

## Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach

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**Abstract:** Every Muslim must adhere to or adhere to the Qur'an and Hadith. In Islamic law, it is known as maqashid sharia. Prohibition of carrying out a marriage because one-sucks can be seen from the maqashid sharia. in maqashid sharia, the purpose of Allah to make the law is to maintain the benefit of mankind, as well as to avoid *mafsadat*, both in this world and in the hereafter. The purpose of this research is to find out why in Islam it is forbidden to marry because of the same age. The findings in the study show that there are five main elements that are protected against the stipulation of the prohibition of marriage because of being one-sided in Islam. The five main elements are guarding religion (*hifdz ad-Diin*), guarding the soul (*hifdz an-Nafs*), maintaining reason (*hifdz al-'Aql*), guarding descent (*hifdz an-Nasl*), and protecting property (*hifdz al-Mal*).

**Keywords:** Islamic Law, Prohibition of Marriage, Breastfeeding, Maqashid Sharia

### 1. Introduction

Marriage is a way determined by Allah as a way for human beings to meet their biological needs. However, marriage in the teachings of Islam not only meets the biological needs alone, but marriage is an act of worship and means the implementation of Allah's command as a reflection of the creature's obedience to his creation (Nur, 1993). The issue of marriage has been arranged so neatly by Islam, because marriage is an absolute sacred institution that must be followed and maintained. Marriage also has certain pillars and conditions that must be met. Pillars and conditions of marriage are the basis for the legality of marriage (Sabiq, 1997). One of the conditions that must be met is that the woman who will be married by a man is a woman who is halal to be married.

Marriage can be hindered even though it has fulfilled all the principles and conditions that have been set, one of the causes is because of having a relationship of a child. The intercourse is the reason why it is forbidden for a man to marry a woman. In Islam it is known as *rada'ah* (Mukhtar, 1993).

The prohibition of marriage with siblings is also contained in the law of marriage, as well as what is regulated in Islamic law which is the reference for the Islamic community in responding to family cases, one of which is the prohibition of marriage due to a relationship of consensual nature, therefore

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researchers try to explain how and what legal reasons Islam prohibits marriage because the relationship is considered in the maqashid sharia.

### 1.1 Problem Statement

This study is an analysis of the purpose of Allah forbidding marriage due to the existence of a sexual relationship, then associated with the maqashid sharia. The focus of this study is more on the reasons of *maslahat*, meaning to find the point of truth and wisdom behind the prohibition of holding a marriage because of a relationship if viewed from the maqashid sharia. Legal basis and considerations used in accordance with the arguments of the Qur'an and Hadith related *rada'ah*. This research was conducted in Indonesia, bearing in mind that there are frequent marriages, which in fact are one-half-siblings (Syarifuddin, 2006)

## 2. Materials and Methods

The research methodology used is a normative juridical research model. This type of research is library research or document study, namely research carried out or service to the norms contained in written texts such as those contained in scientific books which are used as the main reference in terms of studies or research which are sourced and based on secondary data. The nature of the research used is a descriptive concept which aims to analyze and analyze the maqashid sharia concept as a basis for the prohibition of marriage because of breastfeeding. The data source used is secondary data, which is data originating from library materials such as books, journals, articles and information from websites or data obtained by researchers indirectly from the object but from other sources, both oral and writing (Suratman & Dillah).

Information materials as additional aspects of research sources can be primary legal materials, secondary legal materials and tertiary legal materials (Irianto & Sidharta, 2011). The data collection research technique used is library research (Marzuki, 2013), research that aims to obtain data by reading books, theories and principles whose relevance is in accordance with the problems to be discussed in this normative juridical research (Ali, 2010). Data analysis used is to map the data that has been obtained in order to get a conclusion from the research results in analyzing this research, the researcher uses qualitative analysis, namely grouping data according to the aspects studied, a conclusion is drawn with or without using numbers statistics (Moleong, 2007).

## 3. Results and Discussion

The following will describe in detail the study to be investigated. That is, everything related to the reasons for the prohibition of marriage because of a relationship that is in the maqashid sharia perspective, is explained below. As for that which will be described, among others: the definition of the relationship of the same relationship, the arguments for prohibition of marriage because of the relationship of the same, the concept of maqashid sharia, the *maslahat* values of the prohibition of marriage because of the same relationship, and finally closed with an analysis of the prohibition of marriage because of the same relationship.

### 3.1 Meaning of Breastfeeding

Breastfeeding in religious terms is called *ar-rada'* (*al-rada'ah*) or *ar-rida'* (*ar-rida'ah*) which means breastfeeding (sucking). While breastfeeding babies are called *ar-radi'*, breastfeeding mothers are called *al-murdi'ah* (Munawwir, tt). Etymologically, *al-rada'ah* / *ar-rida'ah* is the name for breast milk, both human and animal milk. Both toddlers (babies), and adults (Jaziri, 1990). The problem of *rada'ah* is one of the pre-Islamic Arab traditions. The proof is as Allah says:

وَحَرَّمْنَا عَلَيْهِ الْمَرَاضِعَ مِنْ قَبْلُ فَقَالَتْ هَلْ أَدُلُّكُمْ عَلَىٰ أَهْلِ بَيْتِ

means: and We forbade him (Moses) to breastfeed the women who wanted to breastfeed (him) before that; then he (brother of Moses) said, "Shall I show you, the family that will take care of him for you and they can be good to him?."

One of the pre-Islamic Arabic tradition is to breastfeed his child to another woman (mother), if the mother can't breastfeed. This is a solution so that the child can still get breast milk (Air Susu Ibu). This tradition continued until Islam came and flourished in the land of Arabia. But this tradition gave rise to a new law on marriage in Islam. For children who are breastfeeding other than their mother, they will be affected by the consequences of the sharia, namely it is forbidden to undergo a marriage relationship or other laws related (Rusyd, tt).

Some argue that the incidence of breastfeeding that can lead to the prohibition of marriage between people who are breastfeeding must have testimony (Syarifuddin, 2006), and recognition. The number of witnesses assigned was two men or one man and two women, on the condition that they must be fair (Dimiyati, tt), as happens in property transactions, because in general women have a role in the process of breastfeeding as well as in childbirth (Zuhaili, 2010). However, this is still being debated among scholars.

### 3.2 Reference to Prohibition of Marriage Due to Dairy Relationships

Prohibition of marry because breastfeeding is clearly explained in the Qur'an and the hadith of the Prophet Muhammad. As contained in the letter an-Nisa' verse 23 as follows:

**حرمت عليكم أمهاتكم وبناتكم وأخواتكم وعماتكم وخالاتكم وبناتكم  
وحلائل أبنائكم الذين من أصلابكم وأن تجمعوا**

means: *"Forbidden to you (married) mother-mother; your daughters; your sisters, your father's sisters; your mother's sisters; daughters of your brothers; daughters of your sisters; your mothers who breastfed you; breastfeeding sisters; your wives (in-laws); the children of your wives who are in your care of the wife you have intermarried, but if you have not intermarried with her (and you have divorced), then you are not guilty of marrying her; (and forbidden to you) the wives of your children (son-in-law); and gather (in marriage) two sisters, except that which has happened in the past; surely Allah is Oft-Forgiving, Most Merciful. (QS an-Nisa (4): 23).*

In addition, the hadith of the Prophet also explains the prohibition of marrying a brother and sister, such as:

**لَا رِضَاعَ إِلَّا فِي حَوْلَيْنِ.**

means: *"there is no breastfeeding (which makes mahram) except at the age of two years". (HR. Baihaqi: 1544)*

Also based on the hadith of the Prophet saw below:

**يَحْرُمُ مِنَ الرِّضَاعَةِ مَا يَحْرُمُ مِنَ النَّسَبِ.**

means: *"things from the relationship of breastfeeding are forbidden as such things are forbidden from the relationship of lineage". (HR. Bukhari: 2645)*

According to Sheikh Abdul Aziz bin Abdullah bin Baz, that narrated from Aisyah RA, he said, *"First came a verse that stipulates, that ten times breastfeeding causes (a breastfed child) has become haram for us. Then the recommendation was removed to five times the breastfeeding that had been informed. So when the Prophet sallallaahu 'alaihi wa sallam died, this ruling still applies". (HR. Muslim: 505)*

From some information in the verses and hadith above it can be understood that the existence of a relationship of breastfeeding then causes the existence of a lineage relationship. If it is based on lineage, of course everything that is forbidden because of the lineage becomes valid, including marriage or marriage.

### 3.3 The Concept of Maqashid Sharia

In language, maqashid sharia consists of two words, namely “maqashid” and “sharia”. Maqashid are things related to *maslahah* and damage in it (Usman, 2002). Meanwhile, sharia is the language of the way to the spring (Mardani, 2010). In terms, maqashid sharia are good goals that Islamic law wants to achieve, by opening the means to goodness or closing the means to evil. In addition, the meaning of maqashid sharia is a set of divine intentions and moral concepts that form the basis of Islamic law (Auda, 2015).

Maqashid sharia (the purpose of Islamic law) must be known by the *mujtahid* in order to develop legal thinking in Islam in general and answer contemporary legal issues whose cases are not explicitly regulated by the al-Qur'an and al-Hadith. More than that, the purpose of the law must be known in order to find out whether a case can still be applied based on legal provisions, because of changes in the social structure, the law cannot be applied (Djamil, 1997). Thus, Islamic law will remain dynamic in responding to various social phenomena that are constantly changing and developing (Rusli, 1999).

Maqashid sharia is always in line and accompanied by *maslahat*. Where maqashid sharia is found, there is also *maslahat*. Simply put *maslahat* can be defined as something good and can be accepted by common sense. Acceptable sense contains the understanding that one can know and understand the motives behind the enactment of a law, that is, it contains benefits for human beings, either explained by Allah himself or through rationalization. In the view of Syathibi, Allah revealed the shariah (rules of law) aimed at creating benefits and avoiding harm, both in this world and in the hereafter. The rules in the shariah are not made for the shariah itself, but for the purpose of benefit (Hayati, Sinaga, 2018).

Maqashid sharia in accordance with the level of urgency is divided into three types, namely *dharuriyyat*, *hajiyiyat*, and *tahsiniiyyat*. *Dharuriyyat* is to take care of needs that are essential for human life. There are five basic needs: religion (*al-din*), soul (*al-nafs*), descent (*an-nasl*), property (*al-mal*) and intellect (*al-aql*). Meanwhile, *hajiyiyat* is a need that is not essential, but rather a need that can prevent humans from experiencing difficulties in life. Not being maintained this need does not threaten the five basic human needs. As for *tahsiniiyyat*, it is a need that supports the improvement of human dignity in society and before Allah according to obedience (Qardawi, 1999).

All of that contains benefits for mankind (Abubakar, 2012). If one of them does not exist then human life will be endangered, being in enormous and prolonged hardship, which will lead to extinction (Syarifuddin, 2008). Abubakar (2012) said regarding the fifth order, some scholars argue that the appropriate order mentioned above, means the protection and fulfillment of religious needs and requirements comes first over the four below, and the protection of life comes first over the three below, and so on in succession. There are also scholars who argue that four of the five requirements above are one level, except religion (*ad-din*).

### 3.4 Maslahat Values Prohibition of Marriage Due to Dairy Relationships

Al-Qur'an and the hadith of the Prophet Muhammad on the provisions of the law have been successfully realized in the form of rules and juridically its existence is compelling, the provisions must be obeyed and carried out by each people in Indonesia. One of them as stated in the Compilation of Islamic Law (KHI). KHI in Indonesia is one of the guidelines in deciding matters in the Religious Court. Juridically, having authority in determining whether or not a marriage can take place is based on the articles contained therein.

Judging from the side of *maslahat*, the purpose of Allah to prescribe his law is to maintain the welfare of human beings, as well as to avoid *mafsadat*, both in this world and in the hereafter. The goal is to be achieved through *taklif* (KBBI, 2016), whose implementation depends on the understanding of the main sources of law, namely the Qur'an and hadith. In order to create human welfare in this world and the hereafter, based on the experts of *ushul fiqh*, there are five basic elements that must be preserved and created. The five main elements are religion (*hifdz ad-Diin*), soul (*hifdz an-Nafs*), intellect (*hifdz al-'Aql*), descent (*hifdz an-Nasl*), and property (*hifdz al-Mal*). A *mukallaf*, (KBBI, 2016) will get benefits while being able to preserve the five trees, and vice versa if the five points cannot be properly preserved, it is certain that mafsadat will emerge (Djamil, 1997).

Philosophical values contained in the prohibition of marriage because of the union contained in the Qur'an and hadith is to realize benefits, while the benefits include three categories, namely (Harun, 1996):

1. Aspects of *Maslahah Daruriyah*, which has an important purpose, because its absence brings consequences to the breakdown of life rules, rampant chaos among men, who will then be deprived of their welfare.
2. Aspect of *Maslahah Hajiyyah*, which is *maslahah* which due to its absence will cause objections and difficulties to human beings, the burden of heavy things will create trouble.
3. Aspect of *Maslahah Tahsiniyah*, which is *maslahah* which due to its absence will not cause the consequences of breaking the rules of life and will not make human beings fall into trouble.

In terms of content, *maslahah* is divided into: (1) *maslahah al-'ammah*, which is the general benefit that concerns the public, (2) *maslahah al-khassah*, which is personal benefit. In terms of its existence, *maslahah* is divided into: (1) *maslahah mu'tabarah*, which is the benefits supported by *syara'*. (2) *maslahah mulgah*, that is benefits that are rejected by the *syara'* because it is contrary to it. (3) *maslahah mursalah*, that is benefits whose existence is not supported by *syara'* and is not canceled by *syara'* through detailed evidence (Harun, 1996).

The establishment of the law aims to realize the welfare of the people. Sharia or a law sometimes brings benefits at one time and at another time can bring harm. At the same time sometimes a law brings benefits in a particular environment, but it does bring harm in another environment (Khallaf, 1994).

In this life, human beings are faced with *maslahah* and *mafsadat*. *Maslahah* must be achieved while *mafsadat* must be avoided. However, when one is faced with two options, between avoiding danger (*mafsadat*) on the one hand and achieving benefits (goodness) on the other, then what should be done is to avoid danger (prohibition) from doing things that can bring benefits, although the choice may cause some good (*maslahah*) to be neglected. Because *syara'* attention to prohibition (which should be abandoned) is greater than the command (which must be implemented). This is in accordance with the rules of fikih (Djazuli, 2006):

### در المفساد مقدم على جلب المصالح

means: "rejecting *mafsadat* comes first from taking *maslahah*"

Some human actions lead to *maslahah* and some cause *mafsadat*. *Maslahah* and *mafsadat* are for the benefit of the world, *ukhrawiyah*, and at the same time both. Therefore, the importance of being specific in other words, something that is considered more important should come first.

Lighter *mafsadat* should be done to avoid or reject larger *mafsadat*. As in the rules of jurisprudence (Djazuli, 2006):

### إذا تعارض مفسدتان روعي أعظمهما ضرر ابارتكاب أخفهما

means: "If there is a conflict between two *mafsadat*, then the greatest *mafsadat* must be protected by performing the *ummah to*

These principles explain that for the benefit of the people it is necessary to eliminate the damage as much as possible, this is if it is related to the problem of one group, so that there is no misunderstanding in the common people about *rada'ah*, it is necessary to explain clearly and in detail so that benefit is achieved. Thus when there is a case of one-sided marriage in the life of the common people it can be prevented as soon as possible and the community does not carelessly breastfeed a baby who is not a child.

### 3.5 Analysis Prohibition of Marriage Due to Dairy Relationships

From the results of the reading the author did that the basis and legal considerations used in determining the prohibition of marriage because of sexual intercourse is with the arguments of the

Qur'an and hadith related *rada'ah*. The purpose of the philosophy (philosophy of Islamic law) in establishing the law in the Qur'an and hadith is to realize the welfare of human beings by guaranteeing matters of *dharuri*, *hajjiyyat*, and *tahsiniyyat*. Things that *dharuri* for human beings return to five things, namely religion, soul, intellect, honor, and wealth. Islam has prescribed various laws that guarantee the realization and formation of each of these five things, as well as various laws that guarantee its maintenance and protection. Marriage due to dairy relationships is associated with the things *dharuri* is as follows:

1. Religion (*hifdz ad-Diin*)

Marriages for *rada'ah* are carried out on the basis of ignorance of the prohibition law or because of the traditions of an area that allow it. By carrying out *rada'ah* marriages, these efforts are unable to provide religious maintenance, because such *rada'ah* marriages can have implications for descendants (*nasab*) whose status is unclear. A marriage should be carried out with the intention of worship, because then marriage for the sake of maintaining religion will always be realized.

2. Soul (*hifdz an-Nafs*)

The prohibition of *rada'ah* marriages has meaning and wisdom which is very important for efforts to nurture the soul. Marriage is carried out so that the woman and child in her womb can get a lawful living. However, it is hindered when a *rada'ah* marriage is carried out, what is clear is that the law is haram, and the soul will not be at ease

3. Sense (*hifdz al-'Aql*)

A household that is overshadowed by sins because marriage is haram (marriage *rada'ah*), will cause pressure, both from external and internal factors. If the pressure is allowed to continue, it is possible to affect the health of the mind. Therefore, marriages between these milk relatives should be done in order to maintain the mind so that humans remain healthy as required by Islam.

4. Descendants (*hifdz an-Nasl*)

Every married person wants offspring. Offspring is a gift that Allah gives to His servants by means of a legal marriage. Therefore, the existence of descendants must be preserved so that the status of the lineage is legally valid.

5. Property (*hifdz al-Mal*)

Property should also be taken care of and used to the best of one's ability in family life to meet the needs of family life.

In the case of a *rada'ah* marriage, the right step is if the marriage has already been carried out, then the marriage must be abolished (abolished) by the Religious Court because this is in accordance with statutory regulations, to avoid the emergence of a larger *mafsadat*. . However, if the marriage is legal, then the marriage must be certified by the Religious Court so that it is registered by the Office of Religious Affairs (Kantor Urusan Agama).

#### 4. Conclusion

From the explanation that has been presented, it can be concluded that the determination of the law of the prohibition of marriage because of the marriage that has been prescribed by Allah, is not separate from the maqashid sharia. Inside there are values that must be maintained for the benefit of mankind. as for who are forbidden to perform marriages because of intercourse: (a) marry a woman who is breastfeeding and so on in a straight line upwards; (b) married a breastfeeding woman and so on along a straight line downwards; (c) married a sister of a nursing mother, and the nephew of breastfeeding; (d) married a breastfeeding aunt and stepmother; (e) married to a child who is breastfed by his wife and offspring.

In the maqashid sharia, the purpose of Allah to prescribe its law is to preserve the welfare of human beings, as well as to avoid *mafsadat*, both in this world and in the hereafter. With regard to the prohibition of marriage because of sexual intercourse (in Islamic terms called *rada'ah*) that exists in

Islamic law, the stipulation of the law in order to realize human welfare. This is in line with the understanding of the main sources of law, namely the Qur'an and Hadith.

According to the author, there are five basic elements that are protected against the enactment of the law of the law of marriage due to sexual intercourse. In maqashid sharia, these five elements must be preserved and realized. The five main elements are religion (*hifdz ad-Diin*), soul (*hifdz an-Nafs*), intellect (*hifdz al-'Aql*), descent (*hifdz an-Nasl*), and property (*hifdz al-Mal*). A person who avoids marriage because of one-sidedness will get benefits, because he can get these five points, and vice versa if someone marries his sister, he will certainly bring mafsadat, because as a result of that marriage, the subject cannot be properly guarded.

There are many rules that explain that for the benefit of the people then as much as possible to eliminate harm, this if associated with the issue of breastfeeding, so that there is no misunderstanding in the public about *rada'ah*, then it is necessary to explain clearly and in detail in order to achieve benefits. Thus, when there is a case of same-sex marriage in the life of the public can be prevented as soon as possible and the community also does not indiscriminately breastfeed a baby who is not his child.

The solution offered in this case of marriage *rada'ah* is that if the marriage has already taken place, then the marriage must be *fasakh* (removed) by the Religious Court because it is in accordance with the legislation, to avoid the emergence of greater *mafsadat*. However, if the marriage is legal, then the marriage must be registered by the Religious Court to be recorded by the Office of Religious Affairs (KUA).

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