



El-Usrah: Jurnal Hukum Keluarga

<https://jurnal.ar-raniry.ac.id/index.php/usrah/index>

Vol. 6 No. 1 January- June 2023

ISSN: 2549 – 3132 || E-ISSN: 2620-8083

The Evaluation of *Maqāṣid Asy-Syarī'ah* on Discourses of the Islamic Family Law

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Abstract

The concept of *maqāṣid syarī'ah* and its relationship to family law is an intriguing topic for academic inquiry and discussion. The *maqāṣid syarī'ah* is a concept that defines a goal of Islamic law for the betterment of life in this world and the hereafter. This objective is achieved in human existence by safeguarding religion, soul, reason, progeny, and property. The term *al-aḥwāl al-syakḥṣiyyah*, which refers to kinship relations, can be considered a substitute for the term *munākahāt*, which is commonly used in classical *fiqh* texts. The numerous issues that intersect with the concept of family law must be viewed through the lens of sharia objectives. How then does the *Shari'ah* respond? This article attempts to analyze it using a literature review and the *maqāṣid syarī'ah* analysis instrument. Based on *al-'ādat* from *al-Syātibī*, the understanding of *al-aḥwāl al-syakḥṣiyyah* should be based on the interpretation of the meaning of the texts of the Qur'an and hadith, so that religious texts related to *al-awl al-syakḥiyyah* are not positioned as a form of legal-formal rule, but rather as a search for the meaning contained in religious arguments in the Islamic law

Keywords: *Maqāṣid Syarī'ah*, Kinship, *Al-aḥwāl-syakḥṣiyyah*

Abstrak

Konsep maqāṣid syarī'ah dan hubungannya dengan hukum keluarga merupakan topik yang menarik untuk dikaji dan didiskusikan secara akademis. Maqāṣid syarī'ah adalah sebuah konsep yang mendefinisikan tujuan hukum Islam untuk perbaikan kehidupan di dunia dan akhirat. Tujuan ini dicapai dalam eksistensi manusia dengan menjaga agama, jiwa, akal, keturunan, dan harta benda. Istilah al-aḥwāl al-syakḥṣiyyah, yang mengacu pada hubungan kekerabatan, dapat dianggap sebagai pengganti istilah munākahāt, yang biasa digunakan dalam teks-teks fikih klasik. Banyaknya isu yang bersinggungan dengan konsep hukum keluarga harus dilihat dari sudut pandang tujuan syariah. Lalu bagaimana syariah menanggapi? Artikel ini mencoba menganalisisnya dengan menggunakan tinjauan literatur dan instrumen analisis maqāṣid syarī'ah. Berdasarkan al-'ādat dari al-Syātibī, pemahaman terhadap al-aḥwāl al-syakḥṣiyyah harus didasarkan pada interpretasi makna teks-teks al-Qur'an dan

hadis, sehingga teks-teks keagamaan yang berkaitan dengan al-ahwāl al-syakhsīyyah tidak diposisikan sebagai suatu bentuk aturan legal-formal, tetapi lebih pada pencarian makna yang terkandung dalam dalil-dalil keagamaan dalam syariat Islam.

Katakunci: *Maqāṣid Syarī'ah, Kekerabatan, Al-ahwāl-syakhsīyyah*

Introduction

As a reform endeavor at the philosophical level, the study of family law (*al-ahwāl al-syakhsīyyah*) feels compelled to establish a position in relation to family law. This is done so that family law does not acquire the stigma of being a law characterized by a textual approach that tends to be static and unchanging. Discourses on family law are frequently centered on textual arguments that form the foundation of their abstracts, originating from classical *fiqh* books as the basis for provisions that sometimes trump legal reasoning in concluding the law. This point reinforces the notion that Islamic family law is only dissected with an analytical knife by examining, reading, and comprehending the statute's articles, without further consideration of the philosophical aspect intended by the article's rules.

Analyzing the intent and purpose of the law enforcement, also known as the *maqāṣid asy-syarī'ah* approach, is the preventive approach replicated in modernizing family law perspectives. This approach is worthy of further investigation, so that the study of Islamic law, particularly family law, is not limited to the textual level, and family law discussions cannot be isolated from sociological and philosophical considerations. Why is this so crucial? Because the purpose of enforcing law (*Islamic syari'at*) is to achieve social welfare and kindness for all of humanity. It is time for the implementation of a law to be aligned with concrete goals. It is believed that law contributes to the realization of justice, kindness, and mutual benefits for all members of the society.

A study that employs the *maqāṣid asy-syarī'ah* concept to pursue a philosophical goal or law also consider the implication, i.e., whether the impact is constructive or destructive. Therefore, it is necessary to take a sociological and philosophical perspectives on the application of a law in the society. This simultaneously addresses the doubt of some individuals that the law can adapt to changes and developments in the society.

When discussing the Islamic law, it is impossible to disregard its contexts, including the study of jurisprudence as a derivative scientific discipline for comprehending commands and prohibitions. *Fiqh* is interpreted as a comprehension of God's revealed propositions in order to render God's language into human language. Therefore, *fiqh* must be viewed from multiple angles of comprehension and perspectives, including social science and humanities approaches. This implies that it is not sufficient to comprehend the law by merely reading and analyzing the text of the *Qur'an* and *hadith*, without considering the spirit behind why the law was created. Particularly in the sphere of the family law, as a private law that every human being experiences by virtue of their nature, namely procreation through marriage.

This article was examined using the library research method and the *maqāṣid asy-syarī'ah* approach, focusing on the nature and nature of family relationships within the context of family law. Library research is a method of conducting research that entails the collection of all information derived from various forms of literature, such as notes, books, and the outcomes of previous research.¹

According to Abdul Rahman Sholeh, library research is a study that seeks to obtain sources or research objects by placing extant library facilities such as books, journals, magazines, documents, and historical story records. In brief, library research that is exclusive to the subject of study.²

The Family Law: Narration and Scope (*al-Aḥwāl al-Syakḥṣiyyah*)

Al-Aḥwāl al-syakḥṣiyyah is a term that can be considered new in the discourse of *fiqh* disciplines, as the use of this diction appears to have emerged in recent times. The term *al-aḥwāl al-syakḥṣiyyah* can be considered a substitute for the term *munākahāt*. The previous term *munākahāt* appears frequently in discussions in classical *fiqh* texts that, in general, cover the same topics as the new term *al-aḥwāl al-syakḥṣiyyah* does. The book of *fiqh* systematically divides the discussion of *al-aḥwāl al-syakḥṣiyyah* into four sections: *rub 'al-'ibādāt*, *rub 'al-mu'āmalāt*, *rub 'al-munākahāt*, and *rub 'al-jināyāt*. After the cultural contact between Islam and the Western culture, specifically in the second half of the nineteenth century, new classifications emerged in contemporary *fiqh*, one of which is *al-aḥwāl al-syakḥṣiyyah*, which is viewed as more malleable than the *munākahāt* found in conservative *fiqh* systematics. *al-aḥwāl at-ta'abbudiyah*, *al-aḥwāl al-syakḥṣiyyah*, *al-aḥwāl al-māliyyah wa al-māddiyyah*, *al-aḥwal al-madaniyyah*, *al-aḥwāl al-jinā'iyah dan al-aḥwal al-siyāsiyyah*.³

Etymologically, *al-aḥwāl al-syakḥṣiyyah* refers to indications of a connection to private/personal problems or concerns. In contrast, the practical meaning of *al-aḥwāl al-syakḥṣiyyah* is closer to that of the terms private law or *personenrecht*. In private law, or *Personenrecht*, matters that become subject to the law related to legal authority and authority to act, or in Dutch, *rechtsbevoegdheid* and *handelingsbevoegdheid*, respectively.⁴

In *al-aḥwāl al-syakḥṣiyyah*, however, it is interpreted more broadly, not only discussing and regulating the relationship between legal authority and authority to act (*ahliyyah al-wujūb*, *ahliyyahal-adā'*), but also more generally. Regulates family law and its derivatives, including endowments and grants. Taher Mahmood,

¹ Iqbal Hasan, *Analisis Data Penelitian dengan Statistik*, (Jakarta: Bumi Aksara), 2008, p. 5.

² Abdul Rahman Sholeh, *Pendidikan Agama dan Pengembangan untuk Bangsa*, (Jakarta: PT. Raja Grafindo Persada, 2005), p. 63.

³ Dahlan Abdul Azis, dkk, *Ensiklopedi Hukum Islam I*, (Jakarta: PT. Ihtiar Baruwan Hoeve, 1996), p. 56.

⁴ L.J. Van Apeldoorn, *Pengantar Ilmu Hukum*, cet. 26 (Jakarta: Pradnya Paramita, 1996), p. 221.

departing from this discourse, refers to *al-aḥwāl al-syakhṣiyyah* as private law for Muslims, or as Muslim Personal Law. Given that the scope of the discussion is more rigorous and intricate, and that its origin is religious doctrine, this term is not regarded as an exaggeration.⁵

Moreover, from the perspective of legal accountancy, Burgerlijk Wetboek, the 'Holy Book' of Indonesian civil society, is divided into four sections:

- a. Book I (covering persons and family law);
- b. Book Two (objects and inheritance law);
- c. Book III (relating to contracts);
- d. Book IV (pertaining to proof and expiration);

In contrast to the preceding content, *al-aḥwāl al-syakhṣiyyah* has the same technical scope as BW in terms of the discussion of Book I and other Books.⁶

In general, it can be asserted that Muhammad Qodri Pasha, an Egyptian Islamic legal figure, was the first to establish *al-aḥwāl al-syakhṣiyyah* as a distinct body of law and then consolidate it into a single volume. The compilation (codification) that he performed was then compiled into a book titled *al-Aḥwāl al-Syar'iyyah fī al-Aḥwāl al-Syakhṣiyyah*, whose subject comprises the fundamentals of marriage law and its derivatives, including grants, inheritance, and waqf.⁷

In brief, *al-aḥwāl al-syakhṣiyyah* comprises the private rights and responsibilities of each person who is referred to as the subject of marriage law. The legal scope of family law encompasses premarital and post-marital "ceremony," as well as events, consequences, and legal ramifications following the dissolution of a marriage. In addition to the aforementioned topics, *al-aḥwāl al-syakhṣiyyah* also discusses inheritance provisions such as wills, grants, and endowments.

Why do inheritance-related studies fall within the scope of *al-aḥwāl al-syakhṣiyyah*? Due to the fact that marriage is the smallest organization capable of forming kinship relationships, inheritance has legal ramifications. In contrast to inheritance, grants and waqf are included in the scope of *al-aḥwāl al-syakhṣiyyah*'s discussion due to contracts that prioritize justice and benefit rather than material gain, as is the case with the *mu'āmalah* concept in general.

Dede Rosyada disclosed in a study, citing Mahmud Syaltut's statement as an illustration, that the most prominent feature of *al-aḥwāl al-syakhṣiyyah* is the presence of family and kinship values in every study and scope of its law.⁸ *Al-aḥwāl al-syakhṣiyyah*, which has been extensively discussed in the preceding discussion, provides a common thread that this term is used in light of the numerous discussions

⁵Taher Mahmood, *Personal Law in Islamic Countries: History, Text and Comparative Analysis* (New Delhi: Academy of Law and Religion, 1997), p. 3.

⁶Actually, BW Book II covers object law in general, while *al-aḥwāl al-syakhṣiyyah* object law only covers inheritance, gifts, and endowments.

⁷Dahlan Abdul Azis, dkk, *Ensiklopedi Hukum Islam I*, p. 56.

⁸Dede Rosyada, *Hukum Islam dan Pranata Sosial*, cet. 5, (Jakarta: Rajawali Pers, 1999), p. 75.

pertaining to family and relatives, giving the impression that Islamic family law is another name for *al-ahwāl al-syakhsīyyah*.

Maqāṣid Asy-Syarī'ah: The Conception in Studies of Family Law

Family law (*al-ahwāl al-syakhsīyyah*) is a subset of the derivatives of *mu'āmalah* laws, whose discussion is broader, because family law is not only a matter of social contracts, but also religious contracts that have value before Allah. Talking about the scope of *mu'āmalah* and worship, the 14th-century Spanish scholar al-Syātibī stated unequivocally and emphatically that *mu'āmalah* and worship enable progressive *ijtihād*.

Syātibī divides Islamic law into two fields: the field of ritual worship on the one hand, and the field of social worship on the other. According to al Syātibī, ritual worship is a collection of human actions that are solely Allah's right as the religiously lawful God. The purpose (*maqāṣid*) and its secrets cannot be readily translated by human reasoning, and even if they could be, they are quite general and comprehensive, excluding minute and specific details.⁹

The challenge, according to al Syātibī divides Islamic law into two fields: the field of ritual worship on the one hand, and the field of social worship on the other. According to al Syātibī, ritual worship is a collection of human actions that are solely Allah's right as the religiously lawful God. The purpose (*maqāṣid*) and its secrets cannot be readily translated by human reasoning, and even if they could be, they are quite general and comprehensive, excluding minute and specific details, is that the rules contained in the text that govern matters of ritualistic devotion must be carried out in accordance with absolute teachings, without addition, modification, or diminution. This is what al Syātibī refers to as *ta'abbud*.¹⁰ According to al-Syātibī, in contrast to ritual devotion, social activity (*al-ādat*) is a human right and its nature is explicable through human reasoning. Therefore, the reference is the meaning and not the legal formalities. This is what al-Syātibī means when he uses the term *ta'aqqulī* albeit in an indirect manner. According to al-Syātibī, all social activities are fundamentally combined with the intent behind an order. This implies that all activities involving social relations between humans, as well as endeavors to interpret this in context, become commonplace, if not an absolute necessity.¹¹

An understanding *al-ahwāl al-syakhsīyyah* discourse should be based on the interpretation of the meaning of the texts of the Qur'an and hadith, so that religious texts related to al- *al-ahwāl al-syakhsīyyah* are not viewed as a form of legal-formal rule, but rather as a search for the meaning contained in religious arguments in the form of verses and hadiths in accordance with what the *maqāṣid asy-syarī'ah* approach is comprised of all endeavors to determine the law's goals, objectives, and

⁹Abu Ishaqal-Syatibi, *Al-Muwafaqat fi Usulal-Ahkam*, ed. Muhammad al-Khudar Hussain at-Tulisi (Beirut: Darar-Rasyadah al-Hadisah, t.t.), II p. 215.

¹⁰Ibid., p. 218.

¹¹Ibid., p. 223

desires. To discover the objectives of Islamic law (*maqāṣid asy-syarī'ah*) in verses and hadiths, one must employ a *fiqh* proposal method known as *al-qawā'id al-tasyrī'iyyah*; Nar Ab Zaid refers to it as the "contextual reading method."¹²

On the basis of the preceding narrative, it is conceivable that both *fiqh* proposals and contextual readings utilize *asbāb an-nuzūl* as the primary instrument for interpretation and legal *istinbāt* from the Qur'anic and hadith texts. Nonetheless, if Usul *Fiqh* scholars emphasize the significance of *asbāb an-nuzūl* to comprehend a meaning by holding the generality of the lafaz rather than the specificity of the cause (*al-ibrah bi 'umūm al-lafz lā bi khusūṣi al-sabab*), then the contextual reading is the opposite, namely based on a consistent basis. to a cause specifically, not a term generally (*al-ibrah bi khusūṣial-sabablā bi 'umūm al-lafz*).¹³

Reading the context of a verse of the Qur'an entails delving into the reasons why a verse could exist in society at that time, what circumstances led to a verse's revelation, etc. In other words, as interpreters, one must be able to read and comprehend the socio-historical context of a text disclosed 14 centuries ago in Arab lands from multiple perspectives and approaches. Consequently, if this is done exhaustively, the interpreter can determine the law between the veracity of the sanctity of revelation and the social history of pre-Islamic society.¹⁴ In the end, a contextual interpretation of a verse of the Qur'an or hadith can result in a disparity between the historical meaning and significance indicated by the meaning in the interpreter's sociohistorical context.¹⁵

Attempts to reason on these revealed texts are a process of delving deeper into the *maqāṣid al-tasyrī'*, specifically by examining their positive and negative implications. Al-Syātibī asserted that all *ijtihād* activities employing the *istiṣlāhī* mode of reasoning must consider the ramifications of their actions.¹⁶ The aim of the law (*syara'*) is to pay attention to the repercussions of an action, so a person who engages in *ijtihād* must not reach a conclusion about a person who takes legal action before analyzing the impact of the legal actions taken.¹⁷

If every interpreter enforcing the law considers the effects of the action, then it is evident that the extent to which human welfare is the law's objective can be determined using general logic. In other words, the advantage *taḥsīniyyah* is a complement to the advantage of *ḥājiyyah*, and the advantage of *ḥājiyyah* is a complement to the advantage of *ḍarūriyyah*.

The benefit of the *taḥsīniyyah* need not be maintained if doing so could result in the loss of the *ḥājiyyah* benefit, let alone the *ḍarūriyyah*. In accordance with the

¹²Nasr Hamid Abu Zaid, *Dekonstruksi Gender: Kritik Wacana Perempuan dalam Islam*, terj. Muhammad Nur Ichwan, (Yogyakarta: PSW IAIN Sunan Kalijaga & SAMHA, 1999), p. 180.

¹³Bani Syarif maula, *Kajian al-Aḥwāl al-Syakhṣiyyah dengan Pendekatan Maqāṣid asy-Syarī'ah dalam Jurnal Al-Hukama'*, Vol. 3, Juni 2013, p. 10-11.

¹⁴Ibid., p. 12.

¹⁵Abu Zaid, *Dekonstruksi Gender*, p. 180.

¹⁶Bani Syarif Maula, *Kajian al-Aḥwāl al-Syakhṣiyyah*, p. 13

¹⁷ Ibid.

statement that things that complement do not need to be protected and maintained if they lead to the loss of the primary object that they complement. Similarly, the advantages of *hājiyyah* do not need to be safeguarded and defended if doing so could result in the loss of the advantages of *darūriyyah*. To preserve the benefits of *darūriyyah*, it is 'obligatory' to consider the presence or absence of benefits and the urgency of the benefits that are more important among the five things: protecting religion, protecting the soul, protecting the mind, protecting honor, and protecting wealth.¹⁸

The Actualization of the *Maqāṣid Asy-Syarī'ah* in the Study of Family Law

Based on the scope of family law, there are at least thirteen categories of study objects accessible from *maqāṣid asy-syarī'ah*, as follows:¹⁹

1. Minimum legal marriage age;
2. The guardian's function in marriage ceremony;
3. Marriage registration and recording;
4. Dowry and wedding-related costs;
5. The polygamy;
6. Assistance for the wife and family;
7. Divorce before the court;
8. Women's liberties following a divorce;
9. Pregnancy issues and their legal repercussions;
10. After a divorce, rights and responsibilities regarding child care;
11. Rights of inheritance for sons and daughters;
12. Will is issued for heirs;
13. The validity and administration of family waqf.

In addition to the thirteen categories listed above, there are still contentious family law issues, such as the issue of witnesses (testimony) in sued divorce/divorce. Based on the interpretation of religious texts such as the Qur'an and Sunnah, the Islamic law stipulates that the right to divorce a wife resides with the husband Q.S. al- Baqarah [2] ayat 231 dan Q.S. al-Ahzāb [33] ayat 49.

The verse above, Sunni ulama concur with the statement that a divorce imposed on a wife is permissible and valid even in the absence of prior discussion.²⁰ Similarly, since divorce is a husband's prerogative, there is no need for a divorce witness.²¹ How should the context of talak, which is mentioned in QS. Aṭ-Ṭalāq [65] verse 2 expressly requires witnesses when announcing a divorce.

¹⁸ 'Abdul Wahhab Khallaf, *Ilm Usul al- Fikih*, p. 206.

¹⁹ Khoiruddīn Nasution, *Pengantar dan Pemikiran Hukum Keluarga (Perdata) Islam Indonesia*, (Yogyakarta: ACAdEMIA dan TAZZAFa, 2010), p. 42.

²⁰ Al-Sayyid Sabiq, *Fikihal-Sunnah II*, (Beirut: Daral-Fikr, 1397H/1977M), p. 212

²¹ Ibid., p. 220.

فَإِذَا بَلَغَ أَجَلَہُنَّ فَأَمْسِكُوہُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوہُنَّ بِمَعْرُوفٍ وَأَشْہِدُوا ذَوٰی عَدْلِ مِنْکُمْ وَأَقِیْمُوا الشَّہَادَةَ لِلَّہِ

“Therefore, when they are close to the end of their iddah, refer (back to) them properly or release them properly, and testify with two witnesses who are just among you, and uphold the testimony for Allah.”²²

The Sunni Ulama argue that the verse implies that the existence of witness in the sued divorce is only recommendatory.²³ This indicates that the witness is present at an issue that has a function in evidentiary cases, excluding the divorce case, which is not included in the activities that require proof. In addition, Sunni scholars presume that the Prophet Muhammad and his companions SAW have never found any historical evidence of them imposing divorce throughout history.²⁴

Sunni scholars support this contention by comparing witnesses in *talah* to witnesses in purchasing and selling transactions, as stated in Q.S. Al-Baqarah [2] verse 282 (...*wa asyhidu idza tabaya'tum...*), which recommends witnesses, is not an obligation.²⁵ So, what are the opinions of other academics? For instance, Shi'a clerics require witnesses when imposing a divorce. Their contention that the presence of witnesses during the imposition of a divorce is in accordance with the provisions outlined in Q.S. Aṭ-Ṭalāq [65] verse 2, specifically the meaning of the word *zahirayat*, indicates the necessity of witnesses in both divorce and reconciliation. Sayyid al-Murtaḍā, as cited by al-Sayyid *Sābiq* in his book *al-Intiṣār*, described the legal standing of an order that requires the presence of witnesses.²⁶

The opinion of Sunni scholars that there is no history of the Prophet's hadis or the Companions' *atsar* (practices) regarding the existence of witnesses in the Prophet's divorce of his wife is not a sufficient reason to accept the argument. This is due to the fact that academicians from other circles hold a different view regarding the necessity of witnesses in the event of a divorce, using the history of the Prophet and his companions as evidence. In addition, the Sunni scholars' comparison of divorce witnesses with purchasing and selling witnesses is erroneous because there is no parallel 'illat between *al-aṣl* and *al-far*.

The analogy is that buying and selling is a common occurrence in society, so the requirement to present witnesses is felt to slow down contracts and economic transactions, where people want everything to be conducted promptly and honestly. Buying and selling activities also involve an agreement and willingness between two parties, the seller and the customer. Obviously, this is distinct from the imposition of divorce on a wife, which is typically the husband's will for no discernible reason. The Shia scholars also reasoned that the obligation to present witnesses in the

²²*Al-Qur'an al-Karim dan Terjemah Bahasa Indonesia*, p. 558.

²³Al-Qurtubi, *Al-Jami'li Ahkamal-Qur'an*XVIII, (Beirut: Daral-Kutubal-'Ilmiyyah, 1413 H/1993M), p. 105.

²⁴Abdurrahman as-Sabuni, *Mada Hurriyyah al-Zaujain fi al-Talaq fi al-Syari'ah al-Islamiyyah*, (Beirut: Daral-Fikr,1968), I: 476.

²⁵Ibid.

²⁶Al-Sayyid Sabiq.

imposition of divorce is a necessity which is in accordance with the principle of divorce, namely the permissibility of something that is hated by Allah, in other words it is only carried out as an emergency exit and the last way out when a fatal problem occurs.

If we pay closer attention to the opinions of Sunni and Shi'a scholars, we can conclude that the argument from Shi'a scholars is more in line with the Islamic concept of divorce, which is an endeavor to complicate and reduce the incidence of divorce in holy and sacred marriages. In addition, the wife's rights as a woman will be accommodated and maintained appropriately. With witnesses, it is anticipated that someone will be able to calm the husband's anger before he divorces his wife. Or, at the very least, in the presence of witnesses, the imposition of divorce was based on rational considerations and complete awareness.

Based on the preceding discussion, at least divorce is not solely based on religious texts; furthermore, the imposition of divorce should be studied to determine its effects; if this is done, efforts to make divorce more difficult will be strengthened and better integrated. This is consistent with the philosophical and sociological view that the concept of a legal act in the form of marriage requires further examination. Moreover, in Islam, marriage is a strong, sacred bond that is not haphazardly attached to other things. This is distinct from the act of *talak*, which must be avoided in religious acts because the Quran describes *talak* as something Allah abhors.

The presence of witnesses in *talak* indicates that it embodies the purpose of the reason that the *talak* is permissible, namely as the last solution that is taken when there is no hope of maintaining the marriage as husband and wife in the marriage bond, and not as an absolute right of the husband who is free to pronounce without restrictions. - constraints that limit its use. As stipulated in Article 39 Paragraph (1) of Law No. 1 of 1974 Concerning Marriage and Article 115 of the Compilation of Islamic Law, divorce must be carried out in front of a Religious Court session. This can be justified in *syar'i* based on the legal *istinbat* method, which adheres to the principle of analyzing the impact of law philosophically and sociologically to realize the *maqāṣid asy-syarī'ah* implied in religious texts regarding divorce.

Conclusion

The concept of *maqāṣid syarī'ah* is an approach that illustrates the objectives of Islamic syari'ah for the benefit of human activity. This objective is attained by protecting five essential and final items (religion, soul, mind, lineage, and wealth). Aside from that, it is no less essential to uphold the values of humanity, justice, community, and harmony. *maqāṣid syarī'ah* development has elicited controversial responses from members of society, not least in the context of family law. From the standpoint of upholding human rights, freedom, justice, equality, etc *maqāṣid syarī'ah* is frequently simplified to the point where it is used to legalize the products of liberal thought. For instance, the absolute ban on polygamy, the freedom of interfaith marriages, etc.

According to the responses above, there is a need for a comprehensive and substantial comprehension of the conflict between the concept of *maqāṣid syarī'ah* and family relationships. Based on the concept of al-'ādat from al-Syātibī, understanding of al-aḥwāl-al-syakḥṣiyyah must consistently refer to the meaning contained in religious texts, so that the verses of the Qur'an and hadiths about al-aḥwāl al -syakḥṣiyyah is not placed as a form of legal-formal rules, but seeks the goals desired by the shari' both philosophically and sociologically in human life. In conclusion, Islamic Family Law is able to respond to the needs and challenges of the times and undergo progressive renewal in accordance with the spirit of law which promotes gender equality, rejects the expectation of child marriage, fights for Islamic family law that breaks the ice of tradition, as well as the contextualization project of family law in the Islamic world by adhering to *maqāṣid syarī'ah*

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