
New Marriage Agreement: Maqashid Sharia-Based Marriage Agreement Model as a Solution to Strengthen Family Resilience

Mhd. Rasidin¹, Imaro Sidqi², Doli Witro³, Darti Busni⁴

^{1,4}Institut Agama Islam Negeri Kerinci, ²Universitas Islam Negeri Sunan Kalijaga Yogyakarta, ³UIN Sunan Gunung Djati Bandung.

Abstract

This article aims to discuss marriage agreements in strengthening family resilience in Indonesia and tries to implement them with a different concept than the previous concept through the basis of Maqashid Syariah as its construction epistemology. This article is a juridical-normative research, which uses the maqashid sharia approach and gender through descriptive-qualitative analysis. This article finds that marriage agreements in Indonesia are described or based on several existing laws, including; the Civil Code, Marriage Law (UUP), and Compilation of Islamic Law (KHI). The marriage agreement must be implemented because the marriage agreement itself is considered very important to be formed by each family because it can lead the family to become sakinah, mawadah, and waramah. In addition, marriage agreements, both formal and substantial, need to be revised in detail and not discriminate so that they have a new concept that is more up-to-date and represents legal objectives so that it can strengthen the resilience of families in Indonesia, the impact of which is to reduce the ever-increasing divorce.

Keywords: Marriage Agreement, Maqashid Sharia, Family Resilience

Perjanjian Perkawinan Baru: Model Perjanjian Perkawinan Berbasis Maqashid Syariah Sebagai Solusi Memperkuat Ketahanan Keluarga

Abstrak

Artikel ini bertujuan membahas perjanjian perkawinan dalam memperkuat ketahanan keluarga di Indonesia dan berusaha mengimplementasikannya dengan konsep yang berbeda daripada konsep sebelumnya melalui basis Maqashid Syariah sebagai epistemologi konstruksinya. Artikel ini merupakan penelitian yuridis-normatif, yang mana menggunakan pendekatan maqashid syariah dan gender melalui analisis deskriptif-kualitatif. Artikel ini menemukan bahwa perjanjian perkawinan di Indonesia diuraikan atau didasarkan oleh beberapa hukum yang ada, diantaranya; KUHPerdara, Undang-Undang Perkawinan, dan Kompilasi Hukum Islam. Perjanjian perkawinan wajib untuk diimplementasikan karena perjanjian perkawinan sendiri dinilai sangat penting untuk dibentuk oleh setiap keluarga karena bisa menghantarkan keluarga tersebut menjadi sakinah, mawadah, dan waromah. Selain itu, perjanjian perkawinan baik secara formal hingga substansialnya perlu direvisi ulang secara terperinci dan tidak diskriminasi supaya memiliki konsep baru yang lebih kekinian dan merepresentasikan tujuan hukum, sehingga bisa memperkuat ketahanan keluarga-keluarga di Indonesia yang dampaknya dapat mengurangi perceraian yang terus meningkat.

Kata kunci: Perjanjian Perkawinan, Maqashid Syariah, Ketahanan Keluarga

Author correspondence

Email: mhd.rasidin02@gmail.com

Available online at <http://journal.iaingorontalo.ac.id/index.php/au/index>

A. Introduction

The Director General of Badilag of the Supreme Court stated that the dynamics of the divorce rate were increasing every year, especially during the economic crisis period from 1997 to 1998. At that time, it was precisely divorced that had increased very rapidly rather than talak divorces. The reason for divorce is that the wife feels disharmony in her household. In the view of Venny Octarini Siregar (Director of Legal Aid Institute) admits that most of those who file for divorce are from the wife's side (contest divorce). This is due to the background of domestic violence (KDRT) on the part of the husband so that the wife and children become victims.¹ In 2021, the number of divorces reached 447,743.² This long-standing phenomenon has finally returned, along with the Covid-19 pandemic. This is evidenced by data reported by Suara.com that from June to July 2020, it is known that the number of divorces has increased, of which as many as 80% of divorce applications are filed by wives.³ These facts show that in the future, divorce will be a very serious job for the government, so creative new policies can bring good solutions to family life. In addition to the problem of divorce, there is also a new problem that has emerged in the last few periods, namely the sex recession, where this problem arises due to the ever-increasing presence of divorce and patterns of human behaviour that increasingly love their career life, so that the desire of productive people not to marry is getting bigger. one of them in Indonesia.⁴

If these problems are allowed to continue, they will be very dangerous for the life of the nation and even threaten national security. Why is that? Because divorce is a representation of the fragility of family quality or the fragility of family resilience. Furthermore, the fragility of the quality or resilience of the family will

¹ Aris Tristanto, "Perceraian Di Masa Pandemi Covid-19 Dalam Perspektif Ilmu Sosial," *Sosio Informa* 6, no. 3 (December 30, 2020): 293, <https://doi.org/10.33007/inf.v6i3.2417>.

² Jawapos.com, "Angka Perceraian Tinggi, Layanan Tes Pra Nikah Online Diluncurkan," 2023, <https://www.jawapos.com/oto-dan-teknologi/03/01/2023/angka-perceraian-tinggi-layanan-tes-pra-nikah-online-diluncurkan/#:~:text=Berdasarkan data dari Badan Pusat,sebelumnya yang mencapai 291.677 perkara>.

³ Tristanto, "Perceraian Di Masa Pandemi Covid-19 Dalam Perspektif Ilmu Sosial," 293.

⁴ Ibnu Elmi Acmad Slamet Pelu et al., "Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives Marriage Law in Indonesia," *Al-Istinbath : Jurnal Hukum Islam* 7, no. 1 (May 30, 2022): 40–44, <https://doi.org/10.29240/jhi.v7i1.4204>.

result in the fragility of the quality or resilience of the nation.⁵ The theoretical argument is that there is a very strong relationship between the quality of a family and the quality of a nation. An intelligent nation is composed of a set of families that are also intelligent. An advanced nation certainly starts from advanced families as well. This means that national security can be achieved if the presence of family resilience appears. When families can increase their resilience, it will automatically provide a very strong impetus for the progress of the nation and state, and vice versa if family resilience is damaged, then efforts to advance the nation may become dreams that cannot be achieved and will only be futile dream.⁶ Therefore, the high number of divorces is clear evidence that family security in Indonesia is still very fragile, so a solution needs to be provided so that new ideas do not emerge, such as the fear of productive people not to marry (sex recession).

The solutions in question are preventive solutions that provide prevention before disputes or divorce occur in the family. The solution currently emerging and realistic is strengthening the marriage agreement, as Rosita Y. Suwardi is the Notary Initiating the Marriage Agreement, which provides an understanding of the marriage agreement which aims to maintain and enhance family harmony.⁷ The marriage agreement in Article 29 of Law Number 1 of 1974 concerning Marriage paragraph (1) "At the time or before the marriage takes place, the two parties by mutual agreement can enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties. as long as a third party is involved." Meanwhile, in Article 45 of the Compilation of Islamic Law (KHI), the two prospective brides and groom can enter into a marriage agreement in the form of: (1) "Taklik talak", and (2) "another agreement that does not conflict with Islamic law". In essence, both of them have the same concept, but the specific framework and form are not explained thoroughly, so according to the author's opinion, it is necessary to have a marriage agreement in a different form and

⁵ Kemenag.go.id, "Memperkuat Ketahanan Keluarga Di Era Disrupsi," 2021, <https://kemenag.go.id/read/memperkuat-ketahanan-keluarga-di-era-disrupsi-74rdk>.

⁶ Amany Lubis, *Ketahanan Keluarga Dalam Perspektif Islam* (Tangerang: Pustaka Cendekiawan Muda, 2018), 192–93.

⁷ Setneg.go.id, "Gapai Penguatan Ketahanan Keluarga Dengan Perjanjian Pernikahan," 2022, https://www.setneg.go.id/baca/index/gapai_penguatan_ketahanan_keluarga_dengan_perjanjian_pernikahan.

framework than before, course the concept offered must be in line with the purpose of marriage and not conflict with Islamic law.⁸

Based on this explanation, the author wants to conceptualize a new marriage agreement by combining various perspectives through the study of maqashid sharia as the basis for its formation. Because previous studies only described marriage agreements with various separate views and did not correlate them with family resilience in the current era, the material presented was irrelevant to current practical conditions. Therefore, this study will describe the marriage agreement that adapts to the development of the times, which is studied through the perspective of maqashid sharia. The use of maqashid sharia theory in the study of Islamic law is very applicable and has been proven capable of producing actual legal interpretations in the contemporary era. Especially on gender issues, Mohammad Lukman Chakim revealed that the gender equality of women's *fiqh* had fulfilled the six maqashid sharia feature systems (benefits) that Jasser Auda initiated. Equality has a cognitive alignment in the cognitive system, which can reveal the meaning or practical implications of Islamic law.⁹ This encourages the existence of women not discriminated against in the marriage agreement, which contains elements of benefit towards gender equality as required by Islamic law.

B. Research Methods

This article is juridical-normative research using the maqashid sharia approach and gender, which is analyzed descriptively-qualitatively. Some of the data used in this study include primary and secondary data. Primary data is in the form of laws, Compilation of Islamic Law, and Islamic Law Sources, while secondary data is in the form of commentaries, books, journal articles and other written sources related to the theme of the marriage agreement. Data analysis used content analysis techniques. Operationally, the analysis technique begins by first describing the concept of the marriage agreement from various perspectives. Next, the researcher

⁸ Abdurrahman, *Kompilasi Hukum Islam* (Jakarta: Akademika Presindo, 1995).

⁹ Mohammad Lukman Chakim and Muhammad Habib Adi Putra Habib, "Kesetaraan Gender Dalam Fikih Perempuan Perspektif Maqashid Syariah Jasser Auda," *MAQASHID: Jurnal Hukum Islam* 5, no. 1 (August 29, 2022): 59, <https://doi.org/10.35897/maqashid.v5i1.831>.

analyzed the current concept of marriage agreements, and the last one was analyzed using a gender-based maqashid sharia approach in providing solutions to family resilience.

C. Results and Discussion

Marriage Agreement Concept

According to Islamic law, the word “agreement” is called “ (*Akad*) contract”, where the word originates from “al-aqd” which means “to bind”, “to connect”.¹⁰ The agreement, which means “binding”, “agreement (there is a note)” or “contract”.¹¹ According to KBBI, “agreement” comes from the word “promise,” which means “readiness in writing and ability to speak”. Then the agreement is given the meaning to be “an agreement in writing and verbally formed from two or more parties”.¹² The marriage agreement in terms of terms has been described by several legal experts, including: (1) *Akad*, an agreement in which there is an agreement and consent through justification from syara’, which then has legal consequences for the object.¹³ (2) *Akad*, a bond carried out by both parties or more related to particular interests initiated by one of the parties, then carried out by mutual agreement from several other parties. Therefore the agreement is carried out by all parties concerned and has relevance.¹⁴ In the view of one expert named Chairuman Pasaribu, a contract is an agreement between the parties to carry out specific actions. When the intended action has legal consequences, of course, the action is also interpreted as a legal action.

The parties must meet three requirements, including: (1) Not violating Islamic law, which has been mutually agreed upon; (2) Each party is pleased with each other and has choices; and (3) having clarity.¹⁵ Therefore, an agreement must be based on law, and willingness between parties and its elements have clarity. In

¹⁰ Syamsul Anwar, *Hukum Perjanjian Syariah* (Jakarta: RajaGrafindo Persada, 2007), 68.

¹¹ Ahmad Warson Munawwir Al-Munawwir, *Kamus Arab Indonesia* (Yogyakarta: Pondok Pasantren al-Munawwir, 1984), 1023.

¹² Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2008).

¹³ Ahmad Azhar Basyir, *Hukum Perkawinan Islam* (Yogyakarta: UII Press, 2000), 65.

¹⁴ Dadan Muttaqien, *Cakap Hukum Bidang Perkawinan Dan Perjanjian* (Yogyakarta: Insania Cita Press, 2006), 44.

¹⁵ Muttaqien, 45.

the context of marriage, some experts have different views. Some describe that from a formal point of view, the marriage agreement is an agreement formed by the prospective husband and wife before or when the marriage takes place, where the aim is to provide rules for both parties regarding their property.¹⁶ The content of the marriage agreement in substance has no limitations.¹⁷

In the view of one expert that the agreement is defined as a legal relationship related to the property of each party, one of them promises to carry out a specific action, while the other party has the right to make demands on the implementation of the promise.¹⁸ The marriage agreement also has another definition, which is an agreement between the prospective husband and wife to regulate every property owned by them before the marriage is carried out, and a marriage registrar carries out its validity.¹⁹ As to forming a marriage agreement, one of them is the validity of the marriage, which can prevent acts of haste due to the presence of a marriage that is for life to have legal certainty, the validity of evidence, and the prevention of legal irregularities.²⁰ In general, the marriage agreement was formed because; (1) When there is an unequal amount of assets from one of the parties; (2) The parties have input in the extended family; (3) Each party has its own business, therefore when one of them goes bankrupt, one of them is not related; (4) There are debts from one of the parties or both before the marriage agreement.²¹

Marriage Agreement in Marriage Law in Indonesia

Marriage agreements are described in articles 139 -154 of the Civil Code, articles 29 of Law Number 1 of 1974 concerning Marriage, and Islamic Law Compilation of articles 45–52.

¹⁶ Titik Triwulan Tutik, *Hukum Perdata Dalam Sistem Hukum Nasional* (Jakarta: Kencana Prenada Predia Group, 2008), 120.

¹⁷ Wasman Wasman and Wardah Nuroniyah, *Hukum Perkawinan Islam Di Indonesia: Perbandingan Fiqih Dan Hukum Positif* (Yogyakarta: Teras, 2011), 165.

¹⁸ Wirjono Prodjodikoro, *Hukum Perdata Tentang Persetujuan-Persetujuan Tertentu* (Bandung: Sumur Bandung, 1981), 11.

¹⁹ Wasman and Nuroniyah, *Hukum Perkawinan Islam Di Indonesia: Perbandingan Fiqih Dan Hukum Positif*, 171.

²⁰ Salim HS and Erlies Septiana Nurbani, *Perbandingan Hukum Perdata: Comparative Civil Law* (Jakarta: PT RajaGrafindo Perdasa, 2014), 151.

²¹ Soetojo Prawirohamidjojo, *Pluralisme Dalam Perundang-Undangan Perkawinan Di Indonesia* (Surabaya: Airlangga University Press, 2002), 58.

First, in the Civil Code, marriage agreements relate to property. Where article 139 it is states, “prospective husband and wife with a marriage agreement can deviate from the statutory regulations regarding joint assets as long as this does not conflict with good morals or with general order and the following provisions are also heeded”. Articles 140-154 also describe marriage agreements involving the property. So, all the regulations in the Civil Code regarding marriage agreements relate to property, not other agreements.

Second, in the Marriage Law (UUP), the marriage agreement is regulated in Chapter V article 29, paragraphs 1 to 4. Paragraph 1 deals with the technicalities of forming a marriage agreement. They described if the marriage agreement was made before the implementation of the marriage. The marriage agreement has a written character and is ratified by the Marriage Registrar. In addition to providing bonds to husband and wife, marriage agreements can also provide bonds to several other parties as long as they have a relationship. In the following paragraph, paragraph 2 of Article 29 of the Marriage Law describes the ratification of the marriage agreement. The marriage agreement can only be ratified when it does not violate the law, religion, and decency. Then in paragraphs 3 and 4 of Article 29, the Marriage Law describes the enforcement of the marriage agreement that was held. The agreement in question cannot be changed throughout the marriage period, except when each party has an agreement to change, but still with a note that the change does not cause harm to third parties.

The marriage agreement in the article does not include taklik divorce because the agreement in article 29 relates to statements from husband and wife, unlike the taklik divorce, which contains unilateral divorce from the husband, pronounced after the marriage contract.²² In connection with the interpretation of the contents of agreements that do not violate the law, such as marriage agreements stipulating that the wife is not given the authority to carry out any legal actions. Then the contents of the agreement do not violate religious restrictions, such as husband and wife determining freedom of association with other men or women. Then, the

²² Henry Lee A. Weng, *Beberapa Segi Hukum Dalam Perjanjian Perkawinan* (Medan: Rimbow, 1990), 218.

contents of the agreement do not violate the boundaries of decency, such as the husband is not allowed to control the wife's actions outside the home and vice versa.²³

Third, the marriage agreement in Islamic Law Compilation. Islamic Law Compilation regulates marriage agreements in articles 45 to 52. Article 45 has content related to the form of marriage agreements that are allowed to be formed by both parties. Where is the form in question, namely; (1) Taklik divorce and (2) Other agreements that do not conflict with Islamic law. Then article 46 of the Islamic Law Compilation explains the divorce agreement. It was explained that taklik divorce is not permissible against Islamic law. When the conditions specified in the divorce decree are realized, the divorce does not just fall but must go through the courts. The article also provides rules if the taklik divorce agreement is not an obligation. However, once the divorce decree is carried out, it cannot be revoked. Then, in Islamic Law Compilation of articles, 47 to 49 has content related to the marriage agreement regarding the assets of the prospective husband and wife. Article 47, described in the marriage agreement, is carried out in writing, which includes mixing personal assets and separating the assets of each party as long as it does not violate Islamic law. The article also provides opportunities for each party to bring up mortgage relations on personal and joint assets.

Mixing and separating joint assets is described in articles Islamic Law Compilation 48 and 49. Where article 48 it is described that the separation of joint assets does not mean eliminating the husband's obligation to fulfill household needs. This means that if the separation of assets is still carried out, the husband will continue to fulfill his responsibilities as the head of the household. Then article 49 describes if the mixing of personal assets can cover all inherited and acquired assets during the marriage. When the marriage agreement is related to the mixing of inherited assets, the agreement does not cover personal assets acquired throughout the marriage, and vice versa. Islamic Law Compilation of article 50 describes the techniques that enforce marriage agreements—described if the marriage agreement related to property is binding on the parties since the marriage was

²³ Abdul Kadir Muhammad, *Hukum Perdata Indonesia* (Bandung: Citra Aditya Bakti, 1990), 88.

carried out. The marriage agreement can be revoked through mutual agreement of the parties and should register at the Value Added Tax Office where the marriage is carried out. When it has been revoked, the revocation is binding on the parties, while for third parties, it can only be enforced when the husband and wife share the registration date in the local newspaper. Revocation is null and void and does not bind third parties when the husband and wife do not share it for 6 months. In addition, the revocation carried out is not allowed to cause harm to third parties. As described in article 51, violation of the marriage agreement has implications for the wife. The wife has the right to ask for an annulment of marriage or apply for a divorce as a reason in court. When a husband has more than one wife, a marriage agreement can be formed relating to the location of residence, estimated shift times and household expenses.

From the explanation above, it can be understood that the marriage agreement in article 29 of Law number 1 of 1974 has been amended or realized if taklik divorce is included in the classification of a marriage agreement.²⁴ In the view of R. Soetojo and Asis Safioedin, it is explained that if the marriage agreement in Indonesia is formed when there is more incredible wealth than one party or several parties, to prevent the occurrence of irregularities in the rules regarding the union of assets.²⁵ If we pay attention to the regulations in the marriage agreement, the content already has direction and focus on property issues and regulations that manage the control of husband and wife assets directly according to mutual agreement. Then the Civil Code, which has regulated marriage agreements, cannot be abolished by the Marriage Law but becomes a guideline for making a marriage agreement, as long as it does not violate the provisions in Article 29 of the Marriage Law and Chapter VII of the Islamic Law Compilation.²⁶

Concerning the contents of the marriage agreement, the Marriage Law does not carry out discussions, whereas, in the rules, it is explained that the marriage

²⁴ Wasman and Nuroniyah, *Hukum Perkawinan Islam Di Indonesia: Perbandingan Fiqih Dan Hukum Positif*, 181.

²⁵ Soetojo Prawirohamidjojo and Asis Safiodin, *Hukum Orang Dan Keluarga* (Bandung: Alumni, 1986), 76.

²⁶ Wasman and Nuroniyah, *Hukum Perkawinan Islam Di Indonesia: Perbandingan Fiqih Dan Hukum Positif*, 187.

agreement is not allowed to violate law, religion, and decency. Therefore, everything related to the contents of the marriage agreement is left to the public officials who have the authority to interpret it. In line with article 149 of the Civil Code, after the marriage is carried out in any way that the marriage agreement cannot be changed because the property system chosen by the husband and wife when the marriage takes place is based on fears that during the marriage the husband can force his wife to make unwanted changes.²⁷ Marriage agreements are allowed to include the parties' agreement, whereas marriage agreements do not always discuss assets and children. Issues other than those referred to can be discussed or agreed upon by the parties as long as they do not violate law, religion, and decency.

Efforts to Form a Harmonious Family Through a Marriage Agreement

Following the description of the Marriage Law and Islamic Law Compilation, agreements are not always in the form of assets alone but are allowed to promise other matters and are necessary to be agreed upon, which aim to expedite married life. Therefore it can create a prosperous family. The meaning of a prosperous family is used to illustrate that family life is *sakinah*-oriented and harmonious, and there are no problems that result in divorce. This is an essential point in the presence of a marriage agreement.²⁸ The marriage agreement can cover many things, such as communication problems, personal or joint property, biological needs, economic problems, and appearance. Through the marriage agreement on these five things, the husband and wife will understand their respective rights and responsibilities so that the marital relationship remains harmonious.

Some concepts and indicators can bring the family to be happy through a marriage agreement, including:

1. Marriage Agreement in Maintaining Communication Relations

In order to become harmonious family, communication is one of the keys to a family. Good communication is a factor in strengthening a relationship, therefore,

²⁷ Tutik, *Hukum Perdata Dalam Sistem Hukum Nasional*, 122.

²⁸ Yasin Yusuf Abdillah, "PERJANJIAN PERKAWINAN SEBAGAI UPAYA MEMBENTUK KELUARGA BAHAGIA (Tinjauan Maqāshid Asy-Syarī'Ah)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 2 (January 7, 2018): 172, <https://doi.org/10.14421/ahwal.2017.10205>.

it is better if the prospective husband and wife, before entering into marriage, can fill out their marriage agreement regarding communication between partners so that both of them can maintain each other. With the emergence of communication in its substance, it is hoped that it can create honesty and openness between husband and wife so that suspicious things can be avoided.²⁹ The communication referred to here is the process of exchanging feelings and information from both parties or more.³⁰ One example of the success of communication is that the family becomes close, so good communication is one of the successes in harmonizing the family.

2. Marriage Agreement on Husband and Wife's Assets

Marriage Law and Civil Code, customary law, and religion regulate marriage agreements.³¹ The marriage agreement is formed by the prospective husband and wife before or when the marriage is carried out to form a harmonious family.³² Property agreements are carried out to avoid conflicts that may arise in the future, even though this is not desirable, it is better to prevent and anticipate husband and wife in the form of a marriage agreement so that in the future, it will be maintained. With the presence of a marriage agreement in the matter of these assets, of course, it will make it easier to solve them where the thing that needs to be remembered and given attention by the husband is that the presence of a marriage agreement does not eliminate his right to support his wife. The unification of joint assets cannot be done before or before marriage. This is described in Article 29 of Law no. 1 of 1974, which reads: "At the time or before the marriage takes place, the two parties to the collective agreement can enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved."

Based on this statement, when a marriage agreement has been formed, there is a separation of assets, where both the wife and husband can use it without asking

²⁹ Abdillah, 172.

³⁰ David Knox, *Choices in Relationship An Introduction to Marriage and the Family* (USA: Wadsworth Cengage Learning, 2010), 108.

³¹ Hilman Hadikusuma, *Hukum Perkawinan Di Indonesia: Menurut Perundangan, Hukum Adat, Hukum Agama* (Bandung: Bandar Maju, 2007), 56.

³² Titik Triwulan Tutik, *Pengantar Hukum Perdata Di Indonesia* (Jakarta: Prestasi Pustaka Publisher, 2006), 128.

permission from both parties. In general, marriage agreements are formed for several reasons, namely:³³ (1) When there are several assets whose percentage is greater than that of the other party; (2) The parties brought relatively large input; (3) Each party has its own business, therefore when one of them goes bankrupt, the other parties are not related. (4) When there are debts that they own, the responsibility is borne by each party. Marriage agreements, in the view of the Civil Code, must be formed through a notarial deed, this is carried out except for the validity of a marriage agreement, there are objectives: (1) To provide prevention against actions that are too hasty; (2) Provide legal certainty; (3) Being a legal means of evidence; (4) To prevent the emergence of abuse against the rules in Article 149 of the Civil Code.³⁴

Marriage agreements are in the category of formal agreements, where when the agreement is not following legal standards, such as the format of the agreement, the method of making it, or the method of ratification, according to what is described in the regulations, it will undoubtedly have null and void consequences. Therefore, the marriage agreement must be formed through a notarial deed format so that its validity can be accepted as an authentic deed.³⁵

3. Marriage Agreement Against Biological Needs (Sex)

In addition to what has been described above, the marriage agreement must also pay attention to biological needs. Another reference is that the biological needs of both husband and wife are fundamental. Where this is described in Surat Ali Imran verse 14, Allah says:

Meaning:

Beautified for people is the love of that which they desire – of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allah has with Him the best return.

³³ Tutik, 33.

³⁴ Idrus Al-Ghifarry, A. Kumedi Ja'far, and Lily Faizal, "Urgensi Perjanjian Perkawinan Dalam Membentuk Keluarga Sakinah Perspektif Hukum Keluarga Islam," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 3, no. 2 (November 29, 2021): 194–96, <https://doi.org/10.37680/almanhaj.v3i2.825>.

³⁵ Ayi Ishak Sholih Muchtar, *Perjanjian Perkawinan Sebagai Upaya Membentuk Keluarga Sakinah* (Sukabumi: Fakultas Keguruan dan Ilmu Pendidikan (FKIP) Universitas Muhammadiyah Sukabumi, 2022), 24–25.

This verse clearly shows that humans have been equipped with lust (lust) for other humans of different sexes. From this statement, it can be simplified that biological needs are significant, so forming a marriage agreement is essential. The biological relationship between husband and wife becomes a form of marriage vows uttered by both. Even further than the presence of a biological relationship actually, both parties have strengthened the construction of their household buildings and provided great strength in establishing love that has been fostered together.³⁶

Even though it is not the primary goal, fulfilling biological needs is vital in a marriage. Because when these needs are met, several other goals will also be fulfilled. Fulfilment of biological needs can be a benchmark in determining the happiness of husband and wife in a household. When these needs are channelled through feeling full of love and sharing a sense of satisfaction with husband and wife, then, of course, it will give a feeling of happiness to each party. This can be a precious capital for husbands and wives in coaching and providing defence for their families. Vice versa, when one party feels dissatisfied with these biological needs, it can endanger family harmony, so a genuine effort is needed at the outset to agree upon this vital matter.

4. Marriage Agreement Regulates Family Financial Economy

Family financial management is considered very important to be carried out by each party, both husband and wife in the household. When it is felt to be very important, this point must be agreed upon before the wedding. For example, the husband is responsible for paying for school children, household needs, and several other things, and the wife pays for kitchen needs, etc. The agreement can provide happiness for both parties. When the agreement is realized, then the possibility of conflict in the future will be avoided. The agreement is needed to be implemented because, in today's era, it is not only the husband who is doing the work, but the wife is also working. Therefore, the marriage agreement in providing financial regulations is considered very important to be implemented so that the orientations owned by the partners can be achieved and complement each other.

5. Marriage Agreement Maintain Appearance

³⁶ Muchtar, 24-25.

Every human being must like and love something clean and beautiful. In the family context, to maintain the appearance of each party, it is necessary to agree. The agreement in terms of appearance is divided into two, namely physical and mental beauty, and the description is as follows; first, namely physical beauty, which is related to physical beauty, and maintaining the excellent appearance of a husband or wife is essential. When appearance is maintained in the household, it will be able to attract attention and give satisfaction to each party. In reality, many husband and wife couples do not pay attention to their appearance in the house. Not beautifying yourself when you are outside but inside so you can strengthen the feelings of love and affection between the two parties. Therefore, if the appearance can be maintained and given attention, there will be little potential for one of the parties to commit an affair.³⁷

Second, is inner beauty related to one's character. All parties, both husband and wife, must decorate themselves with good qualities. For example, they were telling the truth, forgiving each other, keeping secrets in the household, being patient, doing good deeds for people, and several other things. Therefore, outer beauty is oriented to provide peace of mind, while inner beauty is morally oriented.

Maqashid Sharia-Based Marriage Agreement in Strengthening Family Resilience in Indonesia

Maqashid sharia is a theory and a relevant instrument for parsing the discourse of gender equality in Islam. The origin of word maqasid comes from the Arabic word 'Maqasid', whose plural is *maqsid*, which gives instructions on goals, objectives, a matter of interest, and the ultimate goal. The role of the maqashid in studying Islamic law is quite important. Maqashid provides an explanation related to the wisdom behind the rules of Islamic law. Then maqashid becomes a set of reasonable goals to provide prohibitions or permissibility in law. Maqashid is also believed to be a set of divine purposes and a concept of morality that provides the basis for formulating Islamic law. In the current era, maqashid has developed conceptually, as described by Jasser Auda, through a systems approach, in which the

³⁷ Abdillah, "PERJANJIAN PERKAWINAN SEBAGAI UPAYA MEMBENTUK KELUARGA BAHAGIA (Tinjauan Maqāshid Asy-Syarī'Ah)," 175-76.

system contains elements, namely: cognitive nature, wholeness, openness, interrelationships between levels, multidimensionality, and the objectives of Islamic law.³⁸ The *ijtihad* approach, whose basis is maqashid from a conceptual standpoint, can be an epistemological guide in updating Islamic family law in Indonesia. Several themes are believed to be discriminatory, for example, guardianship rights, marriage witnesses, the position of the head of the household, marriage agreements, and several other themes that can be provided with arguments and epistemological guidelines according to the *ijtihad* approach, which is based on maqashid.

Equality and humanity are two crucial foundations for achieving justice and mercy.³⁹ Such is the marriage agreement that the marriage agreement gives benefits to the family. It can be interpreted that the marriage agreement is a strategy for realizing the goals of Islamic law, namely obtaining benefits in the household, significantly so that it can strengthen family resilience so that the family can be harmonious. In the following, we will describe the study of maqashid sharia on marriage agreements in the present era through the six-feature approach initiated by Jasser Auda.

1. Cognitive Features

Cognitive nature is an expression of the relationship between conception and reality. Islamic law results from human *ijtihad* on a text to express a meaning unknown in the Qur'an and Hadith. Therefore, this cognitive characteristic is needed in order to conduct a study of broad views in determining Islamic law.⁴⁰ *Fiqh* is an attempt to understand the fuqaha (*fiqh* expert) in translating the meaning of the sources of Islamic law (Al-Qur'an and Hadith). There is a possibility that a fuqaha's understanding can be wrong in interpreting God's intentions. In order to be able to disassemble the validation of all cognition, Jasser Auda emphasizes the importance

³⁸ Jasser Auda, *Maqās Id Shariah As Philosophy Of Islamic Law: A Systems Approach (Penerjemah) Rosidain and Ali Abdul Mun'im* (Bandung: Pustaka Mizan, 2015), 251.

³⁹ Taufan Anggoro, "Konsep Kesetaraan Gender Dalam Islam," *Afkaruna* 15, no. 1 (2019): 133, <https://doi.org/10.18196/AIIJIS.2019.0098.129-134>.

⁴⁰ Auda, *Maqās Id Shariah As Philosophy Of Islamic Law: A Systems Approach (Penerjemah) Rosidain and Ali Abdul Mun'im*, 251.

of separating the text (Al-Qur'an and Hadith) from people's understanding of the text.⁴¹

Departing from the above understanding, a marriage agreement can be interpreted as a cognitive product created based on concepts in Islamic law and socio-culture in the surrounding community because, in Islamic law, there is no such thing as a marriage agreement, but is known as *taklik-talak*. This means that the concept of a marriage agreement is the result of a modification of the concept of Islamic law, which is acculturated with norms that have sprung up in the surrounding community, as is the essence of the presence of law, which is always dynamic in dealing with practical realities in people's lives.⁴² Therefore, the concept of a more recent marriage agreement will provide more excellent benefits in strengthening family resilience, so the regulations governing marriage agreements in Law Number 1 of 1974 concerning marriage need to be re-deciphered in detail so that they can adjust developments in completing family problems.

2. Wholeness feature

Through system theory, Jasser Auda stated that each bond has causes and effects that must be considered in several parts of the overall series. The bond between the several parts has a particular function in a system. The bond becomes a dynamic and comprehensive building, not just a static one. In the context of problem-solving, text law is not only applied but compared with other laws that are still related to solving the problem because there is a possibility that texts can only be concluded as a single text, it could be that one text does have many meanings and can even develop, according to the dynamics of life.⁴³ It is the same as the existing law in Indonesia, which is essentially the result of a combination of several laws and other practical knowledge, this aims so that the law can accommodate the needs of the community.⁴⁴

⁴¹ Yudian Wahyudi, *Hukum Islam Antara Filsafat Dan Politik* (Yogyakarta: Pesantren Nawesea Press, 2015), 24.

⁴² Ahmad Tolabi Kharlie, *Hukum Keluarga Indonesia* (Jakarta: Sinar Grafika, 2022), 1.

⁴³ Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Jurnal Al-Himayah* 2, no. 1 (2018): 110, <https://www.journal.iaingorontalo.ac.id/index.php/ah/article/view/582>.

⁴⁴ Amin Abdullah, *Multidisplin, Interdisiplin, & Transdisiplin* (Yogyakarta: IB Pustaka, 2022), 13-15.

Based on this description, maqashid sharia cannot be interpreted singly from each of the existing elements and comprehensively complement each other between one element and another, meaning that the marriage agreement must be interpreted broadly and dynamically actual in society so that it will better accommodate the essence of maqashid sharia itself.

3. Disclosure Features

Systems theory describes that a living system, of course, will be an open system. Even though the system looks dead, it is actually open. An open system depends on its capacity to realize a goal in various circumstances. The situation in question becomes an influence in the realization of the goals of a system. Circumstances are the environment that gives effect. An open system is a system that is continuously able to interact with the environment outside it. Through this system, Jasser Auda explained that the system in Islamic law is open. The principle of openness is considered very important for Islamic law when there is an opinion that if the door to *ijtihad* is closed, it will make it seem static. Because, in essence, that *ijtihad* is an essential thing in *fiqh*, therefore experts must have the ability to develop specific procedures and methods in dealing with new and complex problems. Following this statement that one of the solutions to solving problems in this new world is a faqih who must be able to provide new legal constructions so that they are relevant because Muslims in the present era live in a globalization environment that continues to develop in almost all parts of the world.⁴⁵

Based on the explanation above, the current marriage agreement needs a change to strengthen family resilience in Indonesia, where from a substantial point of view, the marriage agreement needs to be detailed by providing guidelines for important discussion values in the marriage agreement previously described. Apart from that, the marriage agreement needs to be executed by the husband and wife before the wedding, seeing that many cases of family problems are so complex that an element of certainty and justice is needed for both parties through the marriage agreement. Therefore, when these two elements can be implemented, in the writer's

⁴⁵ Auda, *Maqās Id Shariah As Philosophy Of Islamic Law: A Systems Approach (Penerjemah) Rosidain and Ali Abdul Mun'im*.

opinion, the legal elements that provide certainty, justice and benefit will be realized in family life.⁴⁶

4. Linkage feature between Levels

Basically that a system is formed from several interconnected particles, in the context of the system in Islamic law, the system is like a tree hierarchy that has roots, where Islam grows and develops not only from one thought but because of many thoughts that make the tree grow very high. It is understood that Islamic law developed due to many factors, such as economic, socio-cultural and political at that time. The method used by Jasser Auda focuses on the problem of creating causal legal thought, such as studies based on gender equality that have arisen due to the demands of the times.⁴⁷ In Jasser Auda's view, so that Islamic law can style positively in creating the benefit of humankind and can solve problems in the current era, of course, the scope and dimensions of maqashid sharia must develop from narrow to broad, from classic to modern, which was initially oriented towards the individual but now must be oriented towards everyone.⁴⁸

Based on the description above, marriage agreements can no longer be interpreted narrowly and are oriented only to benefit the family, but more than that, a harmonious family will provide significant benefits in the life of the nation and state. Expanding the meaning of the marriage agreement through contemporary sharia maqashid will provide more essence of great benefits for the family, whose impact will be felt by many people.

5. Multi-Dimensional Features

A system cannot develop from a single system but cooperates with various dimensions. The system is decomposed into various dimensions that have a coherent relationship with one another. Because the system has a reasonably wide signal, Islamic law can be given an overview and a system. The source texts of Islamic law (Al-Qur'an and Hadith) contain universal elements. Some of the values

⁴⁶ Hasaziduhu Moho, "Penegakkan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, Dan Kemanfaatan," *Jurnal Warta* 13, no. 1 (2019): 7–10, <https://doi.org/10.46576/wdw.v0i59.349>.

⁴⁷ Erfina Fuadatul Khilmi, "Peran Maqasid Syariah Dalam Pembentukan Peraturan Daerah (Studi Pendekatan Sistem Jasser Auda)," *Jurnal Justiciabelen* 1, no. 2 (April 9, 2019): 231, <https://doi.org/10.30587/justiciabelen.v1i2.829>.

⁴⁸ Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," 144.

referred to have their variations, some values are life, worship, nature, social, technology, justice, and several other values. Then the value of equality is also embraced and upheld in Islam because Islam embraces a strong tolerance for equality and stays away from things that smell discrimination. This means that the position between men and women is equal.⁴⁹ In the context of the marriage agreement, the epistemological basis is not only based on Islamic law, but with various other legal considerations, especially customary law or surrounding socio-cultural, so the marriage agreement is not monotonous. It can develop according to the needs of the times. In this case, the marriage agreement must develop and be substantially balanced, meaning that it takes sides with all the parties agreed upon, both men and women. Such a marriage agreement will represent maqashid sharia as the basis for establishing a just law.

6. Intent Feature

In Jasser Auda's view, implementing maqashid sharia is an essential foundation in Islamic laws. In conducting excavations of maqashid, it is obligatory to rely on the Al-Qur'an and Hadith, not on the arguments of the fuqaha. Therefore, the representation of the goal (maqashid) becomes a consideration or benchmark in *ijtihad*, without any tendency or reliance on the priests of a particular school of thought. The goal of establishing Islamic law must be returned to people's lives by considering its problems, providing more protection to the family institution and protecting all sides of what humans do, especially their human rights. Here, Jasser suggests that Maqashid sharia must develop an orientation towards safeguarding and preserving human rights.⁵⁰

The marriage agreement is not only interpreted as an ordinary agreement. It only regulates matters of property, but more than that, the marriage agreement must contain elements in strengthening family resilience, as described by the author

⁴⁹ Mohammad Lukman Chakim and Habib, "Kesetaraan Gender Dalam Fikih Perempuan Perspektif Maqashid Syariah Jasser Auda," 57.

⁵⁰ Muhammad Habib Adi Putra and Umi Sumbulah, "Memaknai Kembali Konsep Nusyuz Dalam Kompilasi Hukum Islam Perspektif Gender & Maqashid Syariah Jasser Auda," *Egalita* 15, no. 1 (August 21, 2020): 55, <https://doi.org/10.18860/egalita.v15i1.10179>.

in the previous point, so that the meaning of the marriage agreement will represent its primary goal, namely, to provide harmony for the family.⁵¹

D. Conclusion

Following the explanation above, it can be understood that marriage agreements in Indonesia are described or based on several existing laws, including; Civil Code, Marriage Law, and Islamic Law Compilation. The marriage agreement itself is considered very important to be formed by every family because it can lead the family to become *sakinah*, *mawadah*, and *waramah* so that the obligation of the marriage agreement is required for the prospective husband and wife so that both can be protected. Maqashid sharia-based marriage agreements will provide incredible benefits in strengthening family resilience. In contrast, marriage agreements, both formally and substantially, need to be revised in detail and not discriminated against so that they have a new concept that is more up-to-date and represents legal objectives so that it can strengthen family resilience. Families in Indonesia whose impact can reduce and prevent divorce continue to increase.

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