

Marital Beslag Outside Divorce Lawsuit in the *Maqashid Syari'ah* Perspective

Riza Mulia

Sunan Kalijaga State Islamic University of Yogyakarta

Email: rizamulia014@gmail.com

Abstract

The law of marriage seeks to protect joint property in the marriage bond with the hope that a quality family can be formed without any problems. Rules in law provide various reasons for formal legal guarantees for the protection of joint assets. This reason also does not escape the view of Islamic law through *maqashid syar'iyuah*. This paper uses a normative approach. The focus of the problem in this paper is the objective of applying marital beslag outside of a divorce suit from the viewpoint of *maqashid syar'iyah*. The results showed that the provisions for marital beslag outside of a divorce suit were intended to maintain human needs from the financial aspect of the family that could sustain the family. In this context, protection of property helps maintain relationships between individuals (families) through the meaning contained in the text, where confiscation contains an element of family care which is also the goal of the *maqashid syari'ah*.

Keyword: marital beslag, protection for marital treasure, *maqashid syari'ah*

***Sita Marital di Luar Gugatan Perceraian dalam Perspektif
Maqashid Syari'ah***

Riza Mulia

Sunan Kalijaga State Islamic University of Yogyakarta

Email: rizamulia014@gmail.com

Abstrak

Hukum perkawinan berusaha melindungi harta bersama dalam ikatan perkawinan dengan harapan agar terbentuknya keluarga yang berkualitas tanpa ada permasalahan dalam keluarga. Aturan dalam hukum memberikan alasan yang beragam dalam penjaminan secara legal formal terhadap perlindungan harta bersama. Alasan tersebut juga tidak luput dari pandangan hukum Islam melalui maqashid syari'ah. Paper ini menggunakan pendekatan normatif. Fokus masalah dalam paper ini adalah tujuan dari penerapan sita marital di luar gugatan perceraian menurut pandangan maqashid syari'ah. Hasil penelitian menunjukkan bahwa ketentuan sita marital di luar gugatan perceraian dimaksudkan untuk memelihara kebutuhan manusia dari aspek finansial keluarga yang dapat mempertahankan kelangsungan keluarga. Dalam konteks ini, perlindungan harta ikut menjaga hubungan antar individu (keluarga) melalui kebermaksudan yang terkandung dalam teks, dimana penyitaan mengandung unsur kepedulian keluarga yang juga menjadi tujuan dalam maqashid syari'ah.

Kata Kunci: sita marital, perlindungan harta, maqashid syari'ah

Introduction

Assets in Islam are something very important, because these assets will be used for one's needs and survival.¹ Islam views wealth as a means to get closer to Allah SWT.² Therefore, protection of property must be under the auspices of sharia which cannot be

¹ Maghfur Ahmad, "Nadhlatul Ulama dan Penegakan Hak Asasi Manusia di Indonesia", *Religia: Jurnal Ilmu-Ilmu KeIslaman*, vol.13, no. 2, 2010, p. 182

² Naerul Edwin Kiky Aprianto, "Konsep Harta dalam Tinjauan Maqashid Syari'ah", *Journal of Islamic Economi Lariba*, vol. 3, no. 2, p. 66.

separated from maqashid. Islam forbids a person to take someone else's property and control it without rights.³ These can be categorized as protection of property itself, punishment for theft, and protection of money.⁴ However, the government has been active and critical of protecting assets in the form of confiscation, especially confiscation outside of a divorce suit. The confiscation sought to protect property that could result in the collapse of families and households.⁵ Indirectly, protection of property in confiscation seeks to maintain family resilience.

Joint assets are assets obtained individually or collectively (husband and wife) during the marriage bond.⁶ Protection of assets in marriage generally only occurs in divorce disputes and distribution of assets, but positive law also regulates protection of property outside of divorce.⁷ This provision is intended to protect property from harmful actions that lead to family collapse.⁸ Confiscation that stands alone gives the power to guarantee joint property without a divorce dispute. This protection is created in the form of confiscation (marital beslage)⁹ with the consideration of indications or bad intentions from the party controlling the property

³Qs. Surat al-Baqarah: 188 ; M. Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian al-Qur'an*, (Jakarta: Lentera Hati, 2002), jilid 1, p. 414.

⁴ Qutub Sano, *Qira'ah Ma'rifiyyah fi al-Fikr al-Usull*, (Kuala Lumpur: Dar al-Tajdid, 2003), p. 157; Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, (Bandung: Mizan Pustaka, 2015), p. 59.

⁵ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, (Jakarta: Sinar Grafika, 2011), p. 374.

⁶Mardani, *Hukum Keluarga Islam di Indonesia*, (Jakarta: Prenadamedia Group, 2016), p. 121.

⁷ See in Article 24 Government Regulation no. 9 of 1975 and Article 95 of the Compilation of Islamic Law.

⁸ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan...*, p. 374.

⁹ Marital confiscation (*marital beslage*) is confiscation which is requested by the wife or husband on the joint property, movable or immovable, as collateral for obtaining its share. This confiscation is requested so that the husband or wife does not transfer the said goods which are joint assets during the investigation process; Muchsin Bani Amin, *Hukum Acara Peradilan Agama/Mahkamah Syar'iyah*, (Banda Aceh: Percetakan Hijrah, 2016), p. 59

so that the property must be protected.¹⁰ During the confiscation period, the use of joint assets will be limited, such as transferring to other parties.¹¹

A potential approach in examining this confiscation is to use *Maqashid syar'iyah* in the context of social welfare. This paper describes the meaning of the application of marital beslag as an effort to protect property outside divorce disputes through *maqashid*. This will give rise to the purpose of protecting the property itself in providing benefits. *Maqashid syar'iyah* contains the aims and objectives that the shari'ah strives for in establishing a law for the benefit of mankind.¹² Therefore the principles in Islamic law are to eliminate narrowness and difficulty, reduce burdens, gradually enact laws, pay attention to the benefit of humans, and create justice.¹³

This writing is done by collecting data and information relating to claims outside of a divorce suit and the concept of protection of property in *maqashid syar'iyah*, then reviewing and analyzing it with supporting materials in normative studies. All data obtained through literature study will be grouped according to the purpose so that it is easy to understand. With this, the author will easily understand what happened, and what to do base on an understanding of the presentation of the data. After the data is arranged, conclusions will be drawn.

¹⁰M. Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, dan Putusan Pengadilan...*, p. 369.

¹¹ Transferring to a third party in other words is prohibited from selling, giving away, or exchanging goods which are confiscated by marital. Charge it to third parties, namely in the form of collateral, mortgages, pawns and leases; M. Yahya Harahap, *Hukum Acara Perdata: Permasalahan dan Penerapan Conservatoir Beslag (Sita Jaminan)*, (Bandung: Pustaka, 1990), p. 94.

¹² Jasser Auda, *Al-Maqashid untuk Pemula*, (Yogyakarta: SUKA-Press, 2013), p. 4.

¹³Muhammad Syukri Albani Nasution, *Filsafat Hukum Islam*, (Jakarta: Raja Grafindo Persada, 2013), p. 113-118.

Confiscation Filing in Legislation

The laws provide equal rights for husbands and wives towards the applications for confiscation.¹⁴ Thus, the basis request for it was not based on the position of the plaintiff, but on who controlled the joint property. The seizure process must of course go through a request for confiscation to a court judge. The judge will study the request in accordance with the applicable application filing procedures. Regarding seizure based on a request for confiscation, it is fundamental, because the determination of seizure cannot be carried out if there is no initiative from the plaintiff who filed a request for confiscation. In this case, the court has the authority to provide advice and assistance to the Petitioner or to his attorney in filing his application.¹⁵ The requirements for a confiscation application must meet the following elements:

1. A request for confiscation can be filed either with a lawsuit or outside the claim.
2. An application for confiscation must be submitted to the competent authority with a vertical level which means starting from the District Court, High Court and the Supreme Court.
3. The Petitioner / Plaintiff is obliged to explain in detail the form of the object being requested for confiscation.
4. Must be accompanied by clear reasons.¹⁶

The applicant must be able to demonstrate the existence of a relationship and the importance of confiscation in the case concerned. The provisions of Article 261 RBg and Article 720 RV provide the main reasons in the request for confiscation such as a concern or suspicion that the respondent will commit fraud on joint property (embezzling or exiling). The concern or suspicion must be real and objective, in which:

- a. The applicant must be able to show facts about the behavior of the respondent to embezzle or exile property.
- b. At the minimum, the Plaintiff can show an objective indication

¹⁴ Lihat dalam Peraturan Pemerintah No. 9 Tahun 1975.

¹⁵ M. Fauzan, *Pokok-Pokok Hukum Acara Perdata Peradilan Agama dan Mahkamah Syar'iyah di Indonesia*, (Jakarta: Prenada Media, 2005), p. 13.

¹⁶ Rocky Marbun, *Kiat Jitu Menyelesaikan Kasus Hukum*, (Jakarta: Visimedia Pustaka, 2011), p. 167.

of the efforts to remove or isolate his belongings in order to avoid the contents of the Plaintiff's claim.

- c. The civil court judge's duty is to maintain the civil law order.¹⁷

The process of implementing confiscation is carried out through stages of application examination. After the application for seizure is submitted, the judge or chairman of the panel will examine the contents of the application letter, the evidence for confiscation and consider the reasons for the petition put forward by the applicant. If these conditions have been fulfilled, the judge examining the case can do the followings:

1. Directly issuing a decree that grants the request for confiscation without an incidental hearing being held first. This confiscation order is accompanied by the determination of the day of trial and the order of the parties in a case to appear before the trial as determined;
2. If the request for seizure is unreasonable, then the judge will determine the day of trial and at the same time reject the request for confiscation. This provision also does not require an incidental hearing;
3. The judge makes a decision on the day of the trial and includes a postponement of the request for confiscation. Regarding this provision, an incidental trial is required first and an interim decision must be made.

If the application for confiscation is filed separately from the subject matter of the case, an incidental hearing must be held to determine the seizure and an interim decision is made.¹⁸ There are two possibilities for this. *First*, filing in writing separated from the lawsuit. In this case, the judge will postpone the trial and order the applicant to register a request for confiscation at the Registrar's Office. Requests for confiscation in writing are usually filed during court hearings or as long as the verdict does not have permanent legal

¹⁷ K. Wantjik Saleh, *Hukum Acara Perdata RBG/HIR*, (Jakarta: Ghalia Indonesia, 2002), p. 9.

¹⁸ Mahkamah Agung dan Direktorat Jendral Badan Peradilan Agama, *Buku Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama* (Edisi Revisi 2010), p. 102.

force. *Second*, submitted orally in court proceedings. The judge will make a note of the request for confiscation and order the clerk to record it in the trial report. Then the trial was adjourned and ordered the applicant to register the request for confiscation at the secretariat.¹⁹ After examining it and it is deemed sufficient and complete, the chairman of the assembly issues a letter of determination on the request for confiscation which rejects or grants the request for seizure. In the event that the application is rejected and new things arise that worry the applicant as the reason for the application for confiscation, the application can be submitted again. If the request for seizure is granted, the judge or chairman of the panel examining the case issues a decree which issues the request for seizure and orders the clerk or bailiff to carry out the confiscation.²⁰

The bailiff's role in carrying out the confiscation is assisted by two witnesses who meet the requirements, namely Indonesian citizens, aged at least 21 years and can be trusted.²¹ Before carrying out the confiscation, the bailiff first notifies the parties and the local village head that the confiscation of the disputed items will take place on the day, date, time and place that have been determined.²² The purpose of this notification is so that they know and take part in witnessing the confiscation and inform the general public about the purpose of the bailiff's arrival and explain that there is a prohibition on transferring rights or transferring confiscated items to other people. If the act is committed, it is invalid (null and void) and is a criminal act.²³

During the execution of the confiscation, the bailiff must pay attention to several things such as checking whether the confiscation has been legally and officially notified; check the presence or absence of the parties concerned. If the confiscation is not present at the time the confiscation is carried out, the confiscation

¹⁹*Ibid.*

²⁰ Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, (Jakarta: Kencana, 2006), p. 93.

²¹ Article 197 paragraph 7 HIR

²² A. Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama*, (Yogyakarta: Pustaka Pelajar, 1998), p. 69.

²³ Basiq Djalil, *Peradilan Agama di Indonesia*, (Jakarta: Kencana, 2006), p. 138.

will be announced on another day. If the confiscated party is present he can be ordered to also sign the minutes; check and record the confiscated goods and make necessary notes about what happened during the confiscation and must be stated in the report of the confiscation; the minutes of seizure must contain in detail one by one the confiscated goods and also explain the size and weight of the goods seized and signed by the clerk, bailiff or the official appointed to carry out the confiscation.²⁴

The provisions for confiscated goods have a different implementation. Regarding moving objects, the bailiff leaves the guard of the item to the party where the object is located.²⁵ It is different if the object confiscated is in the form of money because it is classified as moving goods.²⁶ Money confiscation can be carried out at the bank where the money is deposited or it can also be transferred to another place deemed appropriate.²⁷ For example, in the clerk of the Religious Court, provided that the money cannot be used for other purposes or borrowed by anyone.²⁸

In contrast to immovable objects, the party whose goods are confiscated becomes a legal depositor on the condition that the keeper does not cause a decrease in the value of the said goods.²⁹ Confiscation of immovable objects must be carried out at the location where the goods are located by matching their characteristics, shape and boundaries. If at the location determined by the bailiff does not find the items to be confiscated or the signs are not in accordance with those mentioned by the applicant, and then the bailiff makes a confiscation report which states that the

²⁴ Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama...*, p. 105.

²⁵ See Article 197 paragraph (9) of the HIR and Article 212 RBg which explains that the confiscation of movable property should be kept with the confiscated party where the goods are located or at the same time ordered to be taken to an appropriate place.

²⁶ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan...* p. 335-336.

²⁷ Article 197 paragraph (9) HIR and Article 212 RBg

²⁸ Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama...*, p. 106.

²⁹ *Ibid.*

items to be confiscated are not present or are not found in the location listed in the confiscation determination.³⁰

The provisions for movable objects or immovable objects that are outside the jurisdiction of the court that process the case, the Chief Justice makes a request for confiscation to the court where the goods are located.³¹ The application for seizure must be attached to a confiscation determination made by the panel of judges. The court that is requested to be seized is obliged to immediately send the result of the execution of the confiscation to the Court, which processes the case within 28 hours in the form of a confiscation report.³² Then submit the minutes of seizure at the next trial and determine the legal and valuable confiscation and recorded in the trial minutes.³³ Provisions for confiscated objects in the form of permanent objects or objects registered with government agencies or agencies, so that they are always recorded in the register book and a copy of the minutes must be submitted to the institution or agency concerned.³⁴ And every item that has been confiscated must be recorded in the religious court's confiscated register book.

The Position of Confiscation outside Divorce Lawsuit against Marriage

Marital beslage means that all joint assets are frozen under confiscation.³⁵ This serves to protect the existence and integrity of collective property for the bad intention's of either party. The focus of the assessment in this case is the security or protection of the existence of joint assets.³⁶ Provisions related to the protection of

³⁰ Roihan A. Rasyid, *Hukum Acara Peradilan Agama*, (Jakarta: Raja Grafindo Persada, 2003), p. 212.

³¹ Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama...*, p. 107.

³² Article 195 paragraph (5) HIR.

³³ Retno Wulan Sutantio, *Hukum Acara Perdata dalam Teori dan Praktek*, (Bandung: Bandar Maju, 1997), p. 77.

³⁴ See Supreme Court Circular No. 05 of 1975.

³⁵ M. Yahya Harahap, *Kedudukan Kewenangan dan Acara Peradilan*, (Jakarta: Sinar Grafika, 2001), p. 284.

³⁶ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan...*, p. 369.

joint assets can be found in the KUHPdt (Indonesian Civil Code) which reads "During the trial, the wife may take actions, with the judge's permission, to keep her belongings from being lost or wasted by the husband."³⁷ Other laws that regulate this can also be found in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, Law Number 7 of 1989 concerning Religious Courts and Compilation of Islamic Law which reads "During the ongoing divorce lawsuit for petition by the plaintiff or the defendant, the court may determine matters necessary to ensure the maintenance of goods which are joint rights of husband and wife or items which are the right of the husband or items which are the rights of the wife".³⁸

If starting from the provisions of Article 190 of the Civil Code and Article 24 paragraph (2) letter c of Government Regulation No. 9 of 1975, the application of marital beslag institutions was limited to divorce cases (*huwelijksontbinding*). However, in a broad sense, the application of marital beslag includes other disputes that arise between husband and wife such as waste of money. Another article in the Compilation of Islamic Law also states that "Without prejudice to the provisions of Article 24 paragraph (2) letter c of Government Regulation no. 9 of 1975 and Article 136 to place collateral confiscation of joint assets without an application for divorce, if one of them commits an act that is harmful and endangers joint property such as gambling, drunkenness, wastefulness and so on."³⁹

Compilation of Islamic Law explains that a husband and wife can file a request for marital beslag without a divorce suit. The application is used to protect joint assets from the actions of one of the harmful parties, such as drunkenness, gambling, wastefulness, and so on, so that they can spend their assets without intending to divorce. In other words, marital beslag guarantees joint property

³⁷Article 190 of the Civil Code.

³⁸PP No. 9 tahun 1975 Pasal 24 ayat (2) huruf c, UU No. 7 tahun 1989 Pasal 78, KHI Pasal 136 ayat (2). Ketiga peraturan perundangan ini memiliki isi dan ketentuan yang sama; Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama...*, p. 65.

³⁹Article 95 paragraph (1) Compilation of Islamic Law.

without breaking the marriage bond. The stand-alone placement of marital beslag provides flexibility for husband and wife to maintain the marriage bond.⁴⁰

The Civil Code also regulates marital beslag outside the main case (divorce suit) Article 186 of the Criminal Code, where this provision has been modified as written customary law in accordance with the spirit contained in Supreme Court Circular No.3 of 1963.⁴¹ This article explains that it is permissible for a wife to submit a request for marital beslag outside of a divorce suit and a request for separation of marital assets that are still intact if the husband's behavior actually wastes family assets which can bring catastrophic destruction to the household.⁴² The request can also be submitted if the husband's management of assets is not orderly, so that the safety and integrity of joint assets is not guaranteed.⁴³

The request for marital beslag in this case must be based on the reason that the joint property is in danger because of an act of the husband or wife which actually wastes joint property and may result in the collapse of the family and household; There is no order in managing and managing joint assets by husband or wife that could endanger the integrity of the joint assets.⁴⁴ Granting the application focuses on the reasons for filing for confiscation due to indications that joint assets can be lost and harms other parties and their children in the future.⁴⁵ Certainly, this must be accompanied by strong evidence such as authentic letters and witness statements. If this concern cannot be proven, the application for confiscation will be rejected. However, if proven, the request will be granted. Thus, an

⁴⁰ Azirah, "Juridical Review of Sita Marital on Disputes of Joint Assets in Marriage According to Law Number 1 of 1974 concerning Marriage and the Civil Code", *Skripsi*, Universitas Sumatera Utara, 2015, p. 73.

⁴¹ M.Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan...*, p. 373.

⁴² Article 186 paragraph (1) of the Civil Code.

⁴³ Article 186 paragraph (2) of the Civil Code.

⁴⁴ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan...*, p. 374.

⁴⁵ Wardhatul Jannah, "Permohonan Sita Marital (*Marital Beslage*) terhadap Harta Bersama di Luar Gugatan Perceraian (Analisis Putusan Nomor 549/Pdt.G/2007/PA.JP)", *Skripsi*, UIN Syarif Hidayatullah, 2014, p. 70.

application for seizure must be based on strong reasons by showing the judge the relevance and urgency of confiscation in the case concerned.

Collective assets that have been confiscated will have binding legal force. In line with the regulations in Article 199 paragraph 1 HIR or Article 214 paragraph 1 Rbg, starting from the hour and day the confiscation official is announced; the confiscation contains elements of legal consequences in the form of "null and void" if the property is transferred to another party.⁴⁶ This provision implies that there is a prohibition to transfer and impose such assets on third parties.

Sita Beslag outside of Divorce Suit in the Context of Hifdzul Maal

Maqashid syar'iyah is the intention and wisdom desired by the syari'at maker in all the provisions of his sharia to show the superiority of sharia laws that are not shown in certain legal cases.⁴⁷ *Maqashid syar'iyah* intends to benefit and prevent *mafsadat* (damage or bad consequences befall a person (group) due to actions or acts of violation of the law) for humans. These objectives explain the basic considerations in *maqashid* theory.⁴⁸ In general, *maqashid* aims to protect *maqashid al-khams*, namely protecting religion (*hifz al-Din*), maintaining reason (*hifz al-'Aql*), safeguarding property (*hifz al-Mal*), protecting descendants (*hifz al-Nasl*), and maintaining self (*hifz al-Nafs*).⁴⁹ These five things are a necessity to want the

⁴⁶Transferring to a third party in other words is prohibited from selling, giving away, or exchanging goods which are confiscated by marital. Charge it to third parties, namely in the form of collateral, mortgages, pawns and leases; M. Yahya Harahap, *Hukum Acara Perdata: Permasalahan dan Penerapan Conservatoir Beslag (Sita Jaminan)*..., p. 94.

⁴⁷ 'Allal al-Fasi, *Maqasid al-Shari'ah al-Islamiyyah wa Makarimuha* (Beirut: Maktabah al-Wahdah al-'Arabiyyah, 1963), p. 51; Sanuri, "Hifz Al-Mal sebagai Dasar Etik-Moral dalam Menekan Angka Kemiskinan di Indonesia", *Maliyah*, vol. 6, no. 1, 2016, p. 1192.

⁴⁸ Jasser Audah, *Al-Maqasid Untuk Pemula*, ..., p. 7.

⁴⁹ 'Abd al-Qadir 'Awda, *Al-Tashri' al-Jana'iy al-Islami Muqaranan bi al-Qanuni al-Wad'I*, p. 203; Sanuri, "Hifz Al-Mal sebagai Dasar Etik-Moral dalam Menekan Angka Kemiskinan di Indonesia", *Maliyah*, vol. 6, no. 1, 2016, p. 1194.

continuity and development of human life. In the development of Nusantara (Indonesian) fiqh thought, the fuqahā 'Nusantara continuously practiced fiqh which was unique or in accordance with the situation and condition of the people in the archipelago which of course turned out to be putting forward maqashid al-syari'ah such as Nur Al-Din Al-Raniry (W. 1068 H / 1658 AD), Syekh Abdurrauf Singkel (1024 H / 1615 AD), Shaykh Muhammad Arsyad Al-Banjari (1710-1812 AD), Sheikh Ahmad Khatib Minangkabau (1860-1916 AD), Munawir Syadzali, Ibrahim Hosen, Sahal Mahfudz , and Ali Yafie.⁵⁰

The Shari'a aims to create the benefit of mankind in this world and the hereafter.⁵¹ This statement can be said that the content of *maqashid syar'iyah* or the purpose of law is the benefit of mankind. This opinion starts on the understanding that an obligation is created to realize the benefit of mankind and none of God's laws have no purpose.⁵² Jhering called for a change from the law of causality mechanism to maqashid law. In his view, an action appears to be passive if it is based on the understanding of cause. However, if it is based on a *maqashid* understanding, actions that are moved by an intention will appear to be active and have their own awareness. Even if the purpose of an action is uncertain, without the intention of the action, it is impossible to exist as an effect without cause.⁵³

Intention is an indispensable component of legal philosophy.⁵⁴ The purpose of regulating the confiscation of collective property is realized in order to protect the property from

⁵⁰ Mursyid Djawas, *Jejak Maqashid Al-Syari'ah di Nusantara: Melacak fuqahā' berbasis maqashid al-syari'ah dan hasil ijtihadnya*, Conference Proceedings - ARICIS I, Vol 1, 2016, p. 163-167.

⁵¹ Abu Ishaq Ibrahim ibn Musa al-Ghamati asy-Syathibi, *al-Muwafaqat fi Ushaul al-Ahkam, II*, (t.tp: Dar al-Fikr, t.t.), p. 2-3; Hasan Sho'ub, *Al-Islam wa Tahaddiyah al-'Ashr*, trj. M. Luqman Hakiem, (Surabaya: Risalah Gusti, 1997), p. 30.

⁵² Kutbuddin Aibak, "Zakat dalam Perpektif Maqashdi Al-Syariah", *Ahkam*, vol. 3, no. 2, 2015, p. 210.

⁵³ Von Jhering, *Law as a Means to and End*, p. iix; Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah, ...*, p. 296.

⁵⁴*Ibid.*

extravagant actions, gamblers and drunks. Wahbah Zuhaili explained the role of *maqashid syar'iyah* in maintaining something primary of property, namely prohibiting the waste of property from things that are needed, giving donations and alms for even distribution of assets in order to benefit humans as a whole.⁵⁵

Protection of assets in the form of confiscation, in addition to protecting joint assets, but also to ensure the integrity of the marriage. The context of the application of confiscation is to protect property from actions that endanger property so that it can result in family resilience.⁵⁶ The application of this marital beslag provides flexibility for husband and wife to maintain family resilience. In the contemporary *maqashid* conception, be concerned for the family is a development of the preservation of offspring (*hifz'n nasl*) which is family oriented and moral values in Islamic law.⁵⁷ 'Abd al-Qadir' Awdah provides an example of a quite interesting settlement related to safeguarding assets. Someone who is forced to sacrifice in order to save the property of other people who really need it for their survival, then this is allowed because of *hifz nasl*. In addition, it also has a *hifz mal* element in the sense of participating in the development and empowerment of others.⁵⁸

Jamaluddin Atiyyah also explained specifically with regard to *maqashid* or the purpose of marriage law (family) by using the principle of understanding and interpreting the text of the Al-Qur'an and Hadith about *maqashid syar'iyah* marriage. He stated that the *maqashid syar'iyah* of marriage is to regulate the relationship between men and women, create a family that is *sakinah mawaddah wa rahmah* (happy, loving and supportive), keep offspring, maintain diversity in the family, set good patterns in the family, and regulate

⁵⁵ Wahbah al-Zuhaili, *Maqashid al-Syariah al-Islamiyah fi al-Mal wa al-Iqtishad al-Islami*; Andi Iswandi, "Maslahat Memelihara Harta dalam Sistem Ekonomi Islam", *Salam: Jurnal Filsafat dan Budaya Hukum*, vol. 1, no. 1, p. 29.

⁵⁶ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan...* p. 374.

⁵⁷Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, ..., p. 320.

⁵⁸ Ibn 'Asyur dalam Jasser Auda, *Al-Maqashid untuk Pemula*. ..., p. 56.

the financial aspects of the family.⁵⁹

Protection of assets in confiscation is intended to maintain human needs from the financial aspect of the family while maintaining family relationships. Intent systems can produce different results for the same environment as long as the different results achieve the desired purpose.⁶⁰ Concern for the family is another result found in refinement as a manifestation of property protection. With this, safeguarding property in the context of confiscation outside of a divorce suit helps to maintain relationships between individuals (families).

The confiscation policy follows the consideration of the principles of *maqashid syar'iyah* and the wishes of the community through social benefits. The benefits expressed by nas or not directly expressed by nas will combine into one category of benefit mentioned in the text.⁶¹ This includes explicitly and implicitly as long as the benefit reaches *maqasid* in the Islamic legal system.

Conclusion

The basic concept of *maqashid syar'iyah* as an ethical-moral basis is to reveal the goals to be achieved from a legal stipulation in order to achieve *maslahah* for humans both in the world and in the hereafter by parsing the five features of *daruriyyat al-khamsah*, namely: (1) maintain religion; (2) nurturing the soul; (3) maintaining offspring; (4) maintaining reason; and; (5) maintaining property.

Protection of assets in the form of confiscation is an effort to maintain the financial aspects of the family while maintaining family relationships. Safeguarding assets in the context of confiscation outside of a divorce suit also maintains relationships between individuals (families). This is done through a system of intent which can produce different results for the same environment

⁵⁹ Jamaluddin 'Atiyyah, *Nahwa Taf'il Maqasid Syariah*, (Damaskus: Dar al-Fikr, 2001), p. 149.

⁶⁰Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, ..., p.94.

⁶¹*Ibid.*, p. 308.

as long as the different results achieve the desired purpose.

References

- Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*. Jakarta: Kencana, 2006.
- Andi Iswandi, "Maslahat Memelihara Harta dalam Sistem Ekonomi Islam", *Salam: Jurnal Filsafat dan Budaya Hukum*, vol. 1, no. 1, 2014.
- Azirah, "Tinjauan Yuridis terhadap Sita Marital atas Sengketa Harta Bersama dalam Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kitab Undang-Undang Hukum Perdata", *Skripsi*, Universitas Sumatera Utara, 2015.
- A. Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama*. Yogyakarta: Pustaka Pelajar, 1998.
- Basiq Djalil, *Peradilan Agama di Indonesia*. Jakarta: Kencana, 2006.
- Hasan Sho'ub, *Al-Islam wa Tahaddiyah al-'Ashr*, trj. M. Luqman Hakiem. Surabaya: Risalah Gusti.
- Jamaluddin 'Atiyyah. 2001. *Nahwa Taf'il Maqasid Syariah*. Damaskus: Dar al-Fikr.
- Jasser Auda, *Al-Maqashid untuk Pemula*. Yogyakarta: SUKA-Press, 2013.
- Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*. Bandung: Mizan Pustaka, 2015.
- Kutbuddin Aibak, "Zakat dalam Perpektif Maqashdi Al-Syariah", *Ahkam*, vol. 3, no. 2, 2015.
- K. Wantjik Saleh, *Hukum Acara Perdata RBG/HIR*. Jakarta: Ghalia Indonesia, 2002.
- Lisa Elisabeth Barahamin, "Pelaksanaan Sita Marital dalam Perkara Perceraian", *Lex et Societatis*, vol. 5, no.4, 2017.
- Maghfur Ahmad, "Nadhlatul Ulama dan Penegakan Hak Asasi Manusia di Indonesia", *Religia: Jurnal Ilmu-Ilmu KeIslaman*, vol.13, no. 2, 2010.
- Mahkamah Agung dan Direktorat Jendral Badan Peradilan Agama, *Buku Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama* (Edisi Revisi 2010)
- Mardani, *Hukum Keluarga Islam di Indonesia*. Jakarta:

Prenadamedia Group, 2016.

- Muchsin Bani Amin. 2016. *Hukum Acara Peradilan Agama/Mahkamah Syar'iyah*. Banda Aceh: Percetakan Hijrah.
- Muhammad Syukri Albani Nasution. 2013. *Filsafat Hukum Islam*. Jakarta: Raja Grafindo Persada.
- M. Fauzan, *Pokok-Pokok Hukum Acara Perdata Peradilan Agama dan Mahkamah Syar'iyah di Indonesia*. Jakarta: Prenada Media, 2005.
- M. Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, dan Putusan Pengadilan*. Jakarta: Sinar Grafika, 2011.
- , *Kedudukan Kewenangan dan Acara Peradilan*. Jakarta: Sinar Grafika, 2001.
- , *Hukum Acara Perdata: Permasalahan dan Penerapan Conservatoir Beslag (Sita Jaminan)*. Bandung: Pustaka, 1990.
- M. Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian al-Qur'an*. Jakarta: Lentera Hati, 2002.
- Mursyid Djawas, *Jejak Maqashid Al-Syari'ah di Nusantara: Melacak fuqahā' berbasis maqashid al-syari'ah dan hasil ijtihadnya*, Conference Proceedings - ARICIS I, Vol 1, 2016, p. 163-167.
- Naerul Edwin Kiky Aprianto, "Konsep Harta dalam Tinjauan Maqashid Syari'ah", *Journal of Islamic Economi Lariba*, vol. 3, no. 2.
- Retno Wulan Sutantio. 1997. *Hukum Acara Perdata dalam Teori dan Praktek*. Bandung: Bandar Maju.
- Rocky Marbun, *Kiat Jitu Menyelesaikan Kasus Hukum*. Jakarta: Visimedia Pustaka, 2011.
- Roihan A. Rasyid, *Hukum Acara Peradilan Agama*. Jakarta: Raja Grafindo Persada, 2003.
- Sanuri, "Hifz Al-Mal sebagai Dasar Etik-Moral dalam Menekan Angka Kemiskinan di Indonesia", *Maliyah*, vol. 6, no. 1, 2016.
- Syukur Prihantoro, "Maqasid Al-Syari'ah Dalam Pandangan Jasser Auda (Sebuah Upaya Rekonstruksi Hukum Islam Melalui Pendekatan Sistem)", *Jurnal At-Ta'fikir*, vol. 10, no. 1, 2017.

Wardhatul Jannah, “Permohonan Sita Marital (*Marital Beslage*) terhadap Harta Bersama di Luar Gugatan Perceraian (Analisis Putusan Nomor 549/Pdt.G/2007/PA.JP), *Skripsi*, UIN Syarif Hidayatullah, 2014.