



THE RELIGIOUS COURT'S DECISIONS ON DIVORCE: A *Maqāṣid Sharī'a* Perspective

Muchamad Coirun Nizar

Jurusan Syariah Fakultas Agama Islam UNISSULA Semarang

Email: choirun.nizar@unissula.ac.id

Abstract: *Maqāṣid sharī'a* is considered as a theory that can be applied to analyze the objectives of Islamic law. One of the developments of Islamic law in Indonesia, and in the Muslim world in general, is concerned with religious courts' decision made by judges. This study analyzes court decisions from the *maqāṣid sharī'a* perspective. This qualitative study focused on the divorce cases from the religious court of Salatiga district, Central Java. Twenty percent of the cases in 2017 were proportionally selected. This study shows that there were various reasons of divorce, ranging from constant quarrels to spousal negligence. The other reason was conversion, where one couple left Islam. The court decisions on those divorce cases suggest that the judges attempt to uphold the principles of *maqāṣid sharī'a*, such as the preservation of life, descendant, asset and religion. Depending on the respective case, the judges may grant the petition if it will give a greater benefit to the parties concerned that does not contrary to the *maqāṣid sharī'a*.

Keywords: Divorces, Salatiga, *Maqāṣid sharī'a*

DOI: <https://doi.org/10.20414/ujis.v24i2.408>

Introduction

THE PRACTICE of marriage in Indonesia is regulated by a particular law, namely Law No.1 of 1974. In this law, a marriage aims to establish a happy and eternal family based on the one God concept.¹ The emphasis on eternalilty of marriage is intended to preserve the marriage until an indefinite time. Consequently, although it is recognized in the law that marriages can be ended for several reasons, one of which is due to divorce, the state

¹ Article 1 of Law No. 1 1974

acknowledges that only divorces by trial is the valid mechanism of marital dissolution.²

Divorce issues held in a trial at the religious court (*pengadilan agama*/PA) are classified as the domain of *ijtihādi*, meaning that the decision given by judges is a matter of human's reasoning and consideration. In the study of classical *fiqh*, divorce is the husband's right through repudiation (*ṭalāq*) and can be done anytime and anywhere.³ However, the wife is also entitled to propose *ṭalāq* if she wishes so on the basis of a sound argument. When a husband is negligent in exercising his right to divorce, he is threatened with sin and punishment from Allah.⁴ In other words, although *ṭalāq* is men's privilege, they may face God's curse. To avoid arbitrary *ṭalāq* or divorce, the Marriage Law requires that marriage dissolution cannot happen except by trial at court after the court fails to reconcile conflicting spouses. The religious courts have existed since the Islamicate kingdom in Nusantara archipelago and continued to be recognized as one of the judicial institutions in the modern Indonesian legal system and is granted with the authority of judicial powers based on Law No. 7 of 1989. The modern religious court constitutes the evolution of Islamic sultane magistrate in the archipelago, such as *surambi* court, which was popular in Java prior to the colonial period.⁵

Currently, religious courts exist in every regency or district and city in Indonesia to implement a special authority concerning Muslim personal status and family law in Indonesia. This study is based on empirical study at the religious court of Salatiga district of Central Java. It focuses on the court's decisions on divorce. Divorce constitutes the highest cases of religious court, as the data by Supreme Court reveal.⁶ This mean that divorce dominate all family law cases in almost every district of religious court in Indonesia.

² Article 38 of Law No. 1 of 1974

³ Article 39 of Law No. 1 of 1974

⁴ Shamsuddīn Al-Sharbīnī, *al-Iqnā'* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2004).

⁵ 'Abd al-Raḥmān Al-Jazīrī, *al-Fiqh 'alā Madhāhib al-Arba'ah* (Istanbul: Hakikat Kitabevi, 2004).

⁶ Basiq Djalil, *Peradilan Agama di Indonesia* (Jakarta: Prenada Media Group, 2004).

Judicial institutions in Indonesia have the authority to enforce Islamic law, especially those relating to Islamic family law. Therefore, judicial institutions, especially the religious courts, always produce legal products, namely court decree, that also function as the jurisprudence of Islamic law. In classical terms, it is called *fiqh* or the product of Islamic law. The religious court decision can be said as “Indonesian *fiqh*” because it is issued by the judges through *ijtihād*. Religious court decisions can be produced through three models. Firstly, the decisions is referred as prior law products or jurisprudence. Secondly, the *istinbāt* method or the *ijtihād* method is used to find the legal provisions from the authoritative texts. Thirdly, a combination of both methods. The first and third methods are often used in the development of Islamic law in the modern era. The use of *ijtihād* is also a necessity in the development of Islamic law; it can be carried out flexibly but remains attentive to the situation and context where the *ijtihād* will be exercised.

The development of the *ijtihād* method in the modern Muslim world tends to lead to the use of the *maqāṣid sharī‘a* principles, which was developed by well-known Muslim jurist Al-Shāṭibī. The initial concept of *maqāṣid sharī‘a* have appeared implicitly in some classical literature, such as in the book of *Al Mustasfā* by al-Ghazālī and *Qawā‘id al-Aḥkām* by ‘Izzuddīn bin ‘Abd al-Salām. The *maqāṣid sharī‘a* has been studied by many Islamic legal experts in several parts of the world so that many new literatures have emerged that discuss it intensively. The study has resulted in many reliable scholars in this field, such as Muhammad al-Ṭāhir ibn ‘Āshūr (D: 1393 H / 1973 M), ‘Alal al-Fāsi (D: 1394 H / 1974 M), Aḥmad Al-Raysūnī, just to mention some. The works of these scholars have become references for the discussion of transnational *maqāṣid sharī‘a*.⁷

The *maqāṣid sharī‘a* theory is considered a theory that can continue to exist and be used by *mujtahids* in various circumstances. In observing the development of Islamic law in Indonesia, one of which is developed by judges through the

⁷ The verdict directory of Supreme Court can be accessed from <https://putusan.mahkamahagung.go.id>

verdicts of a religious court. It becomes a current *fiqh* product, which then becomes a material reference in the religious court for subsequent cases. Thus, it is vital to do research that aims at analyzing the court decisions from the *maqāṣid sharī'a* perspective as a method of *ijtihad*.

There are several previous studies about judicial divorce,⁸ but this study specifically investigates the application of the *maqāṣid sharī'a* in the divorce cases issued by Salatiga Religious Court judges in 2017. The qualitative method was used to determine the consideration of the verdicts at the courts regarding divorces as well as the perspective of *maqāṣid sharī'a* related to this matter. This study's population were all verdicts of Salatiga religious court in 2017 relating to divorces, which is very large in numbers. The samples are 10% -15% or 20-25% of the population, depending on (1) researchers' ability in terms of time, energy, and funds, (2) the extent size of the observation area of each subject, and (3) the size of the risk born by the researchers. For studies where the risk is considerable, of course, if the sample is larger, the results will be better.⁹ Therefore, the sampling technique used was proportional sampling, which was 20% of the court decision. If the number of verdicts regarding divorces in this religious court in 2017 is around 1.000, then 20% of 1.000 is 200 cases. The questions to be answered in this article is: (1) what are the factors that have triggered the couple to petition divorce at the religious court regarding in 2017? How is the *maqāṣid sharī'a* perspective on the the court's decision on divorce?

⁸ See for example Euis Nurlaelawati, 'Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce', *Islamic Law and Society* 20, no. 3 (2013): 242-271; Mohamad Abdun Nasir, 'Islamic Law and Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia', *Asian Journal of Social Science* 44, no. 1-2 (2016): 78-103; Syaiful Annas, 'Masa Pembayaran Beban Nafkah Iddah dan Mut'ah dalam Perkara Cerai Talak (Sebuah Implementasi Hukum Acara di Pengadilan Agama)', *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 1 (2017): 1-12; Oyah Bariah and Iwan Hermawan, 'Analisis Putusan PA Karawang tentang Cerai Gugat Karena Pelanggaran Ta'lik Talak', *al-Afkar* 1, no. 1 (2018): 182-195.

⁹ Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek* (Jakarta: Rineke Cipta, 1992).

The next passage highlights the debates on the *maqāṣid sharī'a* and the dynamic change of its conception. Following this is the presentation of the data of divorce cases from the court and analysis of them from the *maqāṣid sharī'a*.

***Maqāṣid sharī'a* in Islamic Law Discourse**

Change and development are a necessity for humankind. What remains in human life is the change and development itself. When these occur, it is also a must to make Islamic law always exists in the times' changes. As one of the universal principles in Islam:

الاسلام صالح لكل زمان ومكان

In the context of Islamic law development, in the past, Islam only offered a discipline in Islamic sharia in the form of a study called *uṣūl fiqh*, while now in the contemporary sharia discourse, *maqāṣid sharī'a* appears as a new trend in the study of Islamic sharia. Etymologically, *maqāṣid* means intention or purpose. It means things that are desired and intended.¹⁰ Meanwhile, *sharia* means a number of deeds laws brought by Islam, both concerning the conception of *aqīdah* (belief) and legislation.¹¹ The combination of these two words becomes *maqāṣid sharī'a*. Mainly, this term means the objectives of Islamic law.

Muslim jurists and scholars define *maqāṣid sharī'a* differently. Imam al-Ghazālī, for example, defines it as *maṣlahah*, which is realized to bring benefits and to reject harms as the goals of sharia'; saving religion, soul, mind, descent, and property.¹²

The development of *uṣūl fiqh* can be viewed from systematic writing or better known as *manhaj*, and the methodology of writing *uṣūl fiqh* originated from two styles, namely *Ḥanafīyah* or *fuqahā'* and *mutakalimīn*. These two schools of *uṣūl fiqh* are an attempt by the scholars to revitalize the concept of legal *istinbāt* to solve human problems. The *Ḥanafīyyah* model (refer to imam Hanafi) has two characteristics; determining the rules of the *uṣūl* under the provisions of the issue of *furu'iyah* and prioritizing the

¹⁰ Ibid.

¹¹ Muḥammad bin Mukarram Ibn Manẓūr, *Lisān al-'Arab* (Beirut: Dār Ṣādr, n.d.).

¹² Ibid.

values of the phenomena of *fiqh*.¹³ These characters make this school known as the school of *fuqaha* because it always departs from *fiqh*'s problems to be drawn into the rules of *uṣūl fiqh*. This school tends to follow inductive thought patterns, departing from particulars to be generalized in a universal rule.

The *maqāṣid* model was presented to the world of *uṣūl* methodology around the 8th century Hijriyah by Imam al-Syatibi with his book *al-Muwafaqat*. It is considered a new model because, apart from not following the previous *manhaj*, he prefers the *uṣūl fiqh* method to the *maqāṣid sharī'a* and understands legal imposition (*taklīf*) universally and its generalities.¹⁴ This shows that al-Shāṭibī is one of the scholars who try to preserve Islamic values through the methodology of *uṣūl fiqh*, where at that time the conditions of the Islamic world were gripped by differences and fanatical groups from various aspects, ranging from aspects of science, thought, and culture; between reformation and conservatives, between maintaining and reconstructing, between fundamentalists and modernists, between the debates of open or closed doors of *ijtihād*, and between formalist and substantive Islam.¹⁵ In this condition, al-Shāṭibī takes steps as an intermediary, and at the same time, he realizes that there are important things as the essence of religion, namely *maqāṣid sharī'a*.

In its construction, *uṣūl fiqh* will not be separated from the two main pillars; *dilālah alfad* and *maqāṣid sharī'a*. From these two, the previous *uṣūl* scholars did not pay attention to the legal perspective from the *maqāṣid*.¹⁶ They were too engrossed in studying the discussion of *lafadh* processing and touched very little on the goals and intentions of *sharia*. This condition makes Islam becoming too textual-authoritative. Whereas, a perfect Islam always offers concrete and abstract aspects. It does not always

¹³ Abū Hāmid Al-Ghazālī, *al-Mustashfā min 'Ilmi al-Uṣūl* (Cairo: Mathba'ah al-Amiriyah, 1904).

¹⁴ 'Abd al-Karīm Al-Namlah, *Al-Muhādhdhab fī 'Ilm Uṣūl al-Fiqh al-Muqarin* (Riyad: Maktabah al-Rushd, 1999).

¹⁵ Ibid.

¹⁶ Aḥmad Al-Raysūnī, *Al-Fikr al-Maqāṣidi: Qawā'iduhu wa Fawā'iduhu* (Ribath: Maṭba'ah al-Najāh al-Jadīdah, 1999).

have to be symbolized because behind that symbol, many secrets show Islam's nature.

Abdul Majid Turkey and Abdul Majid ash-Shaghbir tried to pull back to the *maqāṣid* conception built by al-Shāṭibī. According to Abdul Majid Turkey, the *maqāṣid* proposed by al-Shāṭibī is a new feature that provides a clear description of traditional *uṣūl fiqh*. Meanwhile, ash-Shaghir was more extreme, stating that the concept of *maqāṣid*, from the beginning (al-Juwaynī, al-Ghazālī, 'Izzuddīn bin 'Abd al-Salām, Ibn Taymiyyah) and ended in al-Shāṭibī, has not been able to make *uṣūl fiqh* follow and respond to the civilization and the development of community interactions. Therefore, it is necessary to emerge new theories or conceptions in *ijtihād* with *maqāṣid*.¹⁷

In this case, it is not surprising if *uṣūliyyūn* (*uṣūl fiqh* scholars) say that al-Shāṭibī is a reformer in the discipline of *uṣūl fiqh*, which makes the rigidity of this knowledge open because of his new concept. Then, the problems that have been befalling *uṣūl* scholars have been interrupted. However, he was inspired a lot by previous scholars such as al-Ghazālī, 'Izzuddīn bin 'Abd al-Salām, and al-Qarafi.

The method of determining (*turuq al-ithbat*) *maqāṣid sharī'a* is a technical explanation and further operationalization of how to uncover (*turuq al-ma'rifah*) *maqāṣid sharī'a*. Scholars have a different formulation of *maqāṣid* methodology. The differences lie in a linguistic substance and terminology. Imam 'Izzuddīn bin 'Abd al-Salām used a different approach to understand *maqāṣid sharī'a*. According to its object for *maqāṣid dīniyyah*, the absolute *naqli* (textual) approach used the worldly *maqāṣid* may use the *aqli* (rational) approach. Furthermore, the technique of optimizing this logical reason is not practiced wildly but must run within the limits of the corridors that have been determined by the texts of the Qur'an and Hadith. Intellect is like a balance sheet to standardize various definite cases (*darūriyyah*) and measure various speculative cases (*ẓanniyyah*) to find *mu'tabar* conclusions.

¹⁷ Umar bin Ṣālīh Ibn Umar, *Maqāṣid al-Sharī'a 'inda Imam 'Izzuddīn bin 'Abd al-Salām* (Yordania: Dār al-Nafa'is, 2003).

Theoretically, Imam 'Izzuddīn proposed several methods of determining *maqāṣid sharī'a*, both using the *naqli* and *aqli* approaches; (1) determining *maṣlaḥah* and *mafsadah*, (2) determining a priority scale, and (3) prioritizing the role of *syara'* rather than logical reasons.

In terms of determining *maṣlaḥah* and *mafsadah*, 'Izzuddīn states that every commandment and prohibition of *shari'a* automatically contains *maqāṣid*. Behind every command, there must be a dimension of benefit, whether worldly, *ukhrawi* (hereafter) or both at once. Likewise, behind every prohibition, there must be an element of *mafsadah*, both worldly, *ukhrawi* (hereafter), and both at once.¹⁸

Meanwhile, in determining the priority scale, *maqāṣid sharī'a* has different degrees (*mutafawitat*). There are *maṣlaḥah* that are higher in value than other *maṣlaḥah*. Likewise *mafsadah*, some are worse than the other one. To determine *maṣlaḥah mu'tabar*, it takes the ability to sort on a priority scale.

To determine the *maqāṣid sharī'a*, the role of *shara'* must be preceded. As quoted by Ibn Zughaybah from Imam 'Izzuddīn that the Qur'an and Hadith include orders to take *maṣlaḥah* and prohibitions that contain harms. Some are shown by the sentences of orders and prohibitions in *lafadh*. Some are indicated by good promises and ominous threats.¹⁹ So, it is understood from this expression that the commands in the Qur'an and Hadith absolutely contain *maṣlaḥah* even though they cannot be understood rationally. Likewise, the prohibition in the Qur'an and Hadith contains absolute *mafsadah* even though it cannot be rationalized.²⁰

Divorces at Salatiga Religious Court in 2017

This research was conducted by analyzing the verdicts of religious court in Salatiga regarding divorces in 2017. For

¹⁸ Muhammad al-Tāhir Ibn 'Āshūr, *Maqāṣid al-Sharī'a al-Islāmiyyah* (Yordania: Dār al-Nafa'is, 2001).

¹⁹ 'Izzuddīn Ibn 'Abd al-Salām, *Al-Qawā'id al-Kubrā* (Damaskus: Dār al-Qalam, 2000).

²⁰ Ibn Zughaybah, *Al-Maqāṣid al-Ammah li al-Sharī'ah al-Islāmiyyah* (Cairo: Dār al-Ṣafwah, 1996).

effectivity, 200 samples of the verdicts were categorized into the factors causing the divorces; leaving the spouse (36 cases), continuous disputes and quarrels (117 cases), forced marriages (11 cases), apostasy (1 case), and economics issues (13 cases).²¹

Leaving the spouse occurred in several cases. For example, husbands leave their wives without providing a living, or husbands often leave the house without knowing any causes. Spousal negligence serve reasons for marital dissolution. A divorce case like this happens to a married couple who live in Gentan, Susukan District. The couple has lived as a family for two years and nine months. Then, in December, the husband left his wife and never provided a living. The wife sued her husband at the Religious Court. Then, the court granted her lawsuit with verdict number 1310/Pdt.G/2017/PA.Sal.

Other divorces were due to forced marriages. There were 11 divorce cases caused by this factor in 2017. Such divorce is just a natural consequence because, from the beginning, the marriage was not of spouse's will. One example of this kind is verdict number 1313/Pdt.G/2017/PA.Sal issued to a couple whose wife came from Ketep, Sawangan, Magelang Regency. Their marriage took place in July 2017, upon which the couple temporarily lived in a house of the wife's parents. However, after three months of marriage, it turned out that the household did not get peace since quarrels frequently occurred. This quarrel arose because their marriage was not based on their will, but because of their parents' compulsion. Seeing such a situation, the panel of judges decided that the union was no longer effective.

The most dominant factor of the divorces in this religious court in 2017 was constant disputes and quarrels. In fact, the backgrounds of the cases are diverse. Sometimes the wife neglects her obligations, and the husband leaves his wife without providing a living. In managing a family life, both husband and wife are obliged to carry out their respective obligations. If the obligations are neglected or not carried out, it will undoubtedly have a negative impact on the household. As happened in a household in Watuagung, Suruh District, the wife did not carry

²¹ Ibid.

out her duties properly. Initially, their union was harmonious. Since the wife began to establish affairs with another man, the wife's attitude to her husband had changed. The wife often got drunk and did not properly carry out her duties. Because the husband felt that he could not maintain this broken family, he proposed a divorce petition to the Religious Court and was granted.

The disputes and quarrels were motivated by an affair by either the wife or the husband. At Salatiga religious court, there was a divorce case due to infidelity, one of which was a divorce case experienced by a family living in Karangjati, Pucung, Bancak District. Their divorce took place since the wife had an affair with another man, often called 'another beloved man'. The wife's affair with the man was found when the husband saw his wife leaving a hotel with another man. Seeing his wife cheating with another man, the husband returned his wife to her parents. Because he felt that he could no longer save his family, the husband decided to divorce his wife. And the husband's request was granted by the judges with the issuance of verdict number 1314/Pdt.G/2017/PA.Sal.²²

Another root of the quarrels is when the husband prohibited his wife from caring for her parents. There were 5 cases like this found here. It is classified as low compared to other cases, but households from Semarang Regency have experienced this case. At first, their household was fine. At one point, there was a quarrel in their household. It happened because the husband did not give his wife a living since the beginning of the marriage. In addition, he did not allow his wife to care for her parents. He really neglected his wife. Therefore the wife sued her husband at the Religious Court, and the court granted this lawsuit with the issuance of verdict number 1315/Pdt.G/2017 /PA.Sal.²³

Besides the two factors, a fight is also a common one that makes the wife ask for a divorce. Conflicts sometimes arose

²² Processed data. Mahkamah Agung Republik Indonesia, 'Direktori Putusan MA'.

²³ Verdict of religious court of Salatiga number 1314 /Pdt.G/2017 /PA.Sal Ibid.

because of misunderstandings or disagreements, as described in the previous paragraph. Arguing was usually understood in quarreling, either in the form of harsh actions or harsh and hurtful words. There have been several divorce cases at the Salatiga Religious Court due to quarrels between husband and wife. Their household was initially harmonious. Over time quarrels arose between the two. The cause of this dispute was the wife felt that she lacked the income provided by her husband, refused to be consulted with her family, and often asked her husband to divorce her. Because the wife's attitude was so bad, the husband felt no more suitability with his wife. The husband fulfilled the wife's request to divorce her by asking the Religious Court to get the verdict. Because the judge felt that divorce was better for them, the verdict number 1332/Pdt.G/2017/PA.Sal was issued.²⁴

Misunderstandings can lead to arguments that become a contributing factor to divorce. If quarrels cannot be resolved, it will cause division for anyone, including a family. Suppose there are frequent quarrels in the family over time. In that case, the family will be destroyed, as happened to families in Salatiga where their families were destroyed due to a misunderstanding between husband and wife. Because there were too frequent quarrels, and the husband felt no need to save his family, the husband asked the court to be willing to divorce his wife. This case occurred as stated in court verdict Number 1320/Pdt.G/2017/PA.Sal.²⁵

On the other hand, different opinions can also lead to arguments that become a factor in the cause of divorce. The husband and wife should understand each other. If there is a dispute, one of them should give in. The verdict at the Religious Court number 1321/Pdt.G/2017/ PA.Sal. proves that divorce occurred because of the differences in opinion between husband and wife. Before a divorce emerged, it usually began with a fight, then continued with a separation from the house, and finally ended in court. Besides the case above, there is no mutual trust between husband and wife. If there is no mutual trust, there is

²⁴ Verdict of Religious Court Number 1315/Pdt.G/2017/PA.Sal Ibid.

²⁵ Verdict at Religious Court of Salatiga Number 1332/Pdt.G/2017/PA.Sal Ibid.

only a suspicion that there is no sense of harmony in the household. Verdict 1335/Pdt.G/2017/PA.Sal is proof that missing trust between spouses can lead to divorce.²⁶

The economy has been one of the prominent factors of a divorce case. In the verdict of the Religious Court, several reasons for divorce were found to be economic factors. One of them is when the husband does not have a job. The total of divorces for this case is 15 cases out of 200 selected cases. Economic stability in family is essential and must be normatively met prior to marriage. For husbands, it is an obligation to provide a living for their wives and children. If this is not realized, it will certainly disturb the harmony of a household. Therefore, a husband is obliged to work seriously to support his family. Along with the husband's effort for a living, a good wife should understand the husband's situation. She also should accept what the husband has provided. Some of the divorce reasons are the wife's desire to work abroad as a female migrant worker. Meanwhile, the husband is reluctant to work.

The last case of the 200 samples of divorce cases was *murtad* (apostasy). *Murtad* is a term for people who leave the (belief) religion of Islam. It is one of the reasons for the abrogation of a marriage. Therefore, if a husband or wife commits apostasy, their marriage will be annulled. A divorce case for apostasy occurred at the Religious Court with a verdict letter number 1327/Pdt.G/2017/PA.Sal. Based on the facts at the trial, it was known that both the defendant and the plaintiff had left Islam. Therefore, in this verdict, the judge decided to annul the plaintiff and defendant's marriage contract.²⁷

Being different from the usual divorces, when the end of marriage occurs because of a non-Muslim husband, or both husband and wife leave Islam, there are several different provisions regarding the legal consequences of the two. One of

²⁶ Verdict at Religious Court of Salatiga Number 1320/Pdt.G/2017/PA.Sal Ibid.

²⁷ The two of them married Islamically in Salatiga in May 1995 and were declared apostates in August 1995. Ibid.

them is divorce, which causes the husband lose his right to reconcile.²⁸

Maqāṣid sharī'a Perspectives on the Divorce cases

Maqāṣid sharī'a comes from two Arabic words, *maqāṣid* means goals, while *sharia* is a rule or *sharia* (Islamic law). *Maqāṣid sharī'a* can be defined as the purpose of enforcing *sharia*. The purpose of enforcing *sharia*, according to Ash-Syatibi is to provide benefits for humans in this world and the hereafter. Thus, all *sharia* revealed by Allah is for the benefit of human life.

Indonesia is a country with Muslims as the majority. For this reason, there is special treatment for Muslims. This specialization can be seen in the establishment of religious courts all around the country. The religious court is a judicial institution established explicitly by the government to serve the Muslim community in the field of Islamic law. One of the religious court's authorities is law enforcement and justice in marriage, divorce, inheritance, and, recently, economics sharia.

In enforcing the marriage law, the judge refers to the marriage law and the compilation of Islamic law (*Kompilasi Hukum Islam/KHI*), where this reference is commonly referred to as Indonesian *fiqh* law. However, with the time changes and the emergence of new problems, the judges conduct *ijtihād* in establishing the law. *Ijtihād* by judges must be adjusted to the objectives of the *sharia*. So, it can bring benefits. For example, if the panel of Judges is faced with two choices, deciding a case in accordance with the Marriage Law or *KHI* or *ijtihād*, the judge must choose a more beneficial aspect even though it is contrary to the Law or *KHI* because the essence of law was created for the benefit for humans.

Below is the analysis of the *maqāṣid sharī'a* on the verdicts of the religious court of Salatiga. Some samples from the court decisions on divorce are proposed and analyze to discern whether or not the *maqāṣid sharī'a* is applied in such decisions.

²⁸ Hartini, 'Cerai Talak Suami Non-Muslim di Pengadilan Agama', *Mimbar Hukum* 21, no. 1 (2009): 127–140.

The first case is concerned with a female plaintiff, who sought divorce because of being neglected by her husband. According to the judge's consideration, the defendant's attitude was such, and it had a negative impact on the family. Then, disputes often occurred. The judge predicted that their household could no longer be saved. If it were maintained, it would lead to greater *maḍarat* (harms). Therefore, to avoid greater harm and gain benefits, the judge decided the case with a divorce verdict. The judges based quoted legal maxim to endorse their decision to grant a divorce. The maxims reads

درء المفاسد مقدم على جلب المصالح

which literally means "ejecting evils must be prioritized over taking benefits".

The court issued verdict number 1310/Pdt.G/2017/ PA.Sal, with the consideration that the defendant, during the case, had never attended the trial from beginning to the end. The defendant also did not send a lawyer or anyone as a representative. Therefore, the defendant should be considered deliberately ignoring. The right that the defendant is entitled to appeal should be aborted because his absence at the trial nullifies such right. A *verstek* verdict (decision given without the defendant's presence) was finally handed down on the case. The continuity of the fate of the couple who was neglected by the spouse must be a concern for the sharia. Therefore, when the judge decided a case without the presence of the defendant, after several summonses, in the view of the *maqāṣid sharī'a*, it is included in the category of *maṣlahah dharuri* or primary.²⁹ Moreover, the reason behind this case is the absence of the provision of support from the husband for more than three years. In order to maintain the continuity of life (*hifz nafs*) of household members, namely wife and children, divorce must be approved.

Another example is the court verdict number 1313/Pdt.G/2017/PA. regarding divorce caused by a forced

²⁹ Including the positive influence of *verstek* verdict for husbands and wives is the speedy completion of the case (divorce so as to prevent damage to the joints of family life in the state of the Republic of Indonesia. Sanyoto Sanyoto, 'Perkara Perceraian yang Diputus dengan Verstek', *Jurnal Dinamika Hukum* 9, no. 2 (2009): 167–173.

marriage viewed from a *maṣlahah* perspective is an application of fiqh rules. The panel of the judge referred the same legal maxim as the previous case.

Because defending their household has created a lot of *maḍarat* (harms), their marriage was not on their will but because of their parents' coercion. So far, they have been fighting. Therefore, the court issued a verdict divorce for both of them.

There were more complicated factors that led to spouses' uninterrupted disputes. When the verdict was issued against the background of adultery, then a divorce occurred. In essence, it was one of the considerations of the *maqāṣid sharī'a* in the form of *hifẓ dīn* or protection of religion. The household is considered not successful because it does not achieve the goal of marriage, article 3 of KHI and the Qur'an, Sūra al-Rūm verse 21:

ومن آياته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها وجعل بينكم مودة
ورحمة إن في ذلك لآيات لقوم يتفكرون

Meaning: "And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts) verily in that are Signs for those who reflect."

Based on the judge's consideration above, their marriage failed and did not need to be maintained. So, the court ended their marriage. A divorce is a solution because it protects the *sharia* of marriage that is the creation of the purpose of marriage according to this verse.

Another *maqāṣid sharī'a* perspective is the verdict of this religious court regarding divorce caused by factors leaving one spouse. The judges, in their verdicts, quoted the opinion of the Muslim jurists in *fiqh al-sunna*, which reads:

إذا أدعت الزوجة إضرار الزوج بها بما لا يستطاع معه دوام العشرة بين أمثالهما
يجوز لها أن تطلب من القاضي التفريق وحينئذ يطلقها القاضي طلاقاً بائناً لو
ثبت الضرر وعجز عن الصلح بينهما

Meaning: "If the wife sues for the sufficiency of the husband because he is unable to carry on a family life between the two of them, the wife may ask the judge to be separated or divorced and immediately the judge can pronounce divorce *bain* if it is proven that the lawlessness and peace are not achieved between the two."

In this case, it is necessary to reject a great *mafsada* (harm) in the form of the fate of one of the spouses left alone. The one who was left alone must have an exact fate, especially for their future, because one of the human rights is marriage, while when a marriage occurs with one spouse leaving the other, the next marriage is hindered. This is in accordance with the principles in *maqāsid sharī'a* in the form of *ḥifẓ nasl* or preserving the continuity of human life through regeneration.

The court's verdicts regarding divorce due to the husband's refusal to work shows that the judge considered the words of the scholars of *fiqh* in the book *Fiqh al-Sunnah* Juz II page 291, which reads:

إذا أدعت الزوجة إضرار الزوج بها بما لا يستطاع معه دوام العشرة بين أمثالهما
يجوز لها أن تطلب من القاضي التفريق وحينئذ يطلقها القاضي طلاقاً بائناً لو
ثبت الضرر وعجز عن الصلح بينهما

Meaning: "If the wife sues for the sufficiency of the husband because he is unable to carry on a family life between the two of them, the wife may ask the judge to be separated or divorced and immediately the judge can pronounce divorce *bā'in* if it is proven that the lawlessness and peace is not achieved between the two.

The judges took this verdict because if their household were maintained, they would not achieve the goals mandated in article 1 of the 1974 Marriage Law, article 3 of KHI and *Sura al-Rūm* verse 21. Meanwhile, the economy is one of the crucial things that must be considered in the sustainability of the household. One of the protections that must be considered in order to realize the *maqāsid sharī'a* is *ḥifẓ al-māl* or protecting assets. When protecting assets in the household were neglected, the lives of the people in the family must continue. Then, divorce at that time was the best solution. Quantitative research by Nenny Hendajany in 2018 in West Java concluded that women who work increase the likelihood of divorce.³⁰

The *maqāsid sharī'a* perspective on the verdict at the Religious Court number 1327/Pdt.G/2017/PA.Sal relates to a divorce case

³⁰ Nenny Hendajany, 'Benarkah perempuan bekerja dan berpendidikan mempengaruhi tingkat perceraian? Kasus Jawa Barat', *Jurnal Ekonomi Kuantitatif Terapan*, 13.2 (2020), 272–81.

due to an apostate husband.³¹ In the perspective of *maqāṣid sharī'a*, the cancellation of marriage must occur to maintain Islamic law, especially marriage, which stipulates that both must be Muslims.

Generally, the *maqāṣid sharī'a* perspective on the divorce verdicts in Salatiga Religious Court in 2017 contains *maṣlahah* that can be felt by husband, wife, and children. If classified, *maṣlahah* can be felt by all three. In the divorce verdicts motivated by a continuous disputes between husband and wife, caused by negligence on the part of both the wife and the husband, when the divorce between the two is decided, it is inevitable that all parties can feel the *maṣlahah*. A marriage in which there is *ḍarar* must be terminated because it creates *mafsadah* for all parties in the household. The lives of the three of them can no longer feel calm. The divorce decided by the Religious Court based on one of the parties had left their partner is a form of *maṣlahah* that can be felt by the party left behind. He can establish a marital relationship with another party so that the possibility of achieving peace through another marriage and clarity on the child's fate and responsibilities in the household is more clearly maintained. It is the same with the divorce cases where the husband no longer wants to work. The sustainability of the life of the wife and children in the household, which should be the responsibility of the husband, must be maintained more than the marriage relationship with the husband's irresponsible condition. Meanwhile, the divorce verdicts with the cause of apostasy is a *maṣlahah* for Islam, especially about the law of marriage.

Conclusion

This study shows that various factors have stimulated marital dissolution of conflicting couples at Salatiga Religious Court in 2017. The dominant factor was continuous quarrels and disputes that put the union at risk of being broken. The next predominant reason for divorce was spousal negligence, where one couple, mostly the husband, leaves the other without giving support so that their marital status was uncertain. The other causes included forced marriage, economic instability and conversion.

³¹ Mahkamah Agung Republik Indonesia, 'Direktori Putusan MA'.

The principles of *maqāṣid sharī'a* can be said to be contained in most of the divorce verdicts issued by the religious court. When the judges granted divorce petition on the ground of ongoing spousal disputes, they considered that divorce was better for the disputants than defending the union. In other words, rejecting the petition of divorce while the marriage was already instable may put increase conflicts and tension amongst the parties concerned. The divorce verdict reveals the rejection of *mafsadah* and the adoption *maṣlahah* in the form of continuity of life as a manifestation of *hiḍḍ nasl*. Likewise, the approval of divorce petition on the basis of apostasy suggests that the marriage is no longer able to maintain the religion of Islam (*hiḍḍ dīn*). The *maṣlahah* or benefits, either for the spouse, the plaintiff, children and other parties concerned, is at the centre of the court consideration to either approve or reject the petition of divorce.

References

- Al-Ghazālī, Abū Ḥāmid. *al-Mustashfā min 'Ilmi al-Ushūl*. Cairo: Mathba'ah al-Amiriyah, 1904.
- Al-Jazīrī, 'Abd al-Raḥmān. *al-Fiqh 'alā Madhāhib al-Arba'ah*. Istanbul: Hakikat Kitabevi, 2004.
- Al-Namlah, 'Abd al-Karīm. *Al-Muhādhdhab fī 'Ilm Uṣūl al-Fiqh al-Muqarin*. Riyad: Maktabah al-Rushd, 1999.
- Al-Raysūnī, Aḥmad. *Al-Fikr al-Maqāṣidi: Qawāiduhu wa Fawā'iduhu*. Ribath: Maṭba'ah al-Najāh al-Jadīdah, 1999.
- Al-Sharbīnī, Shamsuddīn. *al-Iqnā'*. Beirut: Dār al-Kutub al-'Ilmiyyah, 2004.
- Annas, Syaiful. 'Masa Pembayaran Beban Nafkah Iddah dan Mut'ah dalam Perkara Cerai Talak (Sebuah Implementasi Hukum Acara di Pengadilan Agama)'. *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 1 (2017): 1–12.
- Arikunto, Suharsimi. *Prosedur Penelitian Suatu Pendekatan Praktek*. Jakarta: Rineke Cipta, 1992.
- Bariah, Oyah, and Iwan Hermawan. 'Analisis Putusan PA Karawang tentang Cerai Gugat Karena Pelanggaran Ta'lik Talak'. *al-Afkar* 1, no. 1 (2018): 182–195.
- Djalil, Basiq. *Peradilan Agama di Indonesia*. Jakarta: Prenada Media

- Group, 2004.
- Hartini. 'Cerai Talak Suami Non-Muslim di Pengadilan Agama'. *Mimbar Hukum* 21, no. 1 (2009): 127–140.
- Hendajany, Nenny. 'Benarkah Perempuan Bekerja dan Berpendidikan Mempengaruhi Tingkat Perceraian? Kasus Jawa Barat'. *Jurnal Ekonomi Kuantitatif Terapan* 13, no. 2 (2020): 272–281.
- Ibn 'Abd al-Salām, 'Izzuddīn. *Al-Qawā'id al-Kubrā*. Damaskus: Dār al-Qalam, 2000.
- Ibn Manẓūr, Muḥammad bin Mukarram. *Lisān al-'Arab*. Beirut: Dār Ṣādr, n.d.
- Ibn Umar, Umar bin Ṣālīh. *Maqāṣid al-Sharī'a 'inda Imam 'Izzuddīn bin 'Abd al-Salām*. Yordania: Dār al-Nafa'is, 2003.
- Ibn 'Āshūr, Muḥammad al-Ṭāhir. *Maqāṣid al-Sharī'a al-Islāmiyyah*. Yordania: Dār al-Nafa'is, 2001.
- Mahkamah Agung Republik Indonesia. 'Direktori Putusan MA'.
- Nasir, Mohamad Abdun. 'Islamic Law and Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia'. *Asian Journal of Social Science* 44, no. 1–2 (2016): 78–103.
- Nurlaelawati, Euis. 'Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce'. *Islamic Law and Society* 20, no. 3 (2013): 242–271.
- Sanyoto, Sanyoto. 'Perkara Perceraian yang Diputus dengan Verstek'. *Jurnal Dinamika Hukum* 9, no. 2 (2009): 167–173.
- Zughaybah, Ibn. *Al-Maqāṣid al-Ammah li al-Sharī'ah al-Islāmiyyah*. Cairo: Dār al-Ṣafwah, 1996.