

Protection of the Institution of Marriage through the Principle of Making Divorce Difficult: An Analysis of Maqasid al-Syari'ah on Practices in the Sinjai Religious Court

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Abstract

This study is motivated by the high divorce rate in Indonesia, which has implications for the fragility of the family institution and the weakening of social resilience, thus requiring legal mechanisms that can provide protection for the institution of marriage. One of the mechanisms applied in the religious court system is the principle of making divorce difficult, which normatively serves to prevent non-urgent divorces. This study aims to analyze the implementation of this principle in the Sinjai Religious Court and review its relevance to maqāṣid al-syarī'ah. The research method uses a qualitative approach with a juridical-empirical model. Data were collected through court observations, interviews with judges, mediators, and litigants, as well as document and literature studies. The research instruments consisted of interview guidelines and field notes, while data analysis was carried out through the stages of reduction, data presentation, and conclusion verification. The results of the study show that the principle of making divorce difficult is implemented from the early stages of case registration, with the panel of judges attempting to reconcile the parties through advice and mediation in accordance with Supreme Court Regulation Number 1 of 2016. These reconciliation efforts continue throughout the trial process through a persuasive approach and the appointment of an official mediator. However, the application of this principle faces a number of obstacles, such as long-standing domestic conflicts, local cultural factors that tend to be permissive towards divorce, and economic pressures on families. From the perspective of maqāṣid al-syarī'ah, the principle of making divorce difficult is in line with the objectives of protecting religion, life, reason, offspring, and property, while reducing the social harm caused by unnecessary divorce. Thus, the application of this principle in the Sinjai Religious Court serves not only as a formal procedure but also as a substantive instrument in maintaining the continuity of marriage, preventing premature divorce, and providing space for domestic reconciliation through mediation.

Keyword: Protection of the Institution of Marriage; Principle of Making Divorce Difficult; Maqashid al-Shariah, Sinjai Religious Court.

Abstrak

Penelitian ini dilatarbelakangi oleh tingginya angka perceraian di Indonesia yang berimplikasi pada rapuhnya institusi keluarga dan melemahnya ketahanan sosial, sehingga diperlukan mekanisme hukum yang dapat memberikan perlindungan terhadap institusi perkawinan. Salah satu mekanisme yang diterapkan di lingkungan peradilan agama adalah asas mempersulit perceraian, yang secara normatif berfungsi mencegah perceraian yang tidak mendesak. Penelitian ini bertujuan menganalisis implementasi asas tersebut di Pengadilan Agama Sinjai sekaligus meninjau relevansinya dengan maqāṣid al-syarī'ah. Metode penelitian menggunakan pendekatan kualitatif dengan model yuridis-empiris. Data dikumpulkan melalui observasi persidangan, wawancara dengan hakim, mediator, dan pihak berperkara, serta studi dokumen dan literatur. Instrumen penelitian berupa pedoman wawancara dan catatan lapangan, sedangkan analisis data dilakukan melalui tahapan reduksi, penyajian data, hingga verifikasi kesimpulan. Hasil penelitian menunjukkan bahwa asas mempersulit perceraian diimplementasikan sejak tahap awal pendaftaran perkara, dengan majelis hakim berupaya mendamaikan para pihak melalui nasihat dan mediasi sesuai Peraturan Mahkamah Agung Nomor 1 Tahun 2016. Upaya perdamaian ini dilanjutkan sepanjang proses persidangan melalui pendekatan persuasif dan menunjuk mediator resmi. Namun, penerapan asas ini menghadapi sejumlah kendala, seperti konflik rumah tangga yang telah berakar lama, faktor budaya lokal yang cenderung permisif terhadap perceraian, dan tekanan ekonomi keluarga. Dari perspektif maqāṣid al-syarī'ah, asas mempersulit perceraian selaras dengan tujuan menjaga agama, jiwa, akal, keturunan, dan harta, sekaligus menekan mudarat sosial akibat perceraian yang tidak perlu. Dengan demikian, penerapan asas ini di Pengadilan Agama Sinjai berfungsi tidak hanya sebagai prosedur formal, tetapi juga sebagai instrumen substantif dalam menjaga keberlangsungan perkawinan, mencegah perceraian prematur, dan memberi ruang bagi rekonsiliasi rumah tangga melalui mediasi.

Kata Kunci: Perlindungan Institusi Perkawinan; Asas Mempersulit Perceraian; Maqashd al-Syariah, Pengadilan Agama Sinjai.

Introduction

Marriage is defined as a noble and binding covenant, carried out on the basis of obedience to Allah Swt., thus serving as a form of worship.¹ Meanwhile, Indonesian positive law, through the Marriage Law, emphasizes that the purpose of marriage is to build a harmonious, peaceful, and prosperous household based on faith in God Almighty.² Islam places great emphasis on the rules of marriage because it is hoped that through this bond, a happy family will be born, receive the blessings and approval of Allah Swt., and produce pious descendants who will continue the good work).³ Ideally, everyone desires to marry only once in their lifetime to build serenity (*sakinah*), affection (*mawaddah*), and mercy (*rahmah*) in their family.⁴ However, the realities of life often present conflicts that lead to divorce,

¹ Anton Anton et al., "Ketentuan Pernikahan Menurut Perspektif Islam," *Jurnal Intelek Insan Cendikia* 2, no. 1 (2025): 1320–29, <https://jicnusantara.com/index.php/jiic/article/view/2333>.

² Rosdalina Bukido and A Zainal Azhar Ishak, "Exploring the Verdict of Interfaith Marriage under Maqasid Sharia Insights," *Mazahibuna: Jurnal Perbandingan Mazhab* 6, no. 1 (2024): 65–79, <https://doi.org/10.24252/mazahibuna.vi.43025>.

³ Wulandari, Zulfahmi Alwi, and Musyfiqah Ilyas, "Tinjauan Hukum Islam Dan Hukum Positif Tentang Dampak Penelantaran Anak Akibat Perceraian Orang Tua," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 3, no. 3 (2022): 470–81, <https://doi.org/10.24252/qadauna.v3i3.24874>.

⁴ Sabir Maidin, "Nikah Mut'ah Perspektif Hadis Nabi Saw.," *Mazahibuna: Jurnal Perbandingan Mazhab* 1, no. 2 (2019): 216–33, <https://doi.org/10.24252/mh.v1i2.11649>.

disputes in marriage often begin with trivial matters and then escalate into serious divisions. According to Abdul Kadir Muhammad, the dissolution of a marriage can occur due to the death of a spouse (divorce by death) or due to divorce, which is further subdivided into divorce by suing and divorce by *talaq*.⁵ Divorce is decided through the courts, and in Islamic jurisprudence, it is known as *talaq*, meaning the breaking of the marriage bond.⁶ *Talaq* itself has two meanings: a general one, encompassing all forms of separation, whether due to death, a judge's decision, or the husband's statement; and a specific one, meaning a declaration of divorce issued directly by the husband to his wife.

Divorce in Indonesia is not an easy matter because the marriage law emphasizes the importance of maintaining the integrity of the household. This is emphasized in the Marriage Law, which explains that the purpose of marriage is to build a harmonious, prosperous, and sustainable family, so that separation between husband and wife should be avoided as much as possible. Therefore, divorce is only permitted if there are valid reasons and must be filed in court. Article 39 of the Law stipulates that divorce can only be decided before a judge after failed reconciliation efforts, there are strong reasons that the household cannot be maintained, and the procedures are specifically regulated in applicable regulations.

Divorce regulations are not only stipulated in law but are also outlined in Articles 113 through 148 of the Compilation of Islamic Law (CIL). These provisions clearly state that divorce cannot be granted without good reason and must be subject to various considerations.⁷ Furthermore, Article 115 of the Compilation of Islamic Law (CIL) stipulates that divorce can only be decided in court after a panel of judges has attempted to reconcile the two parties but has not reached an agreement. This provision is essentially intended to prevent divorce from occurring easily, but rather as a last resort to reduce the high divorce rate while maintaining the goal of marriage, namely to form a harmonious and sustainable family.⁸ However, the reality in society, particularly in the Sinjai Religious Court, shows that divorce cases are decided by divorce far more often than those resolved through mediation. This

⁵ Nurunnisa Nurunnisa et al., "Implications of Annulment of Marriage on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (2023): 1–23, <https://doi.org/10.18592/sjhp.v23i1.9523>.

⁶ Hasbiah Tunnaim Harahap, Sukiati Sukiati, and Muhammad Yadi Harahap, "Yurisprudensi Hukum Mafqud Sebagai Alasan Gugatan Cerai Melalui Putusan Pengadilan (Putusan Nomor 0027/Pdt.G/2016/PA.Srog)," *Innovative: Journal Of Social Science Research* 5, no. 4 (2025): 88–110, <https://doi.org/10.31004/innovative.v5i4.20046>.

⁷ Dahwadin Dahwadin et al., "Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam Di Indonesia," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 11, no. 1 (2020): 87–104, <https://doi.org/10.21043/yudisia.v11i1.3622>.

⁸ Achmad Husaini, "Analisis Hukum Perceraian Dalam Perspektif Kompilasi Hukum Islam," *'Aainul Haq: Jurnal Hukum Keluarga Islam* 4, no. 1 (2024), <https://ejournal.an-nadwah.ac.id/index.php/ainulhaq/article/view/712>.

situation prompted the author to examine the effectiveness of the principle of making divorce difficult in religious court practice and to examine its relevance in maintaining the integrity of marriage from the perspective of *maqāṣid al-syarī'ah*.

Previous studies showed that the principle of complicating divorce has been widely studied in terms of its effectiveness and implementation in various Religious Courts, but most of them still focus on the normative and procedural dimensions. Studies such as those conducted by Nurfitra Salsabila, et. al. (2024)⁹, Mauresti Dwi Putri Artani (2022)¹⁰, and Nadya Larassati Putri (2022)¹¹ emphasized the principle's effectiveness in reducing divorce rates through positive legal and sociological approaches. Meanwhile, Slamet Muljono, et. al. (2022)¹² a study at the Bengkulu Religious Court examined the implementation of this principle from a juridical-empirical perspective, finding that although the principle is implemented, its implementation remains formal and has not completely changed the paradigm of judges and society regarding the meaning of divorce as a last resort. In this context, it appears that these studies are still oriented towards the principle's effectiveness in reducing divorce, rather than its underlying substantive values within the *maqāṣid al-syarī'ah* framework. Meanwhile, studies using the *maqāṣid al-syarī'ah* approach in family law focus more on legal reform, women's protection, and gender justice. For example, Abdul Majid (2025) discussed *maqāṣid* in the reform of the Marriage Law; al-Ghazālī's study on the relevance of *maqāṣid* in the reform of Islamic family law;¹³ and Heryani et. al. (2024) a study at the Kuala Tungkal Religious Court highlighting women's rights after divorce.¹⁴ Other studies, such as those in Pasuruan on marriage confirmation and child status,¹⁵ and those in Banten on divorce due to differences in religious beliefs, showed that *maqāṣid* can be an

⁹ Nurfitra Salsabila, Suriah Pebriyani Jasmin, and Mustafa Mustafa, "Efektivitas Asas Mempersulit Perceraian Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Studi Pada Pengadilan Agama Watampone," *Jurnal Ar-Risalah: Jurnal Hukum Keluarga Islam* 4, no. 2 (2024): 10–30, <https://doi.org/10.30863/arrisalah.v4i2.5688>.

¹⁰ Mauresti Dwi Putri Artani, "Pandangan Hakim Terhadap Asas Mempersulit Perceraian Di Pengadilan Agama Maumere Perspektif Sadd Al-Dzari'ah" (Universitas Islam Negeri Maulana Malik Ibrahim, 2022), <http://etheses.uin-malang.ac.id/42643/>.

¹¹ Nadya Larassati Putri, "Efektivitas Asas Mempersulit Perceraian Di Pengadilan Agama Sengeti Kabupaten Muaro Jambi" (Universitas Jambi, 2022), <https://repository.unja.ac.id/40964/>.

¹² Slamet Muljono et al., "Penerapan Asas Mempersulit Proses Perceraian Pada Persidangan Di Pengadilan Agama Bengkulu," *Wajah Hukum* 5, no. 1 (2021): 126–36, <https://doi.org/10.33087/wjh.v5i1.365>.

¹³ Abdul Majid, "Islamic Legal Reform Based on Maqāṣid Syarī'Ah: A Study of Al-Ghazali's Thoughts and Its Relevance in the Context of Indonesian Family Law," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025): 1–11, <https://doi.org/10.46773/usrah.v6i4.2195>.

¹⁴ Heryani, M. Hasbi Umar, and Bahrul Ulum, "Hak Perempuan Dalam Amar Putusan Cerai Menurut Perspektif Maqashid Syari'ah Pada Pengadilan Agama Kuala Tungkal Kelas 1B," *Mutiara: Jurnal Ilmiah Multidisiplin Indonesia* 2, no. 4 (2024): 173–91, <https://doi.org/10.61404/jimi.v2i4.276>.

¹⁵ M Faiz Nashrullah et al., "Judicial Invalidation of Ithbat Nikah Underage in the View of Religious Court Judges in Madura," *Al-Ahkam* 35, no. 2 (2025): 235–60, <https://doi.org/10.21580/ahkam.2025.35.2.27358>.

approach to maintaining family welfare.¹⁶ However, no study has specifically explored the principle of making divorce difficult from the perspective of *maqāṣid* as a mechanism for moral, social, and psychological protection of families amidst the social dynamics of society. This study is different because it not only examines the application of this principle legally, but also examines it as a social safeguard instrument that functions to maintain household stability and social harmony in Sinjai.

This study aims to examine the principle of making divorce difficult in the Sinjai Religious Court as a form of strengthening the values of family welfare from the perspective of *maqāṣid al-syarī'ah*, with a focus on how this principle functions not merely as a legal norm, but as a mechanism for social and moral protection for the institution of marriage. This study also aims to assess the extent to which the implementation of this principle reflects the principles of *maqāṣid*, such as protection of the soul (*ḥifẓ al-nafs*), descendants (*ḥifẓ al-nasl*), and honor (*ḥifẓ al-ʿird*), as well as to identify the social, cultural, and institutional factors that influence its implementation in the Sinjai Religious Court. Thus, this study is expected to provide a new perspective that goes beyond the legalistic approach, namely, placing the principle of making divorce difficult as an instrument for maintaining family welfare and social harmony in society.

Research Methods

This study employed a qualitative approach with a juridical-empirical framework. It aims to analyze how the principle of difficulty in obtaining divorce is applied in religious court practice, specifically in the Sinjai Religious Court, and to assess its compliance with the principles of *maqāṣid al-syarī'ah* (the principle of Islamic law). This approach was chosen because it bridges the gap between normative Islamic legal norms and the empirical dynamics occurring in society and the judiciary.

Research data was collected through several primary techniques: direct observation, in-depth interviews, and documentary studies of court decisions and relevant laws and regulations. Research instruments included structured interview guidelines for judges, court clerks, and litigants, as well as field notes to document the context and social dynamics surrounding the divorce process.

Data analysis was conducted descriptively and analytically by following three systematic stages: data reduction to select relevant information, data presentation in

¹⁶ Humaeroh Humaeroh and Nita Anggraeni, "Perspektif Maqāṣid Syarī'ah Terhadap Alasan Perceraian Karena Perselisihan Yang Dipicu Salah Satu Pihak Pengikut Aliran Syiah," *Syakhsia: Jurnal Hukum Perdata Islam* 22, no. 1 (2021): 99–110, <https://doi.org/10.37035/syakhsia.v22i1.4878>.

thematic and narrative forms to find patterns in the application of the principle, and drawing and verifying conclusions to obtain a holistic understanding of the effectiveness of the principle of making divorce difficult in protecting the institution of marriage. Through this procedure, the study is expected to provide a conceptual contribution to the integration of the values of *maqāṣid al-syarī'ah* in the practice of Islamic family law in Indonesia.

Results and Discussion

1. The Principle Concept of Making Divorce Difficult in the Religious Court System in Indonesia

The approach taken in the Indonesian Marriage Law by making divorce procedures more difficult is essentially a strategy to maintain household stability and prevent hasty divorces.¹⁷ Marriage is viewed not only as a personal relationship between husband and wife, but also as a social institution that plays a vital role in shaping social order.¹⁸ Therefore, strengthening marital bonds is crucial, especially amidst the increasing number of divorce cases across various levels of society.

One of the concrete manifestations of this principle is the provision that divorce can only be achieved through judicial mechanisms.¹⁹ This provision is not merely a legal formality, but rather a means to ensure that every divorce decision has been thoroughly considered, including the potential emotional and social impacts on both spouses and their children. Through the judicial process, couples are also given the space to openly discuss their issues and, if possible, seek solutions other than separation.

In civil cases such as divorce, the court is required to direct the disputing parties to undergo mediation for a maximum of 30 days, which can be extended if both parties agree, in accordance with Supreme Court Regulation Number 1 of 2016. Furthermore, the provisions in Article 130 HIR/154 RBg emphasize that peace efforts must always be prioritized. This means that every time a hearing takes place, the judge is obliged to advise the couple to review their divorce plans. This series of procedures provides an opportunity for the couple to carefully consider and perhaps find the best alternative before actually making the final decision to separate.

¹⁷ Ramdani Wahyu Sururie, Mohammad Athoillah, and Muhammad Iqbal Zia Ulhaq, "Strategies to Prevent Increasing Divorce Rates for Muslim Families in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 734–59, <https://doi.org/10.22373/sjkh.v7i2.14819>.

¹⁸ Gunjan Jain, "Significance of Marriage as Social Institution in Indian English Writings," *Soc Values Soc* 1, no. 1 (2019): 17–22, <https://doi.org/10.26480/svs.01.2019.17.22>.

¹⁹ Hermansyah Hermansyah, "Interpretasi Asas Mempersulit Perceraian Dalam Perspektif Hukum Islam," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 1 (2024): 1110–21, <https://doi.org/10.47467/as.v6i1.6307>.

2. Analysis of *Maqāshid al-Syarī'Ah* on the Application of the Principle of Making Divorce Difficult at the Sinjai Religious Court

The term *maqāshid* is derived from the plural form of the word *maqsid*, which is derived from the words *qasada-yaqsidu-qasdan*. In Arabic, this word has various meanings. Expressions such as *qasada-hu*, *qasada lahu*, or *qasada ilayhi* may differ in form, but their meanings are similar, including approaching someone with a specific intention, leading or heading towards them, being moderate in the use of wealth, and referring to the meaning of justice.²⁰

In its early development, the study of *maqāshid* has not yet stood alone as a discipline, but rather remains part of discussions within *ushul fiqh* (Islamic jurisprudence). Therefore, it is understandable that a detailed terminological definition of *maqāshid* is lacking in classical literature. Early scholars of *ushul fiqh* typically associated the term *maqāshid* with the concept of *maslahah*, as the two are closely related.²¹ It can even be said that *maslahah* is the core of all dimensions of *maqāshid al-Syarī'ah*, and ultimately, all of them lead to the realization of *maslahah*.

For example, Imam al-Ghazali explained that *maslahah* is generally understood by society as an effort to realize benefits while preventing loss or damage. However, according to him, this interpretation does not fully align with the true meaning of *maslahah*. This is because realizing benefits and preventing harm are merely goals desired by humans for their own good. Meanwhile, what is meant within the framework of *maqāshid al-Syarī'ah* is to maintain and protect the primary objectives of religion. The objectives of sharia encompass five main aspects: protecting religion, life, intellect, lineage, and property.²²

Dharūriyyah (Primary Needs) is a benefit which includes the maintenance of five universal things (*al Kulliyāt al Khamsah*), namely the maintenance of religion, life, intellect, lineage, and property.²³ When commenting on *al Kulliyāt al Khamsah*, Imam al - Ghazali said, "What we mean by *maslahah* is maintaining or guarding the goal or *syara'*", and there are five desires of *syara'* to be achieved: maintaining human religion, preserving their souls, preserving their minds, preserving their descendants, and preserving their wealth. *Hajiyyah*

²⁰ Abd Rauf Muhammad Amin, *Ijtihad Maqasidi Pendekatan Hukum Islam* (Palu: Pesantren Darul Qur'an, 2024).

²¹ Anwar Sadat et al., "Determination of Auspicious Days in Wedding Traditions in Mandar, West Sulawesi: Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1422–46, <https://doi.org/10.22373/sjkh.v7i3.17864>.

²² Abdul Wahid and STAI Hasan Jufri Bawean Gresik, "Pendekatan Maqasid Al-Syariah Dalam Studi Hukum Islam," *JURISY: Jurnal Ilmiah Syariah* 3, no. 2 (2023): 75–83, <https://ejurnal.inhafi.ac.id/index.php/juris/article/view/402>.

²³ Asli Nasution and Muchlis Bahar, "Tingkatan Al-Maqashid Al-Khamsah Dan Penerapannya," *Jurnal Kolaboratif Sains* 7, no. 12 (2024): 4656–70, <https://doi.org/10.56338/jks.v7i12.6609>.

(Secondary Needs) are the benefits required by humans to expand their movement and eliminate the narrowness of their lives, which usually leads to the creation of difficulties due to the unfulfilled goals.²⁴ If these benefits are not met, humans will generally experience hardship and difficulty. *Tahsīniyyah* (Tertiary Needs), as stated by Imam al-Juwaini, are all forms of benefits that have nothing to do with the benefits of *dharūri* or *hajiyy* as stated previously.²⁵ But what is meant is the benefits that are intended to obtain virtue or glory or are intended to avoid anything contrary to the essence of glory itself.

Harmony in maintaining the five core things of Sharia at every point in the *maqāshid al Sharia*, with the application of the principle of making divorce difficult for the sake of the benefit, is:

a. Maintaining Religion (*Hifz al-din*)

Every individual fundamentally aspires to create a family, which is the core purpose of marriage: to create a household filled with peace, love, and grace. This aligns with the *maqāshid al-Syari'ah*, where carrying out religious commands reflects obedience while simultaneously maintaining the continuity of religion itself (*ḥifẓ al-dīn*). The link between establishing an ideal family and the principle of maintaining religion demonstrates that this aspect occupies a fundamental position and is the most important foundation for the purpose of marriage.²⁶ Every husband and wife maintains marriage as an act of worship and also avoids divorce, which could undermine religious values.

The meaning:

The Prophet Muhammad (Peace Be Upon Him) said: "The lawful thing that Allah hates most is divorce." (H.R. Abu Dawud and Ibnu Majah) (Hasan, 2006).

In Islam, marriage is not a rigid, unbreakable bond, but it is also not viewed as something easily dissolved through divorce. Therefore, within a household, various possibilities exist, as explained previously. This principle aligns with the hope of a harmonious and peaceful life between husband and wife, and provides both parties with the opportunity to find a truly compatible partner to achieve the noble purpose of marriage.

b. Maintaining the Soul (*Hifz al-nafs*)

Regarding the principle of aggravating divorce, Islam places maintaining the soul (*ḥifẓ al-nafs*) as a crucial principle. This religion places a high value on all efforts aimed at preserving

²⁴ Mohammad Rasikhul Islam, "Pembagian Maqashid Al-Syari'ah Berdasarkan Pengaruhnya Terhadap Umat Manusia (Dharuriyyat, Hajiyyat Dan Tahsiniyyat)," *Celestial Law Journal* 1, no. 1 (2024): 93–105, <http://journal.unsuri.ac.id/index.php/clj/en/article/view/523>.

²⁵ Rasyidah Rasyidah, "Hukum Pernikahan Tanpa Wali Perbandingan Pemikiran Hukum Imam Abu Hanifah Dan Kompilasi Hukum Islam" (IAIN Parepare, 2024), <https://repository.iainpare.ac.id/id/eprint/5939/>.

²⁶ Abdul Majid, "Problematisasi Awal Pernikahan Dalam Sebuah Pernikahan Ideal Dalam Pandangan Sosiologi Agama," *TheJournalish: Social and Government* 5, no. 4 (2024): 525–37, <https://doi.org/10.55314/tsg.v5i4.832>.

and nourishing the soul.²⁷ Maintaining the soul relates to meeting the needs of food and shelter, which are essential for ensuring the survival of a married couple and their children. Therefore, this point is closely related to fulfilling the needs of the soul. Furthermore, fulfilling the needs of the soul, particularly regarding water, can be crucial for ensuring the survival of the family.

c. Maintaining the Intellect (*Hifz al-aql*)

In Islamic teachings, children are viewed as a trust that must be safeguarded with full responsibility, as they are entrusted by Allah Swt. and possess fundamental rights that must be respected and fulfilled. Therefore, both parents and society have a moral obligation to protect, educate, and provide children with the attention and affection they deserve. These rights include the opportunity to receive a focused and systematic education so that children can hone their intellectual potential and develop into intelligent, creative, and highly competitive individuals.²⁸ This education is not limited to religious knowledge alone, but also extends to the realm of science, in line with Islamic teachings that emphasize the importance of reading, as enshrined in the first revelation to the Prophet Muhammad (Peace Be Upon Him).²⁹ Reading activity is the main gateway to mastering knowledge, which ultimately can encourage the development of human capacity for the advancement of civilization on earth.

d. Maintaining Lineage (*Hifz al-nasl*)

In Islam, the family is the primary foundation for shaping the morals and character of future generations. If the family's role in instilling moral values is neglected, various serious problems will arise in the child's future development.³⁰ However, this is impossible if parents do not have personalities that align with Islamic values. Therefore, the household atmosphere must be built on love, calm, and mutual respect. When a household is filled with quarrels and ultimately lead to divorce, the impact will significantly affect the child's emotional development, thinking, and personality. If divorce is unavoidable due to destiny, parents still have an obligation to minimize its negative impact on their children.

²⁷ Aay Siti Hayat, "Formula Pemeliharaan Jiwa (Hifz Al-Nafs) Pada Undang-Undang Nomor 16 Tahun 2019," *Islamic Review: Jurnal Riset Dan Kajian Keislaman* 9, no. 1 (2020): 115–41, <https://doi.org/10.35878/islamicreview.v9i1.195>.

²⁸ Muhammad Husni Abdulah Pakarti, "Perlindungan Hak Anak Dalam Perceraian Menurut Hukum Keluarga Islam," *Mawaddah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2024): 1–20, <https://doi.org/10.52496/mjhki.v1i1.1>.

²⁹ Abd Rauf Muhammad Amin, "Implementation of Maqasid Al-Syariah Contemporary Perspective," *Journal of Social Transformation and Regional Development* 2, no. 3 (2020): 189–200, <https://doi.org/10.30880/jstard.2020.02.03.023>.

³⁰ Sri Hafizatul Wahyuni Zain et al., "Peran Pendidikan Islam Dalam Pembentukan Karakter Masyarakat Berbasis Nilai-Nilai Al-Qur'an Dan Hadis," *IHSAN: Jurnal Pendidikan Islam* 2, no. 4 (2024): 199–215, <https://doi.org/10.61104/ihsan.v2i4.365>.

The essence of marriage is to bring benefits to both husband and wife. However, when each party's obligations and rights are not properly fulfilled, it often leads to marital discord. Divorce is permitted in Islam, but it is a last resort and is most hated by Allah Swt. In these circumstances, child custody issues are unavoidable, and children are often the most vulnerable victims. They feel deprived of affection, depressed, ashamed of their family's situation, and grow up with fragile self-confidence. Yet, children desperately need the full attention of both parents. Fulfilling children's rights, both physical and emotional, is part of the *maqashid al-syari'ah*, namely maintaining the lineage (*hifz al-nasl*).³¹

e. Maintaining the property (*hifz al-Mal*)

Maintaining the property in the application of the principle of less burdensome divorce proceedings in the Sinjai Religious Court plays a crucial role in guaranteeing justice and protecting the economic rights of separating parties. This principle is fundamentally designed to maintain the integrity of the household and reduce the divorce rate, which often negatively impacts the financial well-being of one partner, particularly vulnerable parties such as women and children. Uncontrolled divorce can significantly increase economic pressure; implementing this principle is a concrete effort to preserve assets. Therefore, this principle serves as an important instrument to ensure the economic rights of each spouse are safeguarded.

3. The Effectiveness and Challenges of Implementing the Principle of Making Divorce Difficult in the Social Context at the Sinjai Religious Court

In the journey of marriage, there is no guarantee that married life will always run smoothly and without obstacles. Sooner or later, a husband and wife will inevitably face differences of opinion, arguments, and even fights that can lead to a rift in the relationship.³² Divorce is permitted in Islam, but it is still considered a lawful act and is most hated by Allah Swt. This shows that although divorce is not prohibited, the primary purpose of marriage is not separation, but rather to achieve tranquility and blessings.³³ However, when the marriage no longer provides benefits for both parties, divorce can be a last resort that must be pursued carefully, taking into account the values of the *maqāṣid al-syarī'ah*.

³¹ Andi Muhammad Akmal and Mulham Jaki Asti, "Problematika Nikah Siri, Nikah Online Dan Talak Siri Serta Implikasi Hukumnya Dalam Fikih Nikah," *Al-Risalah: Jurnal Ilmu Syariah Dan Hukum* 21, no. 1 (2021): 45–59, <https://doi.org/10.24252/al-risalah.v1i1.22247>.

³² Abdullah and Nur Aisyah, "Fenomena Faktor Dominan Tingginya Perceraian Di Kabupaten Maros," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 4, no. 3 (2023): 1021–36, <https://doi.org/10.24252/shautuna.v4i3.33183>.

³³ Alex Kusmardani et al., "Faktor-Faktor Penyebab Perceraian Dalam Perspektif Hukum Keluarga Antar Madzhab Islam Dan Realita Sosial," *Jurnal Syntax Imperatif: Jurnal Ilmu Sosial Dan Pendidikan* 3, no. 3 (2022): 176–94, <https://doi.org/10.36418/syntax-imperatif.v3i3.168>.

a. Protracted and Complex Disputes

One of the biggest challenges in implementing the principle of making divorce difficult is the emergence of long-standing conflicts that are increasingly difficult to resolve. An interview with a judge at the Sinjai Religious Court revealed that:

*"Most couples who file for divorce have been in conflict for years, even through mediation by family and local authorities, but to no avail. By the time the case reaches court, both parties are emotionally too closed to reconcile."*³⁴

The principle of making divorce difficult loses its effectiveness when couples have reached emotional saturation. This situation demonstrates that formal mediation is insufficient without a social and spiritual approach capable of rekindling the spirit of reconciliation. In the context of the *maqāṣid al-syarī'ah*, efforts to maintain a household should still prioritize maintaining the soul (*ḥifẓ al-naḥs*) and maintaining the intellect (*ḥifẓ al-'aql*), as maintaining a stressful relationship can actually lead to new damage.

b. Cultural Factors in Society

Cultural factors are also a crucial element influencing the effectiveness of this principle. The Bugis people of Sinjai are known for their strong character, adherence to principles, and reluctance to change their minds. One court clerk stated:

*"Many couples who have disputes find it difficult to reconcile due to their stubbornness and high pride. They feel they lose their self-respect if they have to forgive first."*³⁵

The Bugis cultural value of *siri'* (self-respect) often becomes an obstacle in the process of resolving domestic conflicts. From the perspective of *maqāṣid al-syarī'ah*, *siri'* can actually be a moral force for maintaining family honor (*ḥifẓ al-'ird*). However, when translated into egoism and unwillingness to reconcile, this value has the potential to hinder the achievement of household *maslahah*. Therefore, a cultural approach needs to be integrated into mediation strategies so that the principle of making divorce difficult can be implemented more contextually.

c. Economic Factors

In addition to social and cultural factors, economic aspects are also a dominant factor triggering divorce. An interview with a mediator at the Sinjai Religious Court revealed:

*"Most divorce cases here are triggered by economic hardship. Many couples are unable to meet the family's basic needs. In these circumstances, arguments become routine and difficult to avoid."*³⁶

³⁴ Kaharuddin (43 years old), Judge of the Sinjai Religious Court, *Interview*, December 10, 2024.

³⁵ Ismail (40 years old), Clerk of the Sinjai Religious Court, *Interview*, December 5, 2024.

³⁶ Moch Ilham (45 years old), Mediator at the Sinjai Religious Court, *Interview*, December 7, 2024.

Economic pressure plays a significant role in weakening household stability, especially for women who are financially dependent on their husbands.³⁷ Within the framework of the *maqāṣid al-syarī'ah*, this condition touches on the aspects of *ḥifẓ al-māl* (maintaining the property) and *ḥifẓ al-nafs* (maintaining the lineage), where economic inadequacy can threaten the well-being and dignity of the family.³⁸ Therefore, the implementation of the principle of making divorce difficult needs to be balanced with socio-economic policy interventions that support family resilience, such as women's economic empowerment and welfare-based mediation programs.

Empirically, the application of the principle of difficulty in divorce in the Sinjai Religious Court shows that this principle still faces various practical challenges. Long-standing domestic conflicts often lead to emotional exhaustion and a loss of desire for reconciliation, rendering the mediation process ineffective. Furthermore, the Bugis culture, known for its strong character and resistance to change, also complicates reconciliation efforts. Intransigence and high egos often make each party reluctant to lower their prestige and forgive, thus rendering the principle of difficulty in divorce ineffective as a preventive measure.

In addition to social and cultural factors, economic conditions are also a significant determinant of the effectiveness of this principle's implementation. Economic constraints, rising living costs, and gender inequality within the household add to the psychological pressures that drive couples to choose divorce as a solution. Nevertheless, the principle of making divorce difficult still has moral and legal significance in maintaining the sanctity of the institution of marriage. By strengthening the values of the *maqāṣid al-syarī'ah* (protection of lineage) and *ḥifẓ al-'ird* (protection of honor)—this principle is expected to become not merely a formal legal norm, but also a mechanism that promotes household integrity through a synergy between legal, cultural, and social welfare values.

Conclusion

The application of the principle of difficulty in obtaining divorce in the Sinjai Religious Court demonstrates a systematic effort to maintain the integrity and sanctity of the institution of marriage in accordance with positive law and the ethical values of Islamic law. The process of implementing this principle begins when the case is registered, with the panel of judges actively seeking to reconcile the parties through advice and guidance. Based on Supreme

³⁷ Zuhdan Ihsan and Ruston Kumaini, "Praktik Ta'awun Dalam Rumah Tangga: Perempuan Sebagai Penanggung Jawab Ekonomi Keluarga Di Desa Sumberjambe," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025): 92–110, <https://doi.org/10.46773/usrah.v6i4.2332>.

³⁸ Hasrul Zen, "Kajian Istimbath Maqashid Al-Syari'ah Dalam Bidang Ekonomi," *Jurnal Media Akademik (Jma)* 2, no. 12 (2024): 1–18, <https://doi.org/10.62281/v2i12.1425>.

Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, the mediation stage is a crucial mechanism for prioritizing dialogue, emotional healing, and finding common ground before a divorce is finalized. This step reflects the religious courts' commitment to reducing the number of non-urgent divorces and ensuring that divorce is pursued as a last resort after all peaceful means have been exhausted. The effectiveness of this principle often faces challenges in complex social realities. Long-standing domestic conflicts, the influence of Bugis culture, which emphasizes self-respect (*siri'*) and intransigence, and severe economic pressures are dominant factors hindering the success of the mediation process. In the perspective of *maqāṣid al-syarī'ah*, this principle has strong relevance because it is in line with the main objective of Islamic law, namely maintaining religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). Thus, the principle of making divorce difficult not only functions as a legal instrument that limits the number of divorces, but also as a moral and social mechanism that strengthens family resilience and creates benefits within the framework of justice and compassion, which are the main goals of Islamic law.

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