

CONSTRUCTION OF THE FIVE PILLAR LAW OF *MUBADALAH* IN THE PERSPECTIVE OF ISLAMIC MARRIAGE PHILOSOPHY

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ABSTRACT

The philosophy of Islamic marriage is often overlooked by the perpetrators of marriage so that the divorce rate is always high. For example, the Central Statistics Agency (BPS) released data on the divorce rate in Central Java for various reasons, in 2020 it reached 65,815 divorces, in 2021 there will be no less than 65,722. Although comparing to the figures in the previous year, this figure has decreased slightly, it is still said to be high. One way to reduce this number is to require a complete understanding of the philosophy of Islamic marriage. The five pillar *mubadalah* can be jointly carried out by each husband and wife, so that household harmony can be achieved together. This paper seeks to examine this, where the type of research used is literature review with documentation techniques, the approach used is *normative theology* with content analysis techniques and drawing conclusions with a deductive thinking framework. The results of this study are that the philosophy of Islamic marriage is parallel to the *maqashid sharia* of marriage. *Maqashid sharia* marriage has two dimensions: *maqashid ashliyyah* or main *maqashid*, and *maqashid taba'iyah* or complementary *maqashid*. The five pillar *mubadalah* are tips that need to be considered to create *maqashid* marriage and a philosophy of Islamic marriage at once.

Keywords : *Pillar of Mubadalah, Maqashid Marriage, Islamic Marriage Philosophy.*

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A. INTRODUCTION

Allah SWT sent down the Koran as a guide, containing rules for the safety and welfare of humans. Besides the Koran, there are Hadiths that have a function as explanatory and complementary to the Koran (Brown, 2017; Nagel, 2020). Al-Quran verses that discuss marriage are found in approximately 85 verses in about 22 of the 114 letters in the Koran (Lendrawati, 2020; Munawaroh, 2019). It is believed and agreed that these verses exist as the word of Allah SWT, or in *ushul fiqh* terms it is called *Qath'iyyus Tsubut*. While the hadiths are very numerous, it is found that a small number of them talk about marriage. As Amir Syarifuddin said that only about 400 more hadiths about marriage were found, among the books of hadith that talk about marriage is the book *Muntaha al Akhbar* by Ibn Taimiyyah which was prescribed by Asy Syaukani in the book *Nail al Awthar* and there are around 330 hadiths about marriage. Another book of hadith is the book *Bulughul Maram* by Ibn Hajar al-Asqalaniy which was prescribed by Ash Shan'ani in the book *Subulus Salam* and there are about 175 hadiths about marriage (Syarifuddin, 2014).

The editorial or term of marriage philosophy is not found in a number of verses and hadiths regarding marriage mentioned above, but from a number of verses or hadith texts it can be formulated the philosophy of marriage in Islam, or the *maqashid* of marriage (Nasution, *et.al.*, 2012). To find out the philosophy of Islamic marriage formulated from the texts of the Koran or hadith, a deep understanding is needed by trying to explore the meaning and nature of the guidelines provided. If the guidelines contained in the texts are understood correctly, respect, honor, and enthusiasm will be obtained to implement them. Mawahib quotes

from Huijbers that a near-perfect understanding of a law can be trusted as something that can shorten the distance between law and justice so that it is targeted as an ideal that must be implemented (Huijbers, 1995; Mawahib, 2019). These ideals and goals are in line with what is stated in article I Chapter I Law Number I of 1974 concerning Marriage which reads: marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the belief in the One and Only God (Sirin, 2018).

Family is the most basic element in society (Zaelani *et.al.*, 2021). The family or household as an important social institution is a stronghold of morality and individual formation. It is a central institution that has many roles. Maintaining it properly, it will be able to give birth to generations that bring benefits to society. This lofty goal is often forgotten by Muslims. Finally, the phenomenon of divorce and domestic disputes is commonplace in various regions, one of which is Central Java. This is similar to the Central Statistics Agency (BPS) which released data on the divorce rate in Central Java for various reasons in 2020 reaching 65,815 divorces. Meanwhile in 2021, the divorce rate in Central Java will also be no less than 65,722. Although when compared to the figures in the previous year this figure has decreased slightly, it is still said to be high. One of the reasons is that understanding of the nature or philosophy of marriage does not get a portion of understanding as a whole.

Referring to the problems that are currently developing, this study aims to analyze the legal construction of the five pillar *mubadalah* in the perspective of Islamic marriage philosophy. This paper examines the philosophy of Islamic marriage by examining the five pillar *mubadallah* which can help create an Islamic marriage philosophy with the aim that

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the purpose, wisdom, or philosophy of marriage in Islam can be understood properly and thoroughly. If this is well known, then each individual in the household will respect it, protect it so that He or She can play his or her maximum role in society and the community feels their existence as the smallest institution.

This study is a follow-up study of several previous studies, where studies of marriage and *mubadalah* have existed before, such as Santoso's research (2020) related to the existence of the role of women as the head of the family is associated with the concept of *Qira'ah Mubadalah*, as well as Haitomi (2021) who has conducted a study of Husband and Wife Relations in the *Mubadalah* Review while studies related to marriage and philosophy have been carried out by several researchers, including Setiyanto (2017) on Polygamy in the Perspective of Islamic Law Philosophy, Musyafah (2020) on Marriage in the Philosophical Perspective of Islamic Law. In contrast to previous research, this study is more focused on the study of *mubadalah* construction in the perspective of Islamic marriage philosophy by focusing on the five pillars of *mubadalah*.

B. METHOD

This study uses a qualitative approach with the type of *library research* (Sugiyono, 2005), while the approach to be used is a *normative theological* approach, an approach in which religious norms or rules become the main reference (Faisal *et.al.*, 2021). The source of the data in this study consisted of documentary data in the form of documents related to the legal construction of the five pillar *mubadalah* and the philosophy of Islamic marriage. The analysis used is *content analysis* (Maksum *et.al.*, 2021). Drawing conclusions is done by using a deductive

way of thinking, drawing general conclusions and then drawing conclusions that are more specific (Hadi, 2012).

C. RESULT AND DISCUSSION

I. Islamic Law Philosophy

In language, the word philosophy comes from the Greek word *philosophia*, which basic word is *philein* means love or *philia*, love, and *sophia* means wisdom (Jauhari *et.al.*, 2020; Nuttall, 2013). This word eventually created to the English word *philosophy*, which is usually translated as "love of wisdom" (Has, 2015; Usman and Itang, 2015). Nasution said that the word philosophy in Indonesian terms has equivalent words in other languages. In Arabic it is called *Falsafah*, in Latin it is called *philosophia*, while in German, Dutch and French terms it is *philosophie*. However, all of them have Greek roots (Nasution, *et.al.*, 2012). Philosophy as deep thought through love and wisdom in Arabic is pronounced with *falsafah*, the equivalent word found in Arabic is wisdom (Izomiddin, 2018; Nasution and Nasution, 2020). From here it is known linguistically that philosophy means wisdom (Nasution, *et.al.*, 2012). Wisdom is knowledge about the nature of something and knowing the nature of what is contained in something, regarding its avails and benefits (Has, 2015; Nurhadi, 2017). Knowledge of this nature becomes a driving force or motivation to do good and right actions (Has, 2015). If the word philosophy is not found in the text of the Koran, then the word wisdom is mentioned in the Koran in 20 verses (M. A. Jauhari, 2020; Nurrohimi and Sidik, 2020).

Philosophers define philosophy with various types, Plato said philosophy is nothing but the knowledge of everything that exists (Guthrie and Guthrie, 1986; McAleer, 2020), Aristotle said that the duty

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of philosophy is to investigate the causes and principles of all things (Ramal, 2021; Wiesner, 1985). Thus philosophy is a very general science. According to the Islamic philosopher, Al-Farabi, philosophy is the science of existential nature and aims to investigate the true essence (Farabi, 2019; Reynolds and Tracy, 1994). Immanuel Kant said that philosophy is a science which is the basis and base of all knowledge which includes four issues (Nasution and Nasution, 2020; Usman and Itang, 2015).

While thinking philosophically as quoted by Usman and Itang (2015) is to think consciously, that is to think carefully and according to a definite rule. Harun Nasution said that the essence of philosophy is to think according to order (logic) freely (not bound by tradition, dogma and religion) and deeply to get to the bottom of the problem. This is in accordance with the task of philosophy, knowing the causes of something, answering fundamental questions, and the principal and responsibilities to solve the problems faced (Fahri, 2016; Nur *et.al.*, 2022).

Then Islamic law, this word is taken from a Western term, Islamic Law which shows that the meaning is the whole building of regulations in Islam both through shari'a, fiqh, and its development such as fatwa, *qanun*, *siyasa* and others (Nasution and Nasution, 2020). al-Siddiqiy (2001) defines it as a collection of power or efforts of legal experts to apply shari'a to the needs of society. While Joseph Schacht (1993) defines Islamic Law by referring to it as *Islamic Law* which means the entire *khitāb* of Allah which regulates the life of every individual Muslim in all aspects of his life (Isnaeni *et.al.*, 2021). While Muslihudin defines that Islamic law is a legal system that is the product of God, God's will that is upheld on earth. Islamic law is called sharia, or the right way. Al-Quran and hadith are the two main and original sources for Islamic law (Muslihuddin, tt.).

When discussing Islamic law, it is also necessary to describe the characteristics of Islamic law, so that a comprehensive discussion of Islamic law itself is found. Islamic law has many special characteristics that can be deduced from its philosophy or wisdom. Among the characteristics of Islamic law are: **First:** it is divine – Rabbani, that is, it comes from God, so it is absolute. **Second:** perfect, the only perfect and harmonious Shari'a. it is perfect because it regulates all aspects of life (Al-Asyqar, 1982). **Third:** the accumulation of elastic and constant properties, providing principles that are global in nature, at the same time constant, but elastic in nature, opens opportunities for mujtahids to make ijihad about contemporary laws that never existed in the previous era (Gunawan, 2018; Kusnadi, 2014). **Fourth:** Universal, it is universal, general, comprehensive for all humans, in all places and times. **Fifth:** Easy and not burdensome. **Sixth:** Systematic, where Islamic law reflects logically different doctrines, interconnected with one another (Aziz, 2019; Kusnadi, 2014). **Seventh:** *Ta'abbudiy* and *ta'aqquli* in nature, this can be seen in the field of worship which contains the value of *ta'abbudy* (pure worship) *ghairu ma'qulat al-ma'na* (irrational) (Aziz, 2019). **Eighth:** Realistic and humanitarian. It does not burden beyond the limits of ability.

Furthermore, legal philosophy is knowledge of deep, systematic, logical and radical thinking about the various rules that apply in human life. According to Rasjidi in Nasution said that legal philosophy has three dimensions of definition. **First:** legal philosophy is a branch of philosophy, ethical or moral philosophy. **Second:** the object of discussion of legal philosophy is the essence of law itself. **Third:** legal philosophy is a branch of science that studies more about every matter that cannot be answered by the branch of law (Nasution, *et.al.*, 2012).

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Meanwhile, the philosophy of Islamic law is the discussion of legal foundations, legal principles, legal mains (sources of law), legal rules, on the basis of which Islamic laws are formed (ash-Shiddieqy, 2001). Philosophy of Islamic law is contained in the meaning of wisdom, *asrar* philosophy and even *illat* law. Even though they are not perfect, all of them are interrelated, moreover connected with the review of current philosophical studies (Has, 2015).

Philosophy of Islamic Law is a philosophy that analyzes Islamic law methodically and systematically to obtain basic information, or analyze Islamic law scientifically with philosophy as its tool (Has, 2015; Sumirah and Pitrotussaadah, 2021). Philosophy of Islamic law can also be interpreted as knowledge of secrets that are explored philosophically, either by ontological, epistemological or axiological approaches (Has, 2015; Izomiddin, 2018). So, the philosophy of Islamic law is also called the philosophy of Islamic law, it can also be called *hikmat at tasyri'*, even further it is also called *maqashid at tasyri'*. Islamic legal philosophy is a set of thoughts in depth, logically, radically towards a rule or law that applies in Islamic teachings.

If the philosophy of Islamic law can be equated with *maqashid at tasyri'*, then this *maqashid* has its own scientific branch. But in short, that Islamic law comes with benefits for humans, benefits in this world and the hereafter. As al-Syatibi (1997) said that: "Indeed al-Syari' (law maker, Allah) stipulates laws aiming at the benefit of humans for the present life (world) and the hereafter simultaneously between the two". Likewise al-Amidi said that: "All fiqh priests agree that Allah's laws cannot be separated from wisdom and purpose/*maqshad* (Al-Syathibi, 1997).

2. Islamic Marriage Philosophy

One of the teachings of Islam in the field of fiqh in relation to civil law is *fiqh munakahat* with discussions related to marriage, divorce and matters surrounding it. As for the matter of the sharia of marriage, it must also contain many *maqashid* behind which are then called the *maqashid* of marriage: the benefits placed by the Maker of the Shari'a as the goal of marriage. If we examine the *maqashid* of marriage, it is found that there are two types: *ashliyah* and *tabi'ah*.

First: Maqashid Principal of Marriage – Maqashid Ashliyyah

Marriage has the main purpose, to increase the number of offspring so that the human kind on this earth is maintained (al-Mashri, 2016). The birth of generations, multiplying offspring is the same terms in describing the main purpose of marriage. This is the *maqashid* desired by the shari'a maker in stipulating marriage. About this it is written in the book *Hasyiyat al-Jamal* that the *maqashid* of marriage is the birth of offspring through a husband-wife relationship (Umar, tt.). *Maqashid* is supported by many arguments, both from the Koran or the hadith of the Prophet.

As for the other main *maqashid* of marriage is maintaining self-respect and maintaining lineage (Khakim & Ardiyanto, 2020; Nurhadi, 2018). In lineage protection, it means protecting the community from damage caused by adultery, and things that can contaminate it. This is because in Islam, lineage will be protected by three things: marriage, prohibition of forbidden marriages and prohibition of adultery, because adultery can cause damage to society, especially in the problem of mixed lineages.

Second: Maqashid Complementary Marriage - Maqashid Tabi'ah

In addition to the main *maqashid* mentioned above, in marriage there are also complementary *maqashid*, which are referred to as *tabi'ah maqashid* and these are infinite in number. From the texts related to marriage, a number of *maqashid tabi'ah* are found. Making it lawful to have fun for husband and wife is included in this type of *maqashid*, and this is obtained through a husband and wife relationship with which there is a channeling of lust. Of course this is not the main *maqashid* of marriage, although in general for the mukallaf himself this is one of the core goals of marriage, and even this is legal and normal.

Giving support to the family: wife and children, is also one of these types of *maqashid*. This is one of the responsibilities of the husband in marriage, with whom the marriage will be maintained so that it will run harmoniously (Ja'far *et.al.*, 2021). In addition, other types of *maqashid* are: the creation of calm, tranquility for husband and wife which the Koran likens to "*libas*", or clothes between one another.

Nasution (2012) said that if what is meant by Islamic marriage philosophy is the purpose of marriage, then according to *sharih* neither the verse nor the hadith mentions the word marriage philosophy or the word purpose. However, from the texts it is indicated that there is a noble purpose of marriage which is one of the Islamic law. Of the five purposes or what is referred to as *al Kulliyat al Khoms*, marriage enters the *Hifdz An Nasli* level, or maintaining offspring. Next, Nasution concluded that at least five main objectives of marriage were found which were sourced from Islamic texts. The five main objectives in question confirm and complement the previously mentioned *maqashid*. The five main goals of marriage are: to get peace in the family with a sense of love and affection,

the purpose of reproduction, the purpose of fulfilling biological needs, maintaining honor, and as worship (Supriatna, 2016).

Wahib mentions several philosophies of marriage in Islam, some of which have also been mentioned above. Among the Islamic marriage philosophies mentioned are: marriage contributes to human welfare, the family is the pillar of the state, and the family is the birthplace of the nation's sons and daughters (Mawahib, 2019).

Referring to the various opinions above, it is understood that the philosophy of Islamic marriage upholds and has noble value, placing humans at the human level, which Allah SWT glorifies among other creatures that reproduce equally. However, at the level of creatures, Allah SWT glorifies humans with a number of rules as guidelines in the hope of arriving at the noble goal of marriage.

If we think further and radically and philosophically about the details of marriage rules, then we will find a separate philosophy of Islamic law behind it. A small example, the dowry requirement which is an obligation in marriage, then has a silver lining. The regulations regarding why it is required that couples who wish to marry have *mawani' an-nikah*, or people who cannot be married, here have a purpose, as well as the existence of *ijab qabul*, the conditions for each one who enters into a contract, all of which are inseparable from their philosophy. Rights and obligations that have been arranged in such a way by religion, of course, have their own wisdom in ensuring the sustainability of the household. Looking further at Islamic law in the form of legislation and its departure from classical fiqh, we will find the philosophy of Islamic law in each of its reforms. Starting from limiting the age of marriage, registration of marriages and so on, there is actually a lot of wisdom and philosophy of Islamic law that accompanies it.

3. Five Supporting Pillars of Household For the Creation of Islamic Marriage Philosophy

According to Faqihuddin, there are five supporting pillars in household life. These five pillars are found by using *mubadalah* theory (Kodir, 2021). If these five pillars or principles run well in the household, then the noble goal of marriage will be achieved. The five pillars are:

First: commitment to a firm bond of promise as a mandate from Allah, or what is called *mithaqan ghalizan*, which is found in the Qur'an sura an-Nisaa' verse 21. The word *mitsaqan* is defined as an oath and pledge of allegiance, this means that the marriage contract is a strong bond mandated by God to husband and wife to commit to maintaining and managing the household. Al-Qurtubi in his commentary explains that the word *mithaqan ghalizan* has three narrations. *First:* that it is related to the hadith of the Prophet: "So fear Allah in dealing with your wives"; second: that it is related to another verse, *fa imsakun bi ma'rufin aw tasrihun bi ihsan* (gathering together well or separating well); *third:* it is a marriage contract. The three are interrelated (Al-Qurthubi, 1964). This agreement is an agreement between the two, through a marriage contract, so this bond must be remembered together, guarded and cared for so that it is sustainable.

Second: The principle of pairing and mutuality, as in the Qur'an sura al-Baqarah verse 187 and al-Rum verse 21. This principle makes the pillar that in the household the relationship between husband and wife is in pairs or in Arabic terms it is *zawj*. The wife is the husband's partner (*zawj*), and the husband is the wife's partner (*zawj*). This pairing principle is also described as clothing one with another, as in the Al-Quran Surah al-Baqarah verse 187 or in al-Quran terms it is called *Libas*. The

philosophy of clothes can be interpreted that clothes are a cover for disgrace, so that the husband covers his wife's disgrace and vice versa, so this principle is the principle of interdependence (Al-Qurthubi, 1964). While Sayyid Qutb explained that this *zawj* principle exists because there is an interest in both, one feels comfortable and calm with one another. There is no domination of one over the other (Quthb, tt.).

Third: The principle of treating each other well, *mu'asyarah bil ma'ruf* as in the Qur'an Surah an-Nisaa' verse 19. This principle is the most essential and fundamental principle in the interaction of husband and wife in the household. The *mubadalah* perspective is strong here, that goodness must be presented and felt by both parties. This is also in accordance with al-Qurthubi's opinion when interpreting this verse that the commandment in the letter an-Nisaa' verse 19 covers everything, both as a husband to his wife or vice versa (Al-Qurthubi, 1964). Even though the structure used is the male language structure (*mudzakkar*) it does not mean that only husbands are required to behave well. The structure with male language here is because socially, men who used to do coercion because of the authority they had, used to take property, and this already existed and became a habit for the Jahiliyyah.

Fourth: the principle of deliberation in deciding something related to decisions in household life. This principle is in accordance with al-Quran sura al-Baqarah verse 233 which talks about child weaning, and also in accordance with al-Quran surah al-Talaq verse 6. If in weaning children are ordered to consult, then other matters must also be sought for deliberation. So that in this principle, both husbands and wives should not become authoritarian individuals, like to impose their will, make decisions without consulting them first. Al-Qurthubi explained that the order was intended for both of them to consult and reach a consensus in a

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ma'ruf manner (Al-Qurthubi, 1964). Of course, deliberations and consultations have many benefits, enrich perspectives, various opinions emerge, with which all the best decisions can be made. The principle of this deliberation by Khoiruddin is referred to as an instrumental principle (Fathoni, 2018).

Fifth: principle of feeling comfortable with each other and providing comfort to partners. In the language of the Qur'an it is "*taradin min-huma*", a pillar taken from the al-Quran sura al-Baqarah verse 233, the willingness/acceptance of both parties. When weaning requires consent, so does the household matter. Willingness is the highest acceptance and plenary comfort, without any obstacles in the heart, or rejection. This principle must be maintained by both of them to give birth to love and happiness in the household.

Furthermore, it is related to the problem of subsistence according to *mubadalah* theory. The first thing that has been mutually agreed upon is that the obligation to support rests with the husband, although under certain conditions the wife is also asked to contribute. Often what a wife needs is protection through a living from her husband, especially when the wife has to go through the phases of menstruation, pregnancy and childbirth and postpartum, then breastfeeding and caring for children, all of which require special energy, so here the husband is required to give living. Here the wife has more rights in matters of disbursement by the husband, and this becomes very relevant if the husband is given the responsibility as a *qawwam* who supports his wife. However, this does not apply absolutely, as now when the wife is able to work and can be financially independent, subsistence is a joint obligation and this is discussed jointly following the pillars mentioned above. If this happens,

then the husband must also be willing to participate in household domestic activities, and here there is a division of roles and responsibilities that are shared together.

According to this *mubadalah* perspective, verses or hadiths that talk about earning a living in the family are not only aimed at men, but both, even though as mentioned above the wife has more rights. Even though the verses or hadith used are in the form of "*mudzakkar*" textually in Arabic, this argument applies to both (al-Quran surah al-Jumu'ah verse 10 and al-Baqarah verse 267 and Hadith of the Prophet) (al-Hajjaj, tt.). Because in principle: whoever does, works, and gives, it is he who gets the appreciation or reward. About this there are many verses of the Koran that discuss it (Kodir, 2021). From this it can also be concluded that if the wife becomes the breadwinner of the family it does not prevent her from continuing to combine the five principles of *mubadalah* above to create the goal of a noble marriage (Riekiya, 2021).

D. CONCLUSION

The philosophy of marriage is not clearly stated in the Koran or hadith, but these texts show the philosophy of marriage law in Islam. Islamic legal philosophy is understood as a goal with the terms *hikmat at tasyri'*, *falsafatu at tasyri'*, *'illat al-Hukum*, and *maqashid asy sharia*. The philosophy of marriage in Islam has many dimensions. In the language of *Ushul Fiqh*, it is termed *maqashid*, so the dimensions that exist are *maqashid ashliyah* and *maqashid tabi'ah*, main objectives and complementary objectives that follow the main objectives. In addition, as a process of achieving the goal or philosophy of Islamic marriage law, there are five pillars based on *qira'ah mubadalah* in relation to the interaction of husband and wife in a marriage. If the philosophy of

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marriage is well understood, it is believed that it is beneficial, then it is hoped that an understanding will emerge that can lead to the practice of husband and wife life, with which a *sakinah, mawaddah wa rahmah* family will be created as one of the efforts to form a just, peaceful, prosperous society. All of this is also supported by the five pillars based on *mubadalah*.

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