion is necessary if a woman requests that she cannot marry. When it comes to them, the above requirements of the Prophet have been met by this criterion. Moreover, the Prophet did not mention this as a sin. In Imam Ahmad's view, efforts need to be made to minimize the number of cases of irresponsible polygamy.²²

The wife has the right to file a lawsuit against Faskh if he violates the agreement in favor of this wife.²³ For example, ta'liq-talaq and joint property are examples of provisions or agreements that may be made in a marriage, according to Hanabilah scholars, as long as the Prophet does not expressly prohibit the act. There is no prohibition against mixing marital property, even if it is not explicitly regulated in traditional fiqh, because according to conventions and customs all property created during marriage belongs to the husband.²⁴

Maqasid Al-Shariah

Understanding Maqasid Al-Shari'ah

There are two terms in Maqasid Al-Syariah, Maqasid and Shari'ah. the plural version of the Arabic term "maqsad," which means goal, principle and ultimate goal, the word "maqasid" is used.²⁵ An area where the water supply is uninterrupted and where visitors come without equipment is referred to as "al-syariah" in Arabic, a term derived from the Arabic phrase "al-shir'ah" or "al-syari'.ah."²⁶

²¹ *Ibid*,149

²² *Ibid*.

²³ Ahmad Rofiq, *Hukum Perdata ...*, 133.

²⁴ Amir Syarifuddin, *Hukum Perkawinan Islam ...*,49.

²⁵ Jasser Auda, *Membumikan Hukum Islam Melalui Maqoshi al-Syariah*, terjemah oleh Rosidin dan 'Ali 'Abdul Mun'im (Bandung: Mizan Media Utama), 33.

²⁶ Yusuf Al-Qardlawi, *Fiqh Maqoshid Syariah* (Jakarta Timur : Pustaka Al-Kautsar 2017), 13.

Mufradat al-O ur ann by Al-Raghib Al-Ashfahani says that "alyar" is the clear path. Similar to "Shara'tu lahu tariqan," this expression (I gave it way). Street directions are then named with this prefix. In this case, it is known as syir'u and shari'ah. The phrase "God's Way" is a common one. He then refers to people's sayings, such as "al-shari'ah is named "shari'ah (source of water), nothing but to compare it to a water source because someone who throws himself into it will drink and become holy. Al-Raghib: The term drink has the same connotation as some of the sayings of the sages: "I have drunk, therefore I will not drink again. Knowing Allah allows me to drink without consuming alcohol."

In many ways, Sharia law is found in the Qur'an. Religious, family and commercial issues; tax; revenue and expenditure of state assets; crime; hudud, qishash, and tazhir punishments; political; the interaction between the ruler and the people; and international relations in this country are all covered by this law. types of jihad and peace wars. These verses are referred to as legal verses al-ahkam by scholars. The term shari'ah has two meanings, so when used by academics it can be assumed to have both:²⁷

First and foremost, all religions that involve aqidah, worship, adab, morality, law, and muamalah are included. In addition to theory and implementation, sharia consists of ushul and furu', as well as aqidah and charity. It covers every aspect of the religion and creed of God, the Prophet, and the sam'iyat. In essence, Al-Quran and As-Sunnah encapsulate all elements of Islam, including worship, muamalah and morality. Scholars define mudharat as the goal of a decision, which is a combination of aqidah, fiqh, and morality.

Second, there is the religious principle of altruism. Such as worship and muamalah, which include the relationship between God, humans, society, and the rule of law, as well as domestic and foreign affairs.

Shari'a, according to Yusuf al-Qardlawi, is the overall goal of Islam, as he explains in his book, *Diraah Fi Fiqh al-Maqasid al-Shari'ah*. Thus, Maqasid Al-Shariah is the goal and secret that Allah has set in every rule, therefore it is very important.²⁸ Maqasid Al-Shari'ah is about realizing virtue while avoiding evil, or taking advantage and resisting harm, or in other words, achieving benefits because the purpose of creating laws in Islam is to generate benefits to remember Allah's purposes, and therefore Maqasid Al-Shari' Ah.²⁹ Goal (al-hadf), interest (al-Mathhlib), goal (al-Garadl), or ultimate goal (al-Maqasid) is the Arabic term maqsad in the plural. The word mashalih is usually referred to in this way.³⁰

²⁷ Ibid.

²⁸ Ahmad Al-Mursi Husain Jauhar, *Maqashid Syari'ah*, terj. Khikmawati, (Jakarta : Amzah 2010), 2

²⁹ Jauhar, *Maqashid Shari'ah*..., 3.

³⁰ Jaser Auda, *Maqashid unthuk Pemula*, terjemah oleh Ali Abdelmon'im (Yogyakarta : Suka Press, 2013), 6.

According to Jasser Auda, this approach is a methodical step or process to reform and reform Islamic law, as indicated.³¹ If you want to get more accurate and adaptable laws, you will need to use this legal ijthad approach to do so.

The core study of Maqashid Shari'ah

The main aim of Islamic law is the welfare of the individual and of society as a whole. This gain transcends this life and will have an effect in the hereafter. According to Abu Ishaq al-Syathiby, also known as al-Syathiby, the five aims of Islamic law, known as Ushil al-Khams, are as follows:³²

Hifẓ al-Din (maintaining religion)

Bild al-Din is the largest and highest maqasid al-Shari'ah (guarding religion). "Remain true to one's faith" means to serve God alone; no fellowship with Him. The foundation of Maqasidu hiji al-Din is twofold: Maintaining the foundation of religion and its ideals, as well as opposing everything that can harm religion, are two ways to keep religion strong. When it comes to questions about religion and lifestyle, God leaves it up to the people. This privilege is based on the word of Allah in the Qur'an, verse 256 of Surah Al-Baqarah [02].

Ibn Kathir has something to say about this verse: "Do not force anyone to become a Muslim. That is exactly what I said. There is ample evidence that one should not be encouraged to convert to Islam".³³

If you live in an Islamic country or a country subject to Muslims, you have the same rights and responsibilities as a Muslim, according to Islam. All citizens, including Muslims, must be protected by the government, which must apply the same rules and regulations that apply to all citizens.³⁴

Hifẓ al-Nafs (care for the soul)

Even in Islam, human life is sacred and must be protected and not exposed to sources that can harm or damage. Allah expressly states this in the Qur'an in Surah Al-Baqarah verse 195 [02].

A person's "human self" is made up of two parts: the physical body and the mental or spiritual meaning. One of the Maqasid Sharia, Bi'ju al-Nafs, is aimed at people with two sides so that humans can carry out their obligations as caliph fi al-ardl. The role of the Caliph requires that all aspects of one's existence, from the physical to the spiritual, are fully involved in order to complete the work at hand. Biu al-nafs, on the other hand, ensures that people are protected from threats to their survival.³⁵

Hifẓ al-'Aql (maintaining intellectual)

Humans can rationally conclude the existence of God. As a result, they were called and commanded by God for a specific purpose. Humans routinely

³¹ Auda, Maqoshid..., 49.

³² Ahmad Al-Mursi Husain Jauhar, *Maqashid Syari'ah*, (Jakarta : Amzah 2010), 1.

³³ Jauhar, Maqashid Shari'ah...,

³⁴ Ibid, 6.

³⁵ Jauhar, Maqashid Shari'ah..., 23

degrade themselves into animals for no apparent reason. Humans will produce various ugliness, sin, evil, and humiliation that have never been seen in animals if reason is not in control. Man is exalted in degree and glory by God because of his ability to think logically. Verse 70 of the letter Ur'an al-Isra [17] explains this.

As the most important gift from God to humans, God commands humans to do everything they can to ensure the protection and growth of their minds, such as study. At the same time, Allah forbids them to damage or weaken the power and strength and potential of the mind. Therefore, Allah forbids humans from swallowing psychotropic drugs, such as intoxicating drinks (khamr) and narcotics (mukhaddirat).³⁶

Reason "named" لقع (bond) because of its ability to bind and forbid its owner from doing evil and evil deeds." Camels "bound" relates to the concept of "reason" in this context rather than camels to give in to their irrational impulses.

Hifẓ al-Nasb(maintaining offspring)

The survival and existence of humans is guaranteed by Islam. There is always a danger to human life both here and in the hereafter from anything that can interfere or harm our existence. This illustrates how Allah punishes those who commit adultery harshly, as stated in Surah al-Nur verse 02 of the Qur'an. Adulterers are not the only ones who need to repent if God's human descendants are to live on. Those who accuse someone of adultery but cannot support their claim face dire punishments, as indicated in verse 3 of Surah al-Nur.

Muslims are not burdened with the task of extinguishing their lusts, but are regulated and disciplined so that they can be directed through the institution of marriage which has been passed down from generation to generation in pre-Islamic times.³⁷

Hifẓ al-Mal(maintain property).

Humans cannot live without wealth, which is one of the most basic human needs. All of these motives, however, are limited by three conditions: the wealth he has lawfully accumulated, the use of this property for lawful purposes, and the issuance of the "rights of God" from which he lives from this property. The Qur'an Surah al-Isra [17] verse 26 states that it is forbidden to live extravagantly, waste money, or use resources that do not belong to you legally.³⁸

Private property is protected by Biju al-Mal, but it also protects the environment and biodiversity by protecting the property of others from damage and uncontrolled exploitation. An important component of public property is the environment, which includes marine wealth such as fish, coral, and other marine life, forests rich in various plants, and underground wealth such as precious metals and fossil fuels. In the strictest sense, Bijd al-Mal entails an obligation to

³⁶ *ibid*,102.

³⁷ Forum Kajian Ilmiah (FKI), *Tafsir Maqoshidi...*, 162

³⁸ *Ibid*.

protect and conserve shared resources. The people who want to destroy it are not only violating the norms of the government but are also acting in a way that is incompatible with Islam. Not only that, the danger in Islam is also very great, as mentioned in the Qur'an Surah al-Maidah [OS] verse 38.³⁹

Maqashid Al-shariah Perspective Marriage Agreement

Couples planning to marry may use a prenup (also known as a prenup or prenup) to explain the terms of their marriage, especially in terms of assets. Each of the two made a commitment to follow through on the terms of their agreement, which was formally approved by the Marriage Registry (VAT).

All things considered, it is evident that the Marriage Agreement governs how their property will be distributed if they separate, either through divorce or death. The Marriage Agreement also includes provisions for the welfare of the spouse's family and the future of their children.

Even if a husband and wife sign a prenup, he or she still has the obligation to provide for the household needs. Because marriage law is facultative and regulates more, a marriage agreement can deviate from it in certain situations but must not conflict with public order.

Based on these reasons, the marriage contract in the household is permissible if it is judged in accordance with Maqasid Al-Shari'ah, especially from the point of view of Kulliyat al-Khams. This can be summarized as follows if each component is considered individually:

Hifdz al-Din(maintaining religion).

This agreement regulates and regulates material issues (wealth), but cannot be separated from theological considerations and cannot be seen in isolation. Because if a threat is made to property, it will cause a ripple effect on religious matters as well. It is impossible to fully actualize and implement sharia, in this scenario, if there are differences of opinion and controversy within the house. The turmoil and noise due to property conflicts will indirectly have an impact on the sincerity and specificity of worship.

When living conditions at home are unsafe and "hot", how can worship be done properly? A person's mentality may be affected indirectly by a chaotic home environment. There is a connection between psychological problems and physical disorders. Worship can be done peacefully, properly, and according to the norm when the situation is normal and stable. This is not always the case. In addition, the soul will be filled with confusion, confusion, and emotion, threatening the ability to perform true worship. Even if it was executed, its quality would definitely suffer as a result.

Hifdz al-Nafs(nurturing the soul).

³⁹ Forum Kajian Ilmiah (FKI), *Tafsir Maqashidi...*, 163.

The climax of the marriage contract is determined by this phrase. The risk of violence and threats to life, particularly domestic violence, can be reduced or avoided by signing a marriage contract. Slander, quarrels, quarrels, and even murder can be provoked by property problems. If property disputes cause a marriage to fall apart, so will kinship relations.

Unwanted outcomes, such minor or major quarrels and quarrels, can be prevented by the couple's marriage agreement, including the potential for the spouses to kill each other. Husband and wife, in accordance with the terms of their marriage contract, must take decisive and measured action in resolving the agreed-upon issues. To avoid bullying and bullying one another, we can all set goals for ourselves.

It is possible to reduce or eliminate undesirable events, especially those that are potentially life-threatening. The rights and lives of both husband and wife can be protected if they follow the instructions of the Marriage Agreement. Murder can be prevented, both physically and psychologically (character assassination).

Hifdz al-'Aql(maintaining intellectual).

This argument is not directly related to the terms of the marriage contract. However, there is a high association when associated. If the term *Hifdz al-'Aql* can be interpreted in any way, it refers to the preservation of knowledge. Therefore, the intellect of the couple can be guaranteed in their marriage contract.

In other words, the reason is like this: if there is no conflict in the family or any fights or divorce, there is no problem with the intellect/intellectuality of both. Since both of them were physically and intellectually healthy, they could be described as normal. Both partners can pursue their own intellectual interests without neglecting each other's responsibilities and duties if these two things are not hindered by any difficulties.

Hifdz al-Naslj Nasab(maintain offspring).

In addition to the benefits of maintaining offspring, this does not necessarily relate to or overlap with the Marriage Agreement. Both husband and wife must be at peace in order to benefit from the Marriage Agreement. Matters that are "vulnerable" to problems and quarrels can be removed early through the Marriage Agreement. This will have a direct bearing on the safety and well-being of children.

All the needs of children, both physical and non-physical, will be met as a result of the marriage contract. Expenditures such as food, drink, clothing and toys can all be traced back to their source and flow in terms of the cost of living for children. Non-physical or mental demands, such as education for worldly life and *ukhrawai*, are also well understood and can be traced back to their source.

Hifdz al-Mal(maintain property)

One of the five aspects of humanity described in *Kulliyat al-Khams* or *al-Maqasid al-Dlarury* as a religious principle is *Hifdz al-Mal*. For certain academic

circles, Hifdz al-Mal is prioritized over the other five traits when there is a dispute between them (ta'arudl). This makes sense, considering that Hifdz al-Mal is usually associated with interpersonal relationships, namely Haq al-Adamy, but Hifdz al-Din mainly focuses on Allah (Haq Allah). When Haq Allah and Haq al-Adamy contradict, Haq al-Adamy is prioritized in Islamic thought.⁴⁰

The desires and interests of others will be ignored if only Haq al-Adamy is prioritized over the Haq of Allah.

The marriage contract is a very strong link that guarantees the protection of the premarital property of each husband and wife. The Qur'an Surah al-Baqarah [02] verse 188 states that a husband may not take advantage of his wife's property and vice versa. Both must submit and obey what has been decided in certain matters.

As a result, the author claims that the terms of the Marriage Agreement are in accordance with the idea of al-Khams Hijdz al-Kulliyat Mal. For Indonesians who are "ordinary people", the existence of a Marriage Agreement is actually more protective and more effective. Muslims are "obedient" if they follow religious rules for fear of sinning and are trapped in fear of violating Islamic law. It is not enough to prevent "lay" Muslims from committing crimes; they need additional instruments that can actually prevent them from doing so. After violating the terms of the Marriage Contract, Intellect is known as (bond) because it has the power to forbid its owner from doing vile things or doing vile activities. As a result, the owner will automatically get a potentially deterrent penalty.

Closing

Prior to marriage, the couple must sign a Marriage Agreement, which is endorsed by the Marriage Registrar. Maqashid al-Shari'ah, on the other hand, is the goal of Islamic law and Allah's secret for every law in Islam. It is the essence of Maqasid al-Shari'ah that one achieves benefit and righteousness by avoiding evil, attracting profit and resisting harm. The topic of Sharihah Maqasid Al-central is Kulliyat al-Khams, which includes Hijdz al-Din (maintaining religion), Hijdz al-Najs (maintaining the soul), and Hijdz al-Naslj Nasab (maintaining offspring) (maintaining property). From the results of the investigation it is clear that the Marriage Contract has fulfilled the Maqashid Al-Sharihah in all respects. Because it protects the constitutional rights of husband and wife, the Marriage Agreement helps the formation of a successful family. For "lay" Muslims, the marriage contract is stronger and more protective because it has a double impact. For "lay" Muslims, the ability to "follow" is against Islamic law, and the fear of sin is enough to keep them from wrongdoing.

⁴⁰Ibn Amir al-Hajj, *al Taqir wa al Tabbir* (Maktabah Syamilah), V: 472. Lihat pula, Forum Kajian Ilmiah (FKI), *Ta'sir Maqashidi* (Lirboyo: Purna Siswa MHM, 2013), 199-201.

Bibliography

- Auda, Jaser. “*Maqoshid untuk Pemula*”, terjemah oleh Ali Abdelmon’im. Yogyakarta : Suka Press, 2013.
- _____. “*Membumikan Hukum Islam Melalui Maqoshi al-Syariah*”, terjemah oleh Rosidin dan ‘Ali ‘Abdul Mun’im. Bandung: Mizan Media Utama, 2013.
- Bukhari (al). “*Shahih al-Bukhari*, juz 3”. Beirut: Dar al-Fikr, 1401 Hf 1981 M.
- Faradz, Haedah. “Tujuan Dan Manfaat Perjanjian Perkawinal”, *Jurnal Dinamika Hukum* Vol. 8 No. 3: Fakultas Hukum Universitas Jenderal Soedirman Purwokerto, September 2008.
- Forum Kajian Ilmiah (FKI), “*Ta]sir Maqashidi*” (Lirboyo: Purna Siswa MHM, 2013.
- Ghozali, Abdul Rahman. “*Fiqih Munakahat*”. Jakarta: Prenadamedia Group, 2003.
- Hajj (al), Ibn Amir . “*al Taqir wa al Tabbir* (Maktabah Syamilah)”, V: 472.
- Jauhar, Ahmad Al-Mursi Husain. “*Maqashid Syari’ah*”. Jakarta : Amzah 2010.
- Ahmad Al-Mursi Husain Jauhar, “*Maqashid Syari’ah*, trj. Khikmawati”. Jakarta : Amzah 2010.
- “Kompilasi Hukum Islam”. Bandung : CV Nuansa Aulia, 2015.
- Mas’ud, Ibnu. “*Fiqih Madzhab Sa]i’I*”. Bandung : Pustaka Setia, 2007.
- Munawwir, Ahmad Warson. “*Al-Munawwir: Kamus Arab-Indonesia*”. Surabaya: Pustaka Progressif, 1997.
- Qardlawi (a), Yusuf. “*Fiqih Maqashid Syariah*”. Jakarta Timur : Pustaka Al-Kautsar 2017.
- Rofiq, Ahmad. “*Hukum Perdata Islam*”. Jakarta : Rajawali Pers, 2015.
- Soebekti. “*Hukum Perjanjian*”. Jakarta: Intermasa, 2014.
- Sudarso. “*Hukum Perkawinan Nasional*”. Jakarta : Rineka Cipta, 2010.
- Syarifuddin, Amir. “*Hukum Perkawinan*” (Jakarta: Kencana, 2006).
- Wasman & Wardah Nuroniyah. “*Hukum Perkawinan Islam Di Indonesia*”. Yogyakarta: CV. Mitra Utama, 2011.



© 2022 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution ShareAlike (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>).

