

Comparation Of Post-Divorce Marriage Agreements Compilation Perspective Of Islamic Law And Maqashid Sharia

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ABSTRACT

Humans as living beings were created by Allah SWT as complementary social beings, living in pairs in the world. As part of paired life, human beings undergo the process of marriage to continue offspring and ensure the continuity of future generations. The purpose of marriage itself is as a form of perfection of human worship in the long run. The marriage formed by a married couple aims to create a lasting and happy family, based on law and religion based on the Almighty God. The application of a marriage agreement agreed upon by a married couple aims to build a harmonious relationship and prevent future conflicts. One form of marital agreement regulated in positive law in Indonesia is regarding taklik talak. A marriage agreement that is often applied is the regulation of joint property in marriage, which is stated in Article 29 of Law Number 1 Year 1974 jo Law Number 16 Year 2019 concerning Marriage. In Islam, the arrangement for making a marriage agreement must follow the provisions stipulated in the Compilation of Islamic Law. The method used in this research is normative research.

Keywords: compilation of Islamic Law; marriage agreement; joint property

INTRODUCTION

Marriage is a sunnatullah decree that applies to all of His creation, especially between men and women, who are physically and mentally united through legal procedures which are intended to create a harmonious, eternal and happy family based on faith in God Almighty. In Indonesia, there are various regulations that discuss marriage agreements, including Law Number 1 of 1974 concerning Marriage, Civil Law, and the Compilation of Islamic Law. Marriage agreements are generally drafted by prospective husband and wife before or during the marriage. The parties drafting the agreement are required to obtain approval from the Marriage Registry Officer or Notary, so that the contents of the agreement can be enforced by the parties concerned. The main function of a marriage agreement is as a legal document that is binding between the prospective husband and wife and third parties, as long as it does not conflict with religious norms and morality. This agreement can be interpreted as a deed of agreement made by the prospective couple in preparing the provisions which must be obeyed and carried out after the marriage takes place. Generally, marriage agreements cover aspects such as management of joint assets, prevention of domestic violence (KDRT), prohibition of infidelity and polygamy, regulation of income and expenses for household needs, separation of assets inherited and earned during marriage, child custody, as well as living and care costs. The legal provisions

related to marriage agreements are regulated in several regulations, such as Law Number 1 of 1974 in Article 29 paragraphs (1), (2), (3), and (4), the Compilation of Islamic Law from Article 45 to Article 52, as well as the Civil Code.

Marriage agreements are not only limited to financial arrangements or property ownership, but are also concerned with other crucial aspects that can be agreed upon, such as arrangements for life in the household. One example is an agreement regarding the right of one party to continue their career after marriage. According to the Civil Code (KUH Perdata) Article 139, a marriage agreement is an agreement between the prospective husband and wife which regulates the legal consequences of the agreement after the marriage takes place (Muchsin, 2008).

Agreements in marriage can be made either regarding husband and wife regarding the mixing of assets or agreeing on the existence of separate assets. The benefits of agreements in marriage are very influential in the long term. Marital agreements provide a framework for couples to avoid disputes, especially in the context of a marital relationship. Therefore, the marriage agreement can be used as a reference if a conflict arises in the future. When the conflict is not desired but the conflict ends in divorce, then the marriage agreement can be a reference so that both partners understand their respective rights and obligations.

According to Wirjo Prodjodikoro, a marriage agreement is a legal bond that focuses on arranging mutual assets between the two parties. This agreement is an agreement made by the prospective husband and wife with the absolute aim of managing the management of their respective assets independently. This agreement is drawn up before the marriage takes place and must be approved by the Marriage Registrar. Making a marriage agreement aims to prevent hasty decisions by couples who are about to get married, remembering that marriage has long-term consequences for life. With this agreement, legal certainty can be guaranteed through valid legal evidence, as well as functioning as a preventive measure against legal smuggling attempts (Prawirahamidjojo and Safiodin, 1986).

Basically, the formation of the concept of a marriage agreement is made with various considerations and reasons. First, if there is a source of wealth from one partner that is greater than that of the other party. Second, each party provides a significant contribution or role. Third, one of the parties has their own business so that if something happens in the future *bankrupt* (bankruptcy) is not affected. Fourth, there are debts made before the marriage (Shatibi, 2001).

The marriage agreement has a crucial role in regulating the balance regarding property ownership during the marriage period. Based on Law Number 1 of 1974 concerning Marriage, there are principles that emphasize the unity of assets between husband and wife. However, through a marriage agreement, the separation of assets can be legally regulated and protected (Kurniawan, 2020).

One aspect of a marriage agreement is the separation of assets between husband and wife, which allows for flexibility in legal protection regarding the position of the marriage agreement from a juridical perspective. This agreement should be agreed upon by the husband and wife during a legal marriage bond, so that

it has binding legal force. This gives legal force to each party in the separation of joint assets and if there is responsibility for debts and receivables after the marriage agreement is made. There is a concept of a marriage agreement to prevent the mixing of assets during marriage, this is regulated in article 139 of the Civil Code (Susanti, 2018).

The concept of a marriage agreement in implementing maqashid sharia provides guarantees for the family which lies in an approach that integrates the principles of maqashid sharia. The importance of implementing maqashid sharia in life protection which includes aspects and guarantees physical and mental safety. For example, there are provisions prohibiting domestic violence and protecting individual rights which are part of the agreement. Self-protection is one of the most important aspects in maqashid sharia, because the aim of maqashid sharia is to prioritize the welfare of the people. A marriage agreement that regulates joint property is very necessary to avoid disputes within the household in the future. In this way, the marriage agreement will provide a sense of security for both parties involved.

METHOD

This research uses library research methods with a qualitative approach. The approach applied is normative, focusing on the concept of Maqashid Sharia as a basis for understanding. The data used in this research includes various sources, including Marriage Law Number 1 of 1974, the Compilation of Islamic Law, as well as a number of journal articles and books related to the topic of marriage agreements. These sources provide a solid basis for analyzing various legal aspects relevant to marriage agreements in the context of Islamic law and regulations in force in Indonesia.

RESULTS AND DISCUSSION

Concept of Marriage Agreement Perspective of Compilation of Islamic Law

A marriage agreement is a contract, namely a noble agreement between husband and wife to achieve a happy family. Some marriage agreements are agreed upon by husband and wife which result in rights and obligations for them. Marriage agreements have a crucial role in Islamic family law, because they aim to create a harmonious and happy family. This agreement is a way to achieve the goals of marriage, which involves provisions regarding the rights and obligations of husband and wife. For example, agreements that regulate alimony, children's education, and responsibilities in care, which function to create an environment that is not *toxic* for child growth and development. Therefore, marriage agreements will be better by creating a quality generation (Idrus, 2021).

When contained in the context of maqashid sharia, a marriage agreement has a very important role related to building a happy and harmonious family. Maqashid Sharia has the aim of Islamic Shari'a in formulating marriage agreements that are not only valid in law but contain moral and ethical values. In this context, marriage agreements always focus on the aim of protecting religion, soul, mind, lineage and

property. One of the main aspects of maqashid sharia is the protection of offspring which can be realized by factors regarding the rights and obligations in raising children. Likewise, commitment to providing good education and a healthy environment for children. Thus, a marriage agreement not only serves as an agreement between husband and wife but is a guarantee for the future of their children (Sumanto, 2020).

With maqashid sharia education, family character can be formed in terms of mental and physical health, which is the main goal of maqashid sharia. A good marriage agreement covers physical and mental health where the couple agrees to undergo regular health checks and supports each other by paying attention to a healthy lifestyle. This will maintain physical and mental health by contributing to happiness in the future. Creation of family guarantees resulting in a happy home life. Maqashid sharia provides goals that focus on protection of religion, soul, mind, lineage and property for husband and wife. An exemplary lesson in interpreting maqashid sharia is to strive for gender justice in the relationship between husband and wife which encourages mutual respect and appreciation so that a warm and peaceful atmosphere is created for the personal development of each partner. By prioritizing the values of protection for offspring, life, property and gender justice in marriage agreements, we can guarantee prosperity and happiness until the end of the marriage.

The type of marriage agreement regulated in Article 45 paragraph 2 of the Compilation of Islamic Law relates to agreements made by husband and wife regarding various matters in domestic life, such as the rights, obligations and responsibilities of each party. The legal impacts that arise as a result of a marriage agreement are not permitted to differ from the principles of Islamic law, especially if a divorce occurs in the future. If the agreement includes the division of joint assets after divorce, then the principles used are based on moral justice and social justice. In moral justice, the distribution of joint property is based on individual rights in accordance with their needs and obligations, especially if one party makes a claim. Meanwhile, social justice considers broader aspects of justice, by ensuring that each individual's rights are fulfilled fairly. In practice, the division of joint assets is a complex issue and must be analysed in depth, considering the differences in needs in each family. Aspects that can influence the distribution of assets include customs, customs and beliefs. Apart from that, social status and economic conditions in the family are also important aspects that must be considered in determining fairness in the distribution of joint assets (Umar DKK, 2003).

In a post-divorce marriage agreement, the division of assets based on the Compilation of Islamic Law is based on the rights and obligations that have been determined. The principle applied stipulates that each party, both husband and wife, is entitled to half of the joint property. The division of assets as stated in article 1 letter F of the Compilation of Islamic Law emphasizes that marital assets are assets that are produced jointly during each marriage bond (Wasman and Nuroniyah, 2011).

This is different if a marriage agreement is made from the start to separate assets, such as separating the results of each partner's business, separating inherited assets, and arranging debts and receivables. In this case, the property cannot be considered joint property because each individual has controlled it from the start. However, this does not reduce the husband's obligation to provide support for his wife. Therefore, the separation of assets in the marriage agreement will still have an effect if a divorce occurs in the marriage. Based on Article 97 of the Compilation of Islamic Law, the division of assets is carried out with the provision of $\frac{1}{2}$ in accordance with the agreed marriage agreement. Considering that the marriage agreement functions as a legal basis that binds both parties, this agreement becomes a reference for judges in resolving disputes related to joint property. In drafting the marriage agreement, the Compilation of Islamic Law adopted the principle of maqasid sharia as a guideline which acts as a balance between the ownership obtained and the needs and benefits. By realizing justice and benefit for a happy and prosperous life for individuals and society, this is a good application of the concept of justice and benefit based on the concept of maqashid sharia theory. Thus, the legal impacts arising from an agreement, as long as they do not conflict with the principles of Islamic law, will bring benefits and prosperity to humanity (Masriani, 2013).

In the concept of the Compilation of Islamic Law, maqashid sharia functions as a combination that contributes to the principles of justice in all aspects of human life. Maqashid sharia, in the context of the Compilation of Islamic Law, becomes an important reinforcement and instrument in exploring the values of justice. Therefore, humans are expected to understand and appreciate the maqashid sharia, because with this understanding, the application and insight into Islamic law becomes more comprehensive. In addition, maqashid sharia covers various aspects and objectives related to legal texts and special regulations that can be applied in everyday life. As a basis for exploring Islamic law, maqashid sharia seeks to realize the values of justice that bring benefit to humanity. Maqashid sharia is a concept that continues to develop to accommodate the dynamics of human life. Therefore, the role of maqashid sharia in ijtiḥad and Islamic studies is very important to achieve the broader goals of sharia (Hasibuan, 2019).

Maqashid Sharia Perspective Marriage Agreement

A marriage agreement is a very important role in household life. In the principles of maqashid sharia, the role of marriage agreements can build values that can provide the best goals for domestic life. Maqashid sharia has quite deep sharia objectives regarding the protection of religion, soul, mind, lineage and property. By understanding maqashid sharia, you can provide empowerment for marriage agreements and make a better contribution to creating a harmonious and happy family. The main goal in maqashid sharia is the protection of descendants. Therefore, the existence of a marriage agreement is not only about assets but also clear provisions regarding each individual's rights and obligations. For example, regulations regarding livelihoods, children's education and parenting responsibilities

can help create a healthy and good environment for children's development. In this way, a good marriage agreement will produce a quality generation (Idrus, 2021).

There are several factors that form the basis for making a marriage agreement after the marriage takes place. First, there is still uncertainty in the law regarding the procedures for making marriage agreements. Second, to reduce the possibility of problems arising related to joint property ownership. Third, the increasing influence of individualistic attitudes in society, which ultimately influences the way prospective married couples think. Fourth, the push to obtain permanent land ownership certificates, even though the parties involved are Indonesian citizens who have undergone mixed marriages (Itrianti & Priambada, 2015).

Some positive values that can be taken are the facility for making a marriage agreement between husband and wife which can build openness to each other, understand each other, and together realize the desired dreams. Because the existence of a marriage agreement becomes an anticipatory medium if the relationship between a husband and wife experiences undesirable things or a lack of harmony, which can be used as a basis for law and guidance for each of them (Masriani, 2013).

The application of the maqashid sharia concept emphasizes the importance of implementing Islamic law to ensure the benefit of humanity. The scholars agree with a widely known rule, namely, "Where there is benefit, there is the law of Allah." Within the maqashid sharia framework, legal experts argue that the role of the mujtahid in carrying out ijihad is very important. The essence of the concept of maqashid sharia is to create goodness, avoid evil, or in other words, achieve benefits and prevent losses.

Asy Syatibi is one of the scholars who delve into the concept of maqashid sharia specifically and systematically. He said that the purpose of God's law is to create benefits for humans both in this world and in the hereafter (Shatibi, 2019).

The concept of maqashid sharia has similarities with *maslahah*, which according to Al-Gazali includes five main aspects, namely protecting religion, soul, reason, lineage and property. However, according to Izzuddin ibn Abd al-Salam, a scholar from the Shafi'i school, more emphasis is placed on understanding *maslahah* in essence, which focuses on efforts to avoid damage and achieve benefits (Salam, 1999).

Maqashid sharia is a very important aspect in promoting and realizing human welfare by upholding factors of justice. In achieving the *Rahmatan Lil Alamin* generation, humanity can realize the role of maqashid sharia by implementing individual goodness with Islamic values. The concept of maqashid sharia aims to avoid all evil and prevent losses. Therefore, benefit in Islam is a factor of equality that cannot be separated. The need for maqashid sharia which cannot be separated from involving aspects *the hifdzul from, hifdzul nafs, hifzul aql, hifzul nashl serta hifzul mal* (Paryadi, 2021).

According to Ash-Syatibi, the application of sharia maqashid can be divided into two categories among others, First, there is the purpose and purpose of sharia

from Allah. Second, a mukallaf who must be charged with the purpose and purpose for individuals who meet the legal requirements. Third, there is an aspect related to establishing the Shari'a (Ash-syar'i) which aims to make people prosperous both in this world and in the hereafter. Achievements made by a mukallaf must have a purpose and an understanding with the implementation of legal taklif as well as obedience to the actions of lust that are carried out on a daily basis. The concept that can be learned and understood is that shari'a is a taqlifi law that must be carried out with the intention of shari'a by ensuring that mankind is always under the protection of the law (Kurniawan, Hudafi, 2021).

The concept of maqashid sharia is very important in protecting life. In the context of a marriage agreement, it must emphasize all aspects that include physical and mental safety for both parties, for example, provisions regarding the prohibition of domestic violence (Domestic Violence) and the protection of the rights of each individual which is part of the agreement. The implementation of a good marriage agreement includes several aspects related to health, such as the obligation to support each other between partners who agree to maintain health both physically and mentally. Implementation if the couple agrees to undergo a health examination will support a healthy lifestyle. Therefore, a healthy lifestyle will create family health that will be maintained and mutually contribute to the mutual happiness of the couple.

The application of maqashid sharia in household life also emphasizes gender equality. Gender equality is part of the balance between partners to care for each other without feeling disadvantaged. Maqashid sharia is able to teach and encourage couples to support each other from all spiritual aspects. A marriage agreement can also refer to various religious values contained therein. Such as carrying out worship together and educating children in religious values. Therefore, the implementation of maqashid sharia will grow and develop in an environment full and strong of spiritual values. If conflict management occurs, maqashid sharia is able to provide a solution in the household. Marriage agreements can include provisions regarding mediation or counseling if conflict occurs. By having a clear strategic resolution mechanism, it will be possible to avoid or reduce a little of prolonged conflict. The concept of maqashid sharia actually encourages humanity to have a spirit of socialism and nationalism with the surrounding environment and family. A marriage agreement can also include terms of engagement that support the couple to behave both morally and materially (Yumna, 2024).

Life is very dynamic, containing the concept of maqashid sharia which must be able to adapt to the conditions of development over time. When making a marriage agreement, it is intended to adapt to a very flexible life without having to impose conditions and no one is harmed by each other. For example, by determining work and the distribution of household tasks that can adapt to social and economic developments. As this progresses, marriage will remain relevant by being able to adapt to the dynamics of life. By prioritizing the values of protecting offspring, souls, property and gender justice, marriage agreements will create happy families. Therefore, it is important for couples to understand the application of the principles

of maqashid sharia in the marriage agreement they make. So that the marriage agreement made will bring benefits as well as happiness and prosperity.

The Purpose of the Marriage Agreement in the Marriage Law

Marriage agreements based on statutory regulations are explained in detail in Marriage Law Number 1 of 1974, especially in Article 29 paragraphs (1), (2), (3), and (4), which regulate the main points of marriage agreements and their implementation. Normatively, this law explains that marriage agreements can be drawn up both before and during the marriage. What is meant is an agreement that is set out in written form and then ratified by an official authorized to register marriages. This agreement involves an agreement between both parties, with the possibility of involving a third party if deemed necessary, provided there is mutual agreement. However, the marriage agreement will not be valid if it is not in line with law, religion or moral norms. Apart from that, the agreement must be in line with the moral norms that exist in the traditions and customs of the local community, so that it does not conflict with existing religious teachings and social values, and can build harmonious social relations (Kurniawan, 2020).

In general, there are several reasons that encourage a marriage agreement to be made, including, first, if one party has more wealth than the other party. Second, if both husband and wife make a significant contribution. Third, if each partner has their own business and is worried about future losses that could affect the other partner. Fourth, it relates to debts that each party had before the marriage, which requires personal responsibility. Based on this, it is very important to make a marriage agreement before the wedding in the form of an authentic deed before a notary. This authentic deed has an important function as valid evidence and can be used as a reference in the legal process if a dispute occurs at a later date. Marriage agreements are permitted by law as long as they do not conflict with morality or public order prevailing in society. Even though marriage agreements have clear goals and benefits, many prospective partners still view them negatively. Some people still consider it something taboo, especially because it is related to the customs or customs of people who want to get married. Although there are some people who accept the idea of a marriage agreement, there are many more who reject it because of unfavorable views, such as the opinion that the agreement is unusual, immoral, selfish, can cause distrust between partners, and is considered contrary to eastern cultural values that respect ethical norms.

Making a marriage agreement is not necessarily for personal protection, but what needs to be considered is, firstly, openness by disclosing all economic conditions, both after the marriage and even before the marriage. The amount of wealth brought by each party before the marriage needs to be carefully considered and calculated, as well as the potential for growth along with developments in income or other factors. In addition, it is important to know the amount of debt each had before marriage, how the debt is likely to develop after marriage, and who will be fully responsible for paying it off. This aims to ensure that the agreement is accepted

clearly and to ensure that no party feels disadvantaged if the marriage ends. Furthermore, the marriage agreement must be made with the voluntary consent of both parties, without any pressure from any party. If one of the parties feels forced to do so, then the agreement can be considered void. Finally, choose an official who is authorized and has a good reputation to draw up this agreement with objectivity, so that justice is achieved and no party is harmed.

A marriage agreement allows husband and wife to open honest communication and share mutually agreed expectations. Generally, the agreement is prepared to provide legal protection for the assets owned by each party. Therefore, basically, marriage agreements are not what people often think. The implementation of a marriage agreement actually aims to protect both parties and their families (Ja'far, 2021).

The urgency in implementing marriage agreements is an important matter in Law Number 1 of 1974. In the clear and detailed application of article 29, the main principle is an agreement as regulated in article 1338 paragraph (1) which regulates "All agreements made legally are only valid as a law made by each party." The importance of the principle in providing space and freedom in making agreements includes, First, providing latitude for each party in whether or not to make an agreement. Second, you can make an agreement with anyone as long as it doesn't harm various factors. Third, be able to determine the contents of the agreement and the implementation of its requirements. Fourth, determine the form of agreement which can be done in writing or verbally. It is very important that a marriage agreement can address and protect the rights and obligations of husband and wife in the future (Sumanto, 2020).

The confirmation of the marriage agreement listed in Article 29 paragraph 2 of the UUP can be done with the stipulation that the agreement does not conflict with religious teachings and moral norms that apply in society. As for Article 29 paragraphs 3 and 4 regulating the application of the marriage agreement. This agreement is permanent and cannot be changed as long as the marriage bond lasts, unless there is a mutual agreement between both parties to make a change, provided that the change does not harm a third party. The agreement referred to in Article 29 does not include taklik talak, because the agreement involves both parties, namely the husband and wife, while taklik talak is only a unilateral statement made by the husband after the marriage contract (Weng, 1990).

Marriage agreements regulated in the Compilation of Islamic Law (KHI) can be found in Articles 45 to Article 52, which detail various types of agreements that can be agreed upon by prospective husband and wife couples. In Article 45, it is stated that marriage agreements consist of two types, namely (1) taklik talak, and (2) agreements that do not conflict with Islamic teachings. Article 46 further regulates that the divorce agreement must be in accordance with the principles taught in Islam. If the divorce agreement is implemented, the divorce will not immediately occur, but must be processed through the courts first. This article emphasizes that the divorce agreement is not an obligation, but once it has been implemented, the divorce

agreement cannot be revoked. Articles 47 to 49 state that property arrangements between prospective husband and wife are carried out in writing, including the separation or mixing of personal assets and income arrangements, as long as they do not conflict with Islamic principles. Articles 50 to 52 regulate the implementation of marriage agreements regarding property that are binding on both partners. This agreement can be cancelled if there is mutual agreement between the husband and wife. Article 51 KHI regulates that if there is a violation of the marriage agreement which is detrimental to the wife, the wife has the right to file an annulment of the marriage or file a divorce suit in court. For example, if a husband has more than one wife, a marriage agreement can be arranged to regulate residence, shifts, and division of household expenses. From this explanation, it can be concluded that the marriage agreement in Article 29 of Law Number 1 of 1974 also includes the divorce agreement (Idrus, 2021).

According to R. Soetojo, in Indonesia, a marriage agreement can be drawn up if one party has more assets than the other party. To prevent irregularities in property management, parties are allowed to determine the law they wish, as long as it does not harm either party (Prawirihamidjojo and Safiodin, 1986).

The Supreme Court's decision has expanded the scope of making marriage agreements, which are now not limited by any provisions. This expansion provides a guarantee of protection and legal certainty that will apply in the future. Even though a legally valid marriage agreement is made after the marriage, this does not rule out the possibility that the agreement can be considered a valid contractual and transactional marriage bond. On the other hand, the marriage agreement does not change the essence or purpose of marriage, which ultimately aims to create a peaceful and happy life. With a marriage agreement, married couples have the opportunity to more easily realize the marital goals they hope for. The procedure for making a marriage agreement provides freedom that is not tied to the time before or during the agreement. Based on this, a marriage agreement has the potential to provide protection for the rights of married couples in achieving common goals in their marriage, provided that the agreement is made without any coercion from the other party. As long as the agreement meets the specified conditions, it can be executed in accordance with applicable law. The Supreme Court's decision aims to create an ideal husband and wife couple, who can consistently realize the ideals of a marriage that is harmonious, peaceful and full of love based on divine values.

CONCLUSION

Based on the conclusions regarding marriage agreements in Law Number 1 of 1974 in particular, in the regulation of marriage agreements which have been explained in detail, the basic value of the main principle of the agreement is benefit. The marriage agreement stated in article 29 explains that the marriage agreement can be executed during the marriage or before the marriage. A valid marriage agreement from a legal perspective is in the form of a written agreement made before a Notary. Agreements are not permitted to violate applicable norms, religion or

immorality. A marriage agreement can apply to third parties as long as the agreement is necessary and does not harm the other party.

If throughout the duration of the marriage agreement it is proven that it violates legal, religious and moral boundaries, it is considered legally null and void. Several applicable rules state that the marriage agreement states that as long as the marriage is in progress it cannot be changed, unless both parties have an agreement that can change it and not harm the other party. The marriage agreement also aims at Islamic sharia which applies the concept of maqashid sharia, the meaning of which is goodness. The meaning of goodness is in carrying out a marriage agreement whose aim is to resolve problems in marriage that are not only joint assets but also the rights and responsibilities of the parties.

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