



**Remarriage in the 'Iddah Perspective of *Maqāṣid Al-Ushrah*:
Study in Wedoro Waru, Sidoarjo, Indonesia**

Muh. Sholihuddin

Universitas Islam Negeri Sunan Ampel Surabaya

Saiful Jazil

Universitas Islam Negeri Sunan Ampel Surabaya

Syamsun Ni'am

Universitas Islam Negeri Sayyid Ali Rahmatullah Tulungagung

Email: msholihuddin@uinsby.ac.id

Abstract: Marriage is a multidimensional event, not only containing legal dimensions, but also a religious, cultural, social, and even political event. Marriage is legal. It is regulated by law, as is worship because someone will receive a reward, then it contains cultural aspects because the marriage process is carried out according to custom. This study aims to reveal the role of *kyai* in the tradition of remarriage during the 'iddah period in Wedoro Waru, Sidoarjo Regency, East Java. The tradition of remarriage during the 'iddah period is a tradition that has been passed down from generation to generation. That article uses an empirical legal method explained by the theory of *maqāṣid al-syarī'ah*, data collection techniques namely interviews and documentation studies. This study found that remarriage during the 'iddah period carried out by *kyai* includes *al-maṣlahah al-tahsīniyyah*, namely doing something good according to tradition and avoiding bad behavior that is reprehensible according to correct reason, so that life becomes safe, peaceful and looks beautiful in the eyes of people. other. Remarriage during the 'iddah period is a form of *al-tajammul* (beautiful) and *al-iḥtiyāt* (prudence). From the perspective of *maqāṣid al-ushrah*, remarriage is a form of maintaining family welfare and realizing *maqāṣid al-sharī'ah*. This remarriage process is carried out by a *kyai* for both partners, because the *kyai* is considered to know the most about religious knowledge. Likewise, it can be emphasized that the marriage integration of the couple carried out by the *Kiyai* is a form of obedience to Islamic law as a form of prudence and creates *maqāṣid al-sharī'ah*.

Keywords: *Maqāṣid al-ushrah*, *maqāṣid al-sharī'ah*, remarriage, 'iddah, *kyai*

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Abstrak: Perkawinan merupakan suatu peristiwa yang bersifat multidimensional, tidak hanya mengandung dimensi hukum, namun juga merupakan peristiwa agama, budaya, sosial bahkan politik. Perkawinan yang sah karena diatur dalam undang-undang, begitu pula ibadah karena seseorang akan mendapat pahala, kemudian mengandung aspek kebudayaan karena proses perkawinan dilakukan menurut adat. Kajian ini untuk mengungkap peran kyai dalam tradisi nikah ulang pada masa 'iddah di Wedoro Waru Kabupaten Sidoarjo, Jawa Timur. Tradisi nikah ulang pada masa 'iddah ini merupakan adat yang telah dilakukan secara turun-temurun dari generasi ke generasi. Artikel tersebut menggunakan metode hukum empiris yang dianalisis dengan teori *maqāsid al-sharī'ah*, teknik pengumpulan data yaitu wawancara dan studi dokumentasi. Studi ini menemukan bahwa nikah ulang di masa 'iddah yang dilakukan kyai termasuk *al-maṣlahah al-taḥsīniyyah*, yaitu melakukan suatu kebaikan dalam tradisi dan menjauhi perilaku buruk yang tercela menurut akal yang benar, sehingga hidup menjadi aman, tenang serta tampak indah dalam pandangan orang lain. Nikah ulang di masa 'iddah ini merupakan bentuk dari *al-tajammul* (merindah) dan *al-iḥtiyāt* (kehati-hatian). Dalam perspektif *maqāsid al-ussrah*, pelaksanaan pernikahan kembali merupakan salah satu bentuk menjaga kesejahteraan keluarga, dan untuk mewujudkan *maqāsid al-sharī'ah*. Proses nikah ulang ini dilakukan oleh seorang kyai kepada kedua pasangan, karena kyai dianggap paling banyak tahu tentang ilmu agama. Demikian juga dapat ditegaskan bahwa pengulangan nikah oleh pasangan tersebut yang dilakukan oleh Kiyai merupakan bentuk ketaatan kepada hukum Islam sebagai bentuk kehati-hatian dan menciptakan *maqāsid al-sharī'ah*.

Kata Kunci: *Maqāsid al-ussrah*, *maqāsid al-sharī'ah*, nikah ulang, 'iddah, kyai.

Introduction

In Islamic law, marriage is a multidimensional event, not only containing a legal dimension, but also a religious, cultural and social and even political event. Marriage is a legal event because it is regulated by law, as well as worship because someone will get a reward, then it contains cultural aspects because the marriage process is carried out according to custom. It is also a social event because it can strengthen social solidarity and unite communities politically.¹ Then, in the

¹ Muhammad Latif Fauzi, "Actors and Norms in An Islamic Marriage: A Study of Madura Community in Rural Eastern East Java," *Journal of Indonesian Islam* 13, No. 2 (2019). Mursyid Djawas, et.al., "The Integration between Syara' and Ade' in Wedding Tradition of Bugis Bone, South Sulawesi: Islamic Law Perspective," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 18, No. 2 (2023), p. 342–364. Muhammad Amin Suma, *Himpunan Undang-Undang Perdata Islam Dan*

Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), it is explained that it is a firm contract (*mitsaqan ghalīzhan*) to obey Allah's commands and carry them out in worship.²

Thus, marriage is a sacred and solid agreement to legally bond between a man and a woman to form an eternal family, polite, courteous, loving, peaceful, and happy. Based on this explanation, marriage or marriage is; *first*, marriage is a commandment. Therefore someone who performs marriage is worship; *second*, marriage is a strong agreement both physically and mentally between a man and a woman; and *third*, marriage has the goal of forming a happy family based on love.³

However, the noble ideals of such a marriage could not be maintained for as long. According to later discovered facts, marriages frequently end in divorce due to a lack of compatibility and mutual understanding between husband and wife. Divorce cases increased from 20,000 to 57,000 in June and July 2020, according to data from the Supreme Court (*Mahkamah Agung/MA*), and 80% of lawsuit cases were carried out by the wife.⁴ Even if you look at the trend, there is an increase every year. In 2015, there were 394,246 cases. In 2016, there were 401,717 cases. In 2017, there were 415,510 cases. In 2018, it continued to increase to 444,358 cases. Meanwhile, in 2020, as of August, the number had reached 306,688 cases. This means that the average number of divorces in Indonesia reaches a quarter of the two million marriages in a year. The causes of divorce are enmity between husband and wife as a result of infidelity, economic problems, heredity, and a lack of maturity in married couples, resulting in a temperamental nature. Divorce frequently leaves scars and ramifications for separated husband and wife, children, or both parties' families.⁵

If left without any effort to find a solution, this fact will have an impact on the child as a victim of divorce. It could be, for example, taking advantage of the

Peraturan Pelaksanaan Lainnya Di Negara Hukum Indonesia (Jakarta: Raja Grafindo Persada, 2004), p. 354.

² Nur Solikin and Moh. Wasik, "The Construction of Family Law in the Compilation of Islamic Law in Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna: Journal of Islamic Studies* 27, No. 1 (2023). Abdurrahman, *Kompilasi Hukum di Indonesia* (Jakarta: Akademika Presindo, 1995), p. 114. Ibrahim Hosen, *Fiqh Perbandingan*, Jilid I (Jakarta: Balai Penerbit dan Perpustakaan Islam Yayasan Ihya 'Ulumuddin, 1971), p. 65.

³ Moh. Idris Ramulyo, *Hukum Perkawinan Islam* (Jakarta: Bumi Aksara, 1996), p. 2.

⁴ Rizki Amalia Syifa Mauliddina, et.al., "Analisis Faktor-Faktor Yang Mempengaruhi Tingginya Angka Perceraian Pada Masa Pandemi Covid-19: A Systematic Review," *Jurnal Kesehatan Tambusai* 2, no. 3 (2021), p. 10–17. Muhammad Aulia Rahman, et.al., "Dayak Ngaju Customary Fines in Pre-Marriage Agreement to Minimize Divorce in The Perspective of Masalah Mursalah Ramadhan Al-Buthi," *El-Mashlahah* 13, No. 1 (2023).

⁵ Julia Eva Putri et al., "Konsep Self Esteem Pada Wanita Dewasa Awal Yang Mengalami Perceraian," *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia* 8, no. 1 (2022), p. 20.

times where there is time for mutual introspection between husband and wife before reaching the religious court route. This period can be used as well as possible for both parties to find common ground between the two or involve other people to not end up in court. This period of introspection or finding common ground in the study of Islamic law is called the 'iddah period, which is a period in which husbands may reconcile and wives may not marry other men. The 'iddah period is a crucial period for a husband or wife to be able to return and continue the ideals of their marriage, which was once a shared commitment, namely *sakīnah*, *mawaddah*, and *rahmah* households for the sake of goodness (*maṣlahah*) for all (children, wife, and husband).⁶

Theoretically, in the study of Islamic law, a husband and wife who are in the 'iddah period are sufficient to express reference in words and deeds. For example, in the form of clear words, "I return to you" or through the metaphor, "you are still the same as before." It can also be done with actions, such as kissing the wife's forehead. Furthermore, the scholars agree that the intention of reconciliation must accompany reconciliation. In the Compilation of Islamic Law, a husband can return to his wife who is in the 'iddah period. What is meant is that *ruju'* only applies when the divorce is still in the status of *raj'i*, namely a divorce where the husband has the right to refer back to his wife after the divorce has been pronounced with certain words and the wife has been married.⁷

However, some realities in society are different. A case was found where a wife who was still in the 'iddah period could not directly *ruju'* her husband even though she was in *raj'i* status. In the village of Wedoro Waru Sidoarjo, it is a fact that a husband who will return (*rujū'*) to his wife must perform a remarriage because the previous marriage is considered imperfect or canceled because it has fallen apart. One of the perpetrators stated that such remarriage is a tradition that has been carried out from generation to generation.⁸ In reality, a kyai performs this remarriage by employing particular techniques. This is done exclusively to enable the husband and wife to fulfill their desire to have a happy family both here and in the afterlife.

The study of remarriage has been a frequently studied theme. Several studies show that remarriage is carried out because it is considered that there are pillars or conditions of marriage that are not fulfilled, such as a husband or wife who has wandered for a long time, the economy is not smooth, there are heredity

⁶ Dirjen Bimbaga Islam Depag, *Ilmu Fiqih*, Jilid 2 (Jakarta: Proyek Pembinaan Prasarana Sarana Perguruan Tinggi Agama, 1985), p. 229. Abidin Nuridin, "Mut'ah and Iddah: Post-divorce Payment Practices in Aceh," in John R. Bowen and Arskal Salim, *Women and Property Rights in Indonesian Islamic Legal Contexts*, (2018).

⁷ Abidin Slamet and Aminuddin, *Fiqh Munakahat* (Bandung: Pustaka Setia, 1999), p. 17.

⁸ Interview with Rodhifah, Female Leader in, Sidoarjo, May 01, 2021.

factors, and so on.⁹ However, the critical point from the studies that have been carried out is that remarriage is a way to improve the relationship between husband and wife, which is considered imperfect in Islamic law, namely only to see the implementation of remarriage by the terms and pillars of marriage.¹⁰

Then, a slightly different case was the annulment of a marriage at the Banda Aceh Religious Court which was caused by an invalid marriage based on court evidence. The reason the judge annulled the marriage was because the marriage was performed by the siblings of the applicant's father. However, the applicant's father does not have the authority to be the guardian of the marriage because the applicant is an out-of-wedlock child and thus only has a relationship with the mother and her family. The panel of judges declared the marriage between the petitioner and the respondent null and void at the end of the trial, so the marriage certificate was null and void. Supposedly, the marriage guardian for a child conceived out of wedlock is the judge.¹¹

The study focused on the repetition of marriages during the 'iddah period which were bombed by Kiyai in Wedoro Waru, Sidoarjo Regency. This study is clearly different from the previous discussion in terms of focus, theory, location and time of research carried out. That article uses an empirical legal method explained by the theory of *maqāṣid al-sharī'ah*, data collection techniques namely interviews and documentation studies.¹² The data were obtained through interviews and documentation. Then the data is analyzed using a descriptive analysis technique, which begins with collecting, analyzing, and interpreting the data.

Maqāṣid al-Ussrah: The Aspiration of Eternal Marriage

Maqāṣid al-ussrah consists of two words, namely *maqāṣid* and *ussrah*. *Maqāṣid* is the plural form of *maqāṣid*, which is the word form of *qaṣada-yaqṣudu* with various meanings, such as going in a direction, goal, middle, fair and not

⁹ Khairani and Cut Nanda Maya Sari, "Pengulangan Nikah Menurut Perspektif Hukum Islam (Studi Kasus Di KUA Kecamatan Kota Kualasimpang)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 1, no. 2 (2017), p. 397–415.

¹⁰ Hilmi Fauzi Muhammad and Ibnu Sina, "Tajdidun Nikah Sebagai Trend Adat Masyarakat Jawa (Analisis Hukum Islam Terhadap Study Kasus Pada Masyarakat Desa Budi Mulya, Puncak Harapan dan Ayunan Papan Kecamatan Lokpaikat Kabupaten Tapin)," *Jurnal Bimas Islam* 11, no. 2 (2018), p. 537–70.

¹¹ Muslim Zainuddin, "The Cancellation of The Weddings for Pre-Marriage Pregnancy Women: An Evaluation of Decision 24/Pdt.G/2020/Ms. Ban," *El-Ussrah: Jurnal Hukum Keluarga* 6, No. 1 (2023).

¹² Faisal Ananda Arfa and Watni Marpaung, *Metodologi Penelitian Hukum Islam*, Jakarta: Prenada Media, 2018. Sandu Siyoto and M. Ali Sodik, *Dasar Metodologi Penelitian* (Yogyakarta: Literasi Media Publishing, 2015), p. 29.

transgressing, straight path, middle between exaggeration and lack of,¹³ “intentional or purposeful”.¹⁴ As for *ussrah*, it means family, family, relatives.¹⁵ Meanwhile, in terms of *maqāṣid al-ussrah*, which is the goals and benefits behind the determination of marriage sharia for the good of husband and wife and their families, both in this world and in the hereafter.¹⁶

The theme of *maqāṣid al-ussrah* can't be separated from the big theme, namely *maqāṣid al-sharī'ah*. The command to marry is part of the *syārī'* command. *Maqāṣid al-sharī'ah* is the goal of Allah and His Messenger in formulating Islamic laws. This goal can be traced in the verses of the Qur'an and hadith as a logical reason for the formulation of a law that is oriented to human benefit.¹⁷ Meanwhile, Wahbah al-Zuhailī defines *maqāṣid al-sharī'ah* as the meanings and goals that are preserved by the *syārī'ah* in all of its laws or most of its laws, or the ultimate goal of the *syārī'ah* and the secrets laid down by the *syārī'ah*.¹⁸

In the philosophical thought of Islamic law, *maqāṣid al-sharī'ah* is the main theme that is discussed by Islamic law scholars. Al-Haramain al-Juwaini from the Shafi'iyah group was the first *usūl al-fiqh* scholar to emphasize the importance of understanding *maqāṣid al-sharī'ah* in establishing Islamic law. He stated unequivocally that a person cannot establish Islamic laws until he understands the true purpose of Allah issuing His commands and prohibitions.¹⁹ Then this was further developed by al-Ghazālī with the concept of *istiṣlāḥ*, which according to him contains five things, namely protecting religion, soul, mind, lineage, and property.²⁰ Furthermore, these five things are the primary or core benefits. Al-Syātībī from the Malikiyyah group in his book *al-Muwāfaqāt* said that the primary purpose of Allah establishing His laws is to realize the *maṣlahah* of human life, both in this world and in the hereafter. Therefore, *taklīf* in the legal

¹³ Ahmad Imam Mawardi, *Fiqh Minoritas Fiqh Al - Aqlliyyat Dan Evolusi Maqasid Al-Syari'ah Dari Konsep Ke Pendekatan* (Yogyakarta: LKiS, 2010), p. 178 -179.

¹⁴ Pierre Cachia, et.al., “A Dictionary of Modern Written Arabic,” *Journal of the American Oriental Society*, 1985.

¹⁵ Ahmad Warson Munawwir, *Kamus Al-Munawwir Arab-Indonesia Terlengkap* (Surabaya: Pustaka Progresif, n.d.), p. 23.

¹⁶ Moch. Nurcholis, “Usia Nikah Perspektif Maqashid Perkawinan: Telaah Syarat Usia Minimum Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor: 22/PUU-XV/2017,” *Tafāquh: Jurnal Penelitian Dan Kajian Keislaman* 8, no. 1 (2020), p. 11.

¹⁷ Satria Effendi M. Zein, *Ushul Fiqh*, (Jakarta: Kencana, 2005), p. 233. Zakaria Syafei, “Tracing Maqasid Al-Shari'ah in The Fatwas of Indonesian Council of Ulama (MUI),” *Journal of Indonesian Islam* 11, No. 1 (2017).

¹⁸ Wahbah Al-Zuhailī, *Usūl Al-Fiqh Al-Islami* (Beirut: Dār al -Fikr, 1986), p.1017.

¹⁹ ‘Abd al-Mālik ibn Yūsuf Abū al-Ma’ālī Al-Juwainī, *Al-Burhān Fi Uṣūl Al-Fiqh*, Jūz I (Kairo: Dār al-Anṣār, 1997), p. 295.

²⁰ Abū Hāmid Muḥammad Al-Ghazālī, *Al-Mustasfa Min ‘Ilm Al-Uṣūl* (Kairo: al-Amīriyah, 1412 H.), p. 250-251.

field must lead to and realize the realization of the legal objectives.²¹ The essence of al-Shāṭibi's opinion is that with the existence of *maṣlaḥah*, the perfection of human life will be realized.

The goals in question are *al-maṣlaḥah*. *Maṣlaḥah* is something that contains goodness in it, both to gain benefit and to reject harm, then all of that is called *al-maṣlaḥah*.²² Amir Syarifuddin said that actions that encourage human goodness are *maṣlaḥah*.²³ From this understanding of language, the meaning of *maṣlaḥah* can mean goodness (*al-khair*) and benefit (*al-manfa'ah*).²⁴ Al-Ghazālī further reinforced this idea, saying that *maṣlaḥah* in *syara'* can be regarded as upholding and accomplishing the objectives of Islamic law (*sharī'ah*), such as upholding one's riches, lineage, and religion. He asserts that any instance in which *maqāṣid al-sharī'ah* is present is referred to as *maṣlaḥah*. Therefore, if there isn't even a single component, it's *mafsadat*.²⁵

In terminology, *maṣlaḥah* is the same as benefits, both in terms of pronunciation and meaning. *Maṣlaḥah* also means benefit or a job that contains benefits.²⁶ In line with this, Fahrudin al-Razi stated that *maṣlaḥah* is a valuable act that has been ordered by *musharri'* (Allah) regarding the maintenance of religion, soul, mind, lineage, and property.²⁷ In more detail, al-Syāṭibī defines *maṣlaḥah* from two points of view, namely in terms of the occurrence of *maṣlaḥah* in reality and in terms of depending on the *syara'* guidance to *maṣlaḥah*. *First*, in terms of the occurrence of *maṣlaḥah* in reality, it means something that returns to the establishment of human life and the perfection of life, achieving what is desired by the absolute nature of *syahwatī* and *aqlī*, so that he feels pleasure. *Second*, in terms of depending on the guidance of *syara'* to *maṣlaḥah*, namely the benefit which is the goal of establishing sharia. To achieve it, Allah requires humans to act so that they reach perfection and are closer to the will of *syara'*. Even if the implementation contains damage that is not what *syara'* wants.²⁸

From some of these understandings, it can be understood that *maṣlaḥah* is anything that can bring good or benefit to humans and avoids itself from damage

²¹ Abū Ishāq Al-Syāṭibī, *Al-Muwāfaqāt Fi Uṣūl Al-Sharī'ah*, Jūz 2 (Kairo: Mustafā Muḥammad, n.d.), p. 4.

²² Abbas Arfan, *Geneologi Pluralitas Mazhab Dalam Hukum Islam* (Malang: UIN-Malang Press, 2008), p. 82.

²³ Amir Syarifuddin, *Ushul Fiqih*, Jilid I (Jakarta: Prenada Media Kencana, 2014), p. 324.

²⁴ Taufiq Yūsuf Al-Wā'i, *Al-Bid'ah Wa Al-Maṣlaḥah Al-Mursalah: Bayanuhā, Ta'siluhā Wa Aqwāl Al-Ulama Fihā* (Kuwait: Maktabah Dār at-Turās, n.d.), p. 241.

²⁵ Al-Ghazālī, *Al-Mustasfa Min 'Ilm Al-Uṣūl...*, p. 275.

²⁶ Ahmad Munif Suratmaputra, *Filsafat Hukum Islam Al-Ghazali: Mashlahah-Mursalah Dan Relevansinya Dengan Pembaharuan Hukum Islam* (Jakarta: Pustaka Firdaus, 2002), p. 184.

²⁷ Fahrudin Muḥammad ibn Umar ibn Ḥusain Al-Rāzī, *Al-Maḥṣūl Fi 'Ilm Uṣūl Al-Fiqh*, Jūz II (Beirūt: Dār al-Ilmiyyah, n.d.), p. 434.

²⁸ Al-Syāṭibī, *Al-Muwāfaqāt Fi Uṣūl Al-Sharī'ah*, p. 44-45.

(*madarat*) by the objectives of *syara'*. From this understanding, there are two things that must be seen, namely *maṣlahah* as a point of view and a goal; *first*, *maṣlahah* is seen as a perspective, namely that *maṣlahah* is a frame of mind to realize goodness for humans; and *second*, *maṣlahah* as a goal, namely the goodness to be achieved must be good based on the goals of *syara'*, namely religion, soul, mind, lineage, and wealth. So, all things that give rise to the five goals are indeed Islamic law, and vice versa; if they conflict with these goals, that is what is prohibited.²⁹

As in the themes related to *maqāsid al-sharī'ah*, in terms of the needs or interests of *al-maṣlahah* by the scholars, it is divided into three, namely: *first*, *al-maṣlahah al-darūriyyah*. Al-Syātibī states that *maṣlahah al-darūriyyah* is something that must exist for the sake of upholding human goodness and welfare, both concerning worldly affairs and the hereafter. If it is lost, does not exist, then an orderly and prosperous world life cannot be realized; even if it exists, it is a corrupted world life and a wretched and suffering afterlife. *Al-darūriyyah* concerns maintaining religion (*ḥifẓ al-dīn*), preserving the soul (*ḥifẓ al-nafs*), maintaining offspring (*ḥifẓ al-nasl*), maintaining wealth (*ḥifẓ al-māl*), and maintaining the mind (*ḥifẓ al-'aql*).³⁰ These five things, by al-Ghazālī are called the five primary goals/principles (*al-usūl al-khamsah*) which are the strongest and highest level of *maṣlahah*.³¹ Then, this *al-usūl al-khamsah* by Syihāb al-Dīn al-Qarafī developed one more basic goal/principle, namely maintaining self-respect (*ḥifẓ al-'ird*);³² *second*, *al-maṣlahah al-ḥājīyyah*, namely the *maṣlahah* needed to complete basic needs. Al-Syātibī explains, *al-maṣlahah al-ḥājīyyah* is *maṣlahah* whose level of need is to provide convenience, and without its existence, there will be difficulties. If this is not taken care of, then people will feel heavy, but the degree of damage is not as joint as it is at the general level;³³ and *third*, *maṣlahah al-tahsīniyyah*, which is doing something that is considered good in tradition and avoiding lousy behavior that is reprehensible according to the right mind, for example, it is collected in the category of commendable morals.³⁴

The *maqāsid* mapping was then further developed by Jasser Audah to suit current developments. Jasser Audah divides *maqāsid* into three; *first*, *maqāsid al-'āmmah* is a universal *maqāsid* in which there are values of justice, equality, tolerance, and convenience. *Al-maṣlahah al-darūriyyah* is included here; *second*,

²⁹ Masdar Farid Mas'udi, "Meletakkan Kembali Maṣlahah Sebagai Acuan Syariah," in *Paradigma Ilmu Syariah Reformasi Program Studi, Kurikulum, Dan Kompetensi Alumni*, ed. Suyitno et.al. (Yogyakarta: Gama Media, 2004), 9.

³⁰ Al-Syātibī, *Al-Muwāfaqāt Fi Uṣūl Al-Sharī'ah*, p. 7-13.

³¹ Al-Ghazālī, *Al-Mustasfa Min 'Ilm Al-Uṣūl*, p. 417.

³² Shihāb al-Dīn Al-Qarafī, *Syarh Tanqīh Al-Fuṣūl Fi Ikhtisār Al-Maḥṣūl Fi Al-Uṣūl* (Mesir: al-Matba'ah al-Khairiyyah, 1307), p. 63.

³³ Al-Syātibī, *Al-Muwāfaqāt Fi Uṣūl Al-Sharī'ah*, p. 21.

³⁴ Al-Syātibī, *Al-Muwāfaqāt Fi Uṣūl Al-Sharī'ah*, p. 22.

maqāṣid khāṣṣah, namely certain benefits, such as not being allowed to commit acts of violence against women in the family, not being allowed to cheat in economic transactions, and so on; third; *maqāṣid juz'iyah*, namely *maqāṣid* processed through *naṣṣ* to respond to a legal case, such as the need for an element of honesty and strong memory when witnessing in court.³⁵ Based on this division, Jasser Auda then mapped and re-explained *maqāṣid* to suit the development of the times by expanding its scope by considering the benefit of humanity broadly, as follows:³⁶

Tabel 1: *Maqāṣid al-Sharī'ah* in Islamic Law

<i>Ḥifẓ al-dīn</i> / religious protection	<i>ḥifẓ al-ḥuriyyah al-I'tiqad</i> / protection of freedom of belief
<i>Ḥifẓ al-nafs</i> / protection of the soul	<i>ḥifẓ al-ḥuqūq al-insān</i> / protection of human rights
<i>Ḥifẓ al-māl</i> / property protection	the embodiment of social solidarity
<i>Ḥifẓ al-'aql</i> / protection of intellect	the embodiment of scientific thinking or the embodiment of the spirit of seeking knowledge
<i>Ḥifẓ al-nasl</i> / protection of offspring	<i>ḥifẓ al-ussrah</i> / family protection
<i>Ḥifẓ al-'ird</i> / protection of honor	protection of human dignity/human rights

It appears that the mapping and expansion of the scope of *maqāṣid* carried out by Jasser Audah has more universality than the mapping and explanation of the classical *maqāṣid*. It is also evident here the difference between the meaning of *ḥifẓ al-nasl* in the hands of Jasser Audah. Of course, it has significant consequences regarding the pattern of relationships in marriage in the household. It aims to "protect offspring" and aims more broadly, namely how to treat family members.

Khoiruddin Nasution, based on his search for the verses of the Qur'an, found the general purpose of marriage, as follows:³⁷

1. Form a *Sakīnah* Family

A *sakīnah* family can be interpreted as a calm, peaceful, and prosperous family both physically and mentally.³⁸ A *sakīnah* family like this does not come suddenly, and only the conditions for patience and piety will be realized in the

³⁵ Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Jurnal Al-Himayah* 2, no. No. 1 (2018), p. 97–118.

³⁶ Retna Gumanti, "Maqasid Al-Syariah...", p. 114.

³⁷ Khoiruddin Nasution, *Hukum Perdata (Keluarga) Islam Indonesia Dan Perbandingan Hukum Perkawinan Di Dunia Muslim* (Yogyakarta: Tazzafa Academia, 2009), p. 223.

³⁸ Zaitun Subhan, *Membina Keluarga Sakinah* (Yogyakarta: LKiS, 2004), p. 06.

family.³⁹ From this *sakīnah* family will emerge reliable and rugged generations because, in the *sakīnah* family, an atmosphere of affection is formed between family members. In Surah al-Rūm verse 21, it is explained:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً
إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ٢١

Meaning: "And among the signs of His power is that He created for you wives of your own kind, so that you tend to and feel at ease with them, and He created between you love and compassion. Verily in that there are indeed signs for a people who think". (QS. al-Rūm, 21).

In this verse, there are 3 (three) keywords that become the primary purpose of marriage: (1) *litaskunū ilaiḥā (sakīnah)*, namely marriage that brings peace, (2) *mawaddah*, namely love overflowing or passionate, and (3) *rahmah*, which is love.⁴⁰

2. Regeneration (Reproduction)

Marriage is the only means for humans to produce the most legitimate offspring. Thus, if there is a marriage, there will be a legitimate generation. Moreover, the presence of children will add to the atmosphere of household happiness. Therefore, Islam recommends praying a lot so that the children born are children that parents can be proud of. As in the Qur'an surah al-Furqān verse 74:

رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا فُرَّةَ أَعْيُنٍ وَاجْعَلْنَا لِلْمُتَّقِينَ إِمَامًا ٧٤

Meaning: "Our Lord, bestow upon us our wives and our descendants as pleasing to (our) hearts, and make us priests for those who are pious". (QS. al-Furqān, 74).

The hadith also explained that the Prophet recommends that Muslims multiply offspring.

تزوجوا الولود الودود فإني مكائر بكم

Meaning: "Marry a fertile woman who is merciful, because I am proud in front of other people with a large number of you". (HR. Abū Dāwud).⁴¹

Based on these verses and hadiths, children are "entertainment" for both parents. Children are also the offspring of both parents. Therefore, it may be claimed that marriage is a way to raise children (*hifẓ al-nasl*) who would later

³⁹ M. Quraish Shihab, *Pengantin Al-Qur'an: Kalung Permata Buat Anak-Anakku*, Cet. I (Jakarta: Lentera, 2007), p. 82.

⁴⁰ Ahmad Mubarak, *Nasehat Perkawinan dan Konsep Hidup Keluarga* (Jakarta: Jatibangsa, 2006), p. 18.

⁴¹ Abū Dāwud Sulaiman bin Al-Asy'ats Al-Sijistani, *Sunan Abī Dāwud*, Jilid I (Kairo: al-Maknāz al-Islāmi, 2000), p. 348.

contribute to the continuation of human existence as the following generation of humans.⁴²

3. Biological Fulfillment

It is human instinct that men love women. Furthermore, religion also explains that Allah created the creatures in this world. They are created in pairs. With marriage, biological needs can be channeled legally and lawfully. As stated in the Qur'an Surah Ali Imran verse 14:

رُئِيَ لِلنَّاسِ حُبُّ الشَّهَوَاتِ مِنَ النِّسَاءِ وَالْبَنِينَ وَالْقَنَاطِيرِ الْمُقَنْطَرَةِ مِنَ الذَّهَبِ وَالْفِضَّةِ
وَالْخَيْلِ الْمُسَوَّمَةِ وَالْأَنْعَامِ وَالْأَحْرَبِ ذَلِكَ مَتَاعُ الْحَيَاةِ الدُّنْيَا وَاللَّهُ عِنْدَهُ حُسْنُ الْمَبِ ۙ ١٤

Meaning: "Made in (the view of) man is his love for what he desires, including: women, children, wealth of many kinds of gold, silver, horses of choice, livestock and fields. That is the pleasure of living in this world, and with Allah is a good place to return (heaven)". (QS. Āli 'Imrān, 14).

4. Keeping Honor

Marriage or marriage both religiously and socially, is an instrument that is recognized and agreed upon as the most legitimate and legal way to maintain self-respect. With marriage, people will avoid all forms of slander against self-respect. The Qur'an and the Hadith of the Prophet mentioned:

قُلْ لِلْمُؤْمِنِينَ يَعْضُوا مِنْ أَبْصَرِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ذَلِكَ أَزْكَى لَهُمْ إِنَّ اللَّهَ خَبِيرٌ بِمَا
يَصْنَعُونَ ٣٠

Meaning: "Say to the believing men: "Let them hold their gaze and guard their private parts; that is purer for them, verily Allah knows of what they do". (QS. al-Nūr, 30).

يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتِطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَحْسَنُ لِلْفَرْجِ
وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وِجَاءٌ

Meaning: "O youth, whoever among you is able to get married, then let him marry, because indeed it can lower the gaze, and maintain honor. And whoever is unable to do so, let him fast, for fasting is a shield for him". (HR. Ibn Mājah).⁴³

⁴² Asrul Hamid and Dedisyah Putra, "The Practice of Buying and Selling During Friday Prayer in Mandailing District Natal: A Study With A Maqashid Al-Syari'ah Approach," *Samarah* 5, no. 2 (2021), p. 1021–43. Rahmat Hidayat, et.al., "Review of Maqāsid al-Syari'ah Concerning the Fulfillment of Child Rights Post-Divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency," *El-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, No. 2 (2022).

⁴³ Ibnu Mājah, *Sunan Ibnu Mājah* (Kairo: al-Maknāz al-Islāmi, 2000), p. 269.

5. Worship

One of the purposes of humans created by Allah SWT. in this world is worship. as the Qur'an *al-Ẓāriyyat* verse 56:

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ ۝٥٦

Meaning: "And I did not create the jinn and humans except that they may serve Me". (QS. *al-Ẓāriyyāt*, 56).

Based on this verse, the purpose of human creation is solely to worship. Therefore, marriage as part of human survival must also be intended for worship, namely an effort to get closer to Allah by carrying out His commands. Moreover, doing marriage is part of carrying out God's commandments.

A more detailed view of *maqāṣid al-ussrah* is emphasized by Jamaluddin Athiyah. According to Jamaluddin Athiyah there are seven purposes for marriage:⁴⁴ *first, tanzīm al-'alaqah bayn al-jinsayn*, which regulates male (husband) and female (husband) and female wife) relationships. Therefore, it is necessary to establish rights and obligations so that there are no disputes between the two husband and wife so that there is a harmonious relationship in their domestic life; *second, ḥifẓ al-nasl*, namely maintaining the sustainability of human life, namely so that human life continues and avoids extinction. This is what makes *syara'* prohibit the occurrence of LGBT as deviant behavior as a preventive measure. The prohibition of deviant behavior is part of maintaining dignity (*ḥifẓ al-'ird*); *third, taḥqīq al-sukn wa al-mawaddah wa al-raḥmah*, which is to ensure that the household that is carried out is genuinely *sakīnah mawaddah wa raḥmah*. In order to ensure the realization of this, *syara'* builds ethics in the household for married couples, such as ethics in having sexual relations, ethics in communicating and associating, and others.

So, every family member has an obligation to create warmth among family members; *fourth, ḥifẓ al-nasb*, which is to maintain the lineage. Then why does the *syara'* forbid adultery, adopting children by attributing to him; *fifth, ḥifẓ al-tadayyūn fi al-ussrah*, namely maintaining religious values in the family. This method can be done by starting when choosing a life partner, the obligation for the head of the household to educate religion to all family members. In this case, parents instill moral and social values to expand the ideas and thinking of family members and equip children with various practical skills to fill their future; *sixth,*

⁴⁴ Jamaluddin Athiyah, *Nahwa Taf'īl Maqāṣid al-Syarī'ah* (Damaskus: Dar al-Fikr, 2003), p. 149-154.

tanẓīm al-jānīb al-muassis al-ussrah, which regulates the fundamental aspects of family formation, including this aspect is the seriousness of the marriage bond, deliberation, the willingness of each partner to follow sharia, the relationship pattern of all family members, especially husband and wife families; dan and seventh, *tanẓīm al-jānīb al-māli li al-ussrah*, which regulates the economic aspects of the family, such as the availability of food, drink, and clothing for family members. Because of this, rules regarding the existence of dowry, inheritance, family income, and waqf are set as symbols of the importance of regulating economic problems.

According to the explanation of the aim of marriage (family), marriage as a method of building a family is so great and remarkable that married couples should not consider it a game, because marriage is the gateway to a larger location, namely society, nation, and country. This includes not just husband and wife, but also family members or other relatives. So, it's not simply managing the pattern of husband-wife connections; there are children, in-laws, relatives, and so on in the family.

The Tradition of Remarriage in the 'Iddah Period in Wedoro Waru

Remarriage in Wedoro Village is a phenomenon that has been carried out for generations, passed down from one generation to another. The people of Wedoro Village also do not understand when the tradition of remarriage in the 'iddah period began. Tracing the origin of the tradition of remarriage in Wedoro Village is challenging due to the absence of written data and valuable sources that can provide information on when this remarriage started.⁴⁵ Confirmed sources only mention that the tradition has existed for a long time and has been passed down from generation to generation.⁴⁶ Shofwan stated that the elders first, if there are residents (husbands) who have mentally abused their wives, want to reconcile, and come to the kyai. The kyai is advised to remarry. Although, kyai suggests that they go directly to him without remarrying because they are still in the 'iddah period. Some follow this advice, but some persist in getting married again.⁴⁷ Furthermore, by the kyai, he agreed. The perpetrator of this remarriage put forward the reason so that there is no doubt in his marital status. With this remarriage, they are sure that their household is legitimate and lawful.⁴⁸

In general, this remarriage tradition, like marriages in general, in the implementation of the marriage contract, some fulfill the pillars and conditions of marriage in total, namely the bride, guardian, witness, and dowry. However, some are only witnesses. For witnesses usually come from community leaders, and

⁴⁵ Soekanto, *Kamus Sosiologi* (Jakarta: Raja Grafindo Persada, 1993), p. 459.

⁴⁶ Interview with Ridwan, Community Leader in Sidoarjo, May 12, 2021.

⁴⁷ Interview with Shofwan, Community Leader in Sidoarjo, May 12, 2021.

⁴⁸ Interview with Rodhifah, Female Leader in, Sidoarjo, May 01, 2021.

while the one who is married is a kyai. Remarriage by the Wedoro community is good because it can be a solution for husband and wife who have been divorced and then reunite; moreover, this is done to benefit the children. These children are often the reason the household is maintained. Married couples who divorce and then remarry are well aware that divorce is something that is not good. It is just that they often face emotional problems and lack of maturity that makes them decide to divorce. Among the remarriage cases that can be described are the following: *first*, it is the case that happened to Rodhifah who remarried 3 (three) times. According to Rodhifah, when her first child was about 40 days old, her husband said the words “*tak tinggal sek yo*” (a Javanese expression which means I will stay for a while). That is, his mother understands that these words are considered divorce words. Her husband wanted to go to work. With reasons of doubt, then on the advice of his mother that Rodhifah remarries.

Moreover, by Kyai Hafidz, remarriage was carried out only by reading the two sentences of the creed (*syahadat*), without dowry, guardian, and witnesses. By reading the two sentences of this creed (*syahadat*), they are declared valid again as husband and wife. In the second incident, Rodhifah stated that the quarrel resulted in a strained relationship. Finally, her husband decided to leave and had no contact with her for about a year. On the advice of parents and siblings to improve their family relations (husband and wife) for the child's benefit by remarrying. The two agreed to make peace and unite, and then they met the local *Modin* (*Gani* or public figure in village) to ask for a remarriage. In front of *Modin* and officers from KUA, the two were remarried like the marriage contract when they first married with a dowry, witnesses, and guardians. However, it is not re-registered in the new marriage book but still uses the old marriage book. While the third, based on Rodhifah's narrative, her husband said the words of divorce, namely divorce. The emergence of the expression of divorce from her husband because of a quarrel between the two. After more than a month, both of them intend to reconcile to build a family for the sake of the child, so they both meet Kyai Ghoni asking to be married again. Furthermore, Kyai Ghoni remarried as in the marriage contract in general. It is just that at that time, there was no guardian and dowry, just witnesses.⁴⁹

Based on Rodhifah's narrative, she remarried because she followed the advice of her parents. He also did not understand the law of remarriage. He stated that this method (remarriage) was the usual method used by parents if the husband had mentally abused his wife; *kedua*, In the case that happened to Fatchan who remarried because there was an incident between himself and his wife that made him issue the word divorce. According to Fatchan, the word divorce is the culmination of the loss of patience that is in him. At that time, his wife was

⁴⁹ Interview with Rodhifah, Female Leader in, Sidoarjo, May 01, 2021.

considered to have often done actions that were not to her status as a wife, such as often arguing and even daring to speak harshly to her.⁵⁰ According to residents, Fatchan is often jealous of his wife because he decorates himself too much and looks sexy. Although there is no evidence of cheating with other men.⁵¹ Several months later, about half a year and over, Fatchan intends to return or refer to his wife, who has received a divorce from him. Fatchan invites his wife back and, based on the advice of his siblings, to remarry. On the suggestion of his voice, Fatchan then met a kyai, namely kyai Tamam. Furthermore, by Kyai Taman, Fatchan was remarried with a new contract with a guardian, witness, and dowry. When carrying out this marriage contract, relatives and close neighbors are invited to witness the marriage contract as gratitude for the re-marriage, the invitation to eat together on the cone that has been prepared.⁵²

Given the reality, as mentioned above, in the context of remarriage during the 'iddah period, the kyai (kyai) of Wedoro Village have different views. Broadly speaking, these different views can be grouped into two, namely refusing and re-accepting during the 'iddah period; First, the opinion that refuses to remarry during the 'iddah period. This refusal is based on the fact that the divorced husband and wife are in talak raj'i status and are still in the 'iddah period, so there is no need for remarriage, only by doing reconciliation that is, using the statement of reconciliation. Those who reject this argument that remarriage during the 'iddah period has never been found in the fiqh books. H. Zainal Abidin is a kyai who firmly refuses to remarry during the 'iddah period. In contrast to H. Zainal Abidin, KH. Abdullah Taman took a more moderate position, refusing, but if the husband and wife persisted in wanting to remarry, KH. Abdullah Taman can still accept it; second, the opinion that states are accepting remarriage during the 'iddah period. Kyai in this group understand very well that there is no evidence or explanation in the Qur'an and hadith that explains about remarriage during the 'iddah period. However, what needs to be understood is that the existence of remarriage is the most *maṣlahah* means to unite a married couple. In it, there is a common good, especially if the couple already has children. If the husband and wife divorced, it would harm the development of children, both mentally and socially. So, the principle of remarriage lies in the common good with the union of husband and wife. KH. Hafidz and KH. Ghoni is a kyai who accepts remarriage.

In the practice of remarriage during the 'iddah period, kyai who accept remarriage use different methods. Some do it by simply reading the two sentences of the creed (*syahadat*) and actually making a new contract. Remarriage in the 'iddah period by reading the two sentences of the *creed* (*syahadat*) as done by

⁵⁰ Interview with Fatchan, the perpetrator remarries in Sidoarjo, May 14, 2021.

⁵¹ Interview with Azizah, Community member in Sidoarjo, May 12, 2021.

⁵² Interview with Fatchan, the Perpetrator remarries in Sidoarjo, May 14, 2021.

KH. Hafidz. So, if a couple comes to do a remarriage, by KH. Hafidz, a married couple, was told to read the two sentences of the creed (*syahadat*), and the remarriage was declared valid. Meanwhile, both partners must prepare the needs to carry out the contract for those who use a new contract, such as witnesses and dowries. As for the guardian, if there is, of course, better.

From the explanation above, the kyai's point of view boils down to one thing: the reunion of husband and wife. These figures agree that divorce is a permissible act but is very hated by Allah SWT. as stated in the hadith, as follows:

أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ تَعَالَى الطَّلَاقُ

Meaning: "From Ibn Umar ra. that the Messenger of Allah. said: The lawful thing that Allah hates the most is divorce. (Narrated by Abū Dāwud).⁵³

From this, it also appears that the difference in remarriage carried out by the kyai is greatly influenced by the kyai's perspective. In this case, it can be explained as follows:

1. Read the two sentences of the creed (*syahadat*) when the 'iddah period is still ongoing

In theory, a wife who is still *ṭalāq raj'i* status and is still in the 'iddah period, the husband can immediately refer to her without remarriage or a new one. Based on the remarriage incident above, the wife's position is still in the status of *ṭalāq raj'i* and the period of 'iddah. The 'iddah of the wife in this event is the period of 'iddah of menstruation, which is three menstruations, because she is not pregnant and is still of productive age (not menopause). Therefore, the husband should only refer to her without the need for remarriage. Reading the creed (*syahadat*) is actually only a means to convince the perpetrator to remarry so that there is stability and eliminate doubts in the heart. This is also, if it is related to the condition of most of the people of Wedoro Village where religious knowledge or understanding is mostly obtained through inheritance, not taking from the original reference source. So here, it seems that the kyai chose the easy way and did not cause debate, let alone conflict. Also solely done for the good of husband and wife who want to reconcile.

2. Remarriage during the 'iddah period using a new contract

In doing remarriage, if it is not done during the 'iddah period and the status is still *ṭalāq raj'i*, then a new contract must be used. In this context, the contract carried out by husband and wife is the same as the contract in the previous marriage, namely the pillars and the contract conditions must be fulfilled, such as

⁵³ Dāwud, *Sunan Abī Dāūd*, p. 1863.

having both the bride and groom, witnesses, dowry, and consent. However, if the contract made is still in the 'iddah period and has the status of *ṭalāq raj'i*, then there is no need for pillars, and all conditions are met when the contract takes place. The custom in Wedoro Village, when remarriage is carried out during the 'iddah period, the guardian is not there. According to the kyai, the marriage contract has been made before, so there is no need for a guardian, only witnesses and a dowry. The marriage contract is carried out because the most important thing is to unite the couple immediately.

The Tradition of Remarriage in the 'Iddah Perspective of *Maqāsid al-Ushrah*

The Wedoro Village community is a traditionalist community; namely, people bound by customs or customs passed down from generation to generation,⁵⁴ especially religious traditions. The Wedoro community can be called a very religious community. Religion is an essential factor for the people of Wedoro Village. Not a few of the Wedoro people send their children to Islamic boarding schools spread across East Java. Likewise, religious activities with Islamic nuances are evident in the Wedoro community. These activities can be due to commemorate Islamic holidays, the death of a person or figure, daily, weekly, monthly, or incidental routine activities, and so on. Activities are usually carried out in turns from one mosque to another, from one resident to another, or permanently, such as ziba'an every Friday night, reading tahlil and istighatsah, completing the Qur'an, studying the yellow book with a caregiver, commemorating the Prophet's birthday *tingkeban* (pregnancy safety tradition), village *ruwatan* (tradition of throwing away bad luck) and others.

Religious leaders, or kyai, play an essential role in preserving these customs. This is due to the fact that religious leaders are thought to be the best educated about religious information. In general, religious leaders have an important role in society, not just as agents of change, but also as community resources for resolving social issues. Indeed, it is fairly commonplace for religious leaders to be involved in subjects outside their scientific competence, such as social, cultural, political, and others, particularly those relating to marriage difficulties encountered by society, which are seen as religious concerns.

In Islamic law, marriage is one of the issues that becomes a concern and becomes one of the essential things in human life. It is vital because it involves the pattern of inner and outer relationships of two or more human beings in this life called family. In this family, a group of people live together with a shared place to live, and each person involved in it feels an inner connection. There is mutual concern for each other, helping each other, socializing, and surrendering for this reason, the relationship pattern of a married couple (husband and wife) by

⁵⁴ Dannerius Sinaga, et.al., *Sosiologi dan Antropologi* (Palembang: PT. Intan Pariwara, 1988), p. 152.

the Qur'an is referred to as a strong bond/agreement. The Qur'an states in the letter QS. al-Nisa' verse 21:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُم إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُم مِّيثَاقًا غَلِيظًا

Meaning: "How are you going to take it back, even though some of you have mingled (mixed) with others as husband and wife. And they (your wives) have taken from you a strong covenant."

The verse above explains that marriage is an earnest agreement between the groom (husband) and the bride (wife). Therefore, the marriage that has been carried out must be maintained for its continuity.⁵⁵ Therefore, couples who will get married must adequately prepare themselves with a strong commitment that marriage is a path to Allah. Marriage is an agreement between the two partners but is essentially an agreement with Allah. So it not only regulates sexual relations between men and women but also involves both. There requires preparation and understanding of marriage for prospective married couples, especially why they have to get married? M. Quraish Shihab explained as follows: "The Qur'an, among other things, emphasizes the need for physical, mental, and economic readiness for those who want to get married. Even though the guardians are asked not to use economic weakness as an excuse to reject a suitor: "If they (prospective daughters-in-law) are poor, then Allah will make them rich (sufficient) thanks to His grace" (QS. An-Nur [24]: 31). Those who do not have the economic capacity are advised to restrain themselves and maintain their chastity. "Let those who have not been able to (marry) refrain, until Allah grants them the ability" (QS. An-Nur [24]: 33).⁵⁶

Remarriage in the 'iddah period finds its contextual point where remarriage becomes one of the facilities to overcome problems, significantly when divorce has fallen, and to eliminate doubts over previous marriages. Remarriage for the Wedoro community is considered good because it is a solution for husband and wife who have been divorced and then reunite; moreover, this is done to benefit the children. These children are often the reason the household is maintained. Married couples who divorce and then remarry are well aware that divorce is something that is not good. It is just that they often face emotional problems and lack of maturity that makes them decide to divorce. Therefore, maintaining the household is the responsibility of married couples and religious leaders as a religious and social responsibility. Furthermore, for the religious leaders of Wedoro Village, remarriage during the 'iddah period contains genuine goodness or benefit.

⁵⁵ Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam* (Jakarta: Raja Grafindo Persada, 2005), p. 50.

⁵⁶ M. Quraish Shihab, *Wawasan Al-Qur'an: Tafsir Maudhu'i Atas Pelbagai Persoalan Umat* (Jakarta: Mizan, 2005), p. 215.

Benefits in the context of remarriage during the 'iddah period in Wedoro, including *maṣlahah al-tahsīniyyah*, namely goodness in tradition and avoiding lousy behavior that is despicable according to right reason. So not as *maṣlahah al-darūriyyah*.⁵⁷ With *maṣlahah al-tahsīniyyah*, life becomes safe, peaceful, and looks beautiful in the eyes of others. In Jasser Audah's view, this remarriage is part of *maqāṣid khassah*. In other words, the benefits of remarriage in the 'iddah period are benefits based on good traditions. The benefit in this context will rise to the status of *al-darūriyyah* benefit in the context of *hifẓ al-nasl* (keeping offspring) and *hifẓ al-usrah* (keeping the family) if it is related to the future of children and family members.

During the 'iddah period, remarriage is not really an acknowledgment that the previous marriage has been damaged, canceled or invalid. However, remarriage during the 'iddah period is a form of solely for *al-tajammul* (beauty) and *al-iḥtiyāt* (prudence).⁵⁸ *Al-tajammul* is meant by remarriage; the husband and wife will appear more intimate, willing to accept each other's circumstances, both advantages, and disadvantages. Moreover, *al-iḥtiyāt* can be understood as a means for married couples to conduct self-evaluation so that bad behavior in the previous household does not happen again.

بَايَعْنَا النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَحْتَ الشَّجَرَةِ فَقَالَ لِي: يَا سَلَمَةُ أَلَا تُبَايِعُ قُلْتُ: يَا رَسُولَ اللَّهِ قَدْ بَايَعْتُ فِي الْأَوَّلِ قَالَ: وَفِي الثَّانِي

Meaning: "We have pledged allegiance to the Prophet PBUH. under a tree. At that time, the Prophet asked me; "Yes Salamah, did you not take bai'at? I answer, "O Messenger of Allah, I have made bai'at the first time (before this)". The Prophet said, "Now the second time".⁵⁹

The hadith does not explicitly discuss remarriage, but in *qiyāsī*, it can be interpreted that a contract can be carried out with two contracts to strengthen (*taukīd*) the first contract. So it does not mean that the first contract has been damaged or canceled, but rather as a means to make the contract that is carried out outlook robust. Likewise, the contract carried out in remarriage during the 'iddah period becomes a means for married couples to start a better household life because marriage is a strong/sacred agreement (*miṣāqan ghalīzan*) between husband and wife.

As for *'urfīyyah*, remarriage in the 'iddah period is a solution in improving the relationship between husband and wife. Moreover, it has been carried out for generations from generation to generation, which is accepted as the best solution to overcome divorce between husband and wife while they are still in the 'iddah

⁵⁷ Al-Syātibī, *Al-Muwāfaqāt Fi Uṣūl Al-Sharī'ah*, p. 22.

⁵⁸ Masduki Machfudh, *Bahstul Masa'il Diniyah* (Malang: PPSNH, 2000), p. 25.

⁵⁹ Muhammad bin Ismail al-Bukharī, *Ṣaḥīḥ Bukhārī* (Maktabah Syamilah, 2011), p. 149.

period. The tradition of remarriage in the 'iddah period became the most potent medium to unite divorced couples.

In the rules of fiqh, it is stated as follows:

الْعَادَةُ مُحْكَمَةٌ

Meaning: "Customs can be made into law".⁶⁰

However, what should be noted is that not all traditions can be the basis for law enforcement. Some provisions require the tradition to be a guide. In the view of scholars, only *al-'ādah al-ṣaḥīḥah* (customs/traditions that are considered valid) can become legal guidelines. *Al-'ādah al-ṣaḥīḥah* is a habit that takes place in society and does not contradict the texts, namely the Qur'an and hadith. This *al-'ādah al-ṣaḥīḥah* does not eliminate the benefit and does not cause harm (*madarat*). Meanwhile, *al-'ādah al-faṣīdah* (customs/traditions considered damaged) should not be a guideline and must be abandoned. *Al-'ādah al-faṣīdah* is a habit that is contrary to the arguments of the texts and the basic rules contained in the *syara'*. This *al-'ādah al-ṣaḥīḥah* does not bring goodness/benefit to humans.⁶¹

Based on these rules, it can be said that remarriage in the 'iddah period is included in the tradition in the category of *al-'ādah al-ṣaḥīḥah* (customs/traditions that are considered valid) because this tradition brings goodness to the reunion of husband and wife: wife and future children. Also rejecting harm, namely separating husband and wife partners and minimizing children as victims of divorce.

Conclusion

Maqāṣid al-usrah is part of the discussion theme of *maqāṣid al-sharī'ah* which is more specific, namely the benefit behind the determination of marriage in Islam for the good of husband and wife and their families, both in this world and in the hereafter. *Maqāṣid al-usrah* in marriage is the formation of a *sakīnah mawaddah wa raḥmah* family, namely a family that is calm, peaceful, and prosperous both physically and mentally. This goal is the main goal (*al-usūl*), while the other goals are details of the main goal (*al-furu'*). Remarriage in Wedoro village is a tradition carried out to improve husband and wife relations. This remarriage is done employing both husband and wife coming to a kyai (religious leader). Then the kyai married the two couples in different ways; some read the two sentences of the creed (*syahadat*), some used a marriage contract in general; namely, there was a dowry and a witness. There are also those without witnesses, but there is a dowry. In the perspective of *maqāṣid al-usrah*, the implementation of remarriage is a form of maintaining the good of the family.

⁶⁰ Abd al-Wahhāb Khallaf, *Ilm Uṣūl Al-Fiqh* (Kairo: al-Dār al-Kuwaitiyyah, 1968), p.88.

⁶¹ Dahlan Abd. Rahman, *Ushul Fiqih* (Jakarta: Hamzah, 2010), p. 209.

Therefore, remarriage can be said to be a marriage according to *maqāsid al-sharī'ah*.

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