



## The Urgency of Registering Marriages In Jambi Province Based On The KHI of *Maqāṣid Al-Syarīah* Perspective

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### Abstract:

*The aim of this research is to analyze specifically and in depth the urgency of registering marriages in Jambi Province based on the Compilation of Islamic Law from the Maqāṣid al-Syarīah perspective. The research method used is a type of qualitative research with the field research category. This research is also normative legal research, where the object can be public law, criminal law, civil law, family law, marriage law and so on. This research was conducted at the KUA in Jambi Province. The data sources in this research consist of primary and secondary data sources. The data collection techniques used in this research are observation, interviews and documentation. The results of this research show that marriage registration for the people of Jambi Province is very important. Based on the Maqāṣid al-Syarīah perspective, there is maṣlahah in registering marriages, namely to provide protection for the husband, wife and children in the family. If we pay attention to the legality of marriages in Indonesia, the state only recognizes registered marriages, on the basis of Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law.*

**Keywords:** Marriage Registration; Jambi Province; KHI; *Maqāṣid Al-Syarīah*

### Abstrak:

Adapun tujuan dilakukannya penelitian ini adalah untuk menganalisis secara khusus dan mendalam tentang urgensi pencatatan Pernikahan di Provinsi Jambi berdasarkan Kompilasi Hukum Islam perspektif *Maqāṣid al-Syarīah*. Metode penelitian yang digunakan adalah jenis penelitian kualitatif dengan kategori penelitian lapangan (field research). Penelitian ini juga sebagai penelitian hukum normatif, yang mana objeknya dapat berupa hukum publik, hukum pidana, perdata, hukum keluarga, hukum perkawinan dan lain sebagainya. Penelitian ini dilakukan di KUA yang ada di Provinsi Jambi. Sumber data pada penelitian ini terdiri dari sumber data primer dan sekunder. Adapun teknik pengumpulan data yang digunakan dalam penelitian ini adalah observasi, wawancara, dan dokumentasi. Adapun hasil penelitian ini adalah diketahui bahwa pencatatan perkawinan bagi masyarakat Provinsi Jambi adalah sangatlah penting. Berdasarkan perspektif *Maqāṣid al-Syarīah*, terdapat *maṣlahah* dalam pencatatan perkawinan, yaitu untuk memberikan perlindungan bagi suami, istri dan anak-anak dalam keluarga. Jika memperhatikan keabsahan perkawinan yang ada di Indonesia, bahwa negara hanya mengakui perkawinan yang dicatat, atas dasar Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam.

**Kata-kata kunci:** Pencatatan Pernikahan; Provinsi Jambi; KHI; *Maqāṣid Al-Syarīah*

## PENDAHULUAN

The discourse on preparing the Compilation of Islamic Law (KHI) began with Bustanul Arifin's proposal which was caused by several considerations. *First*, there is a necessity for Islamic law in Indonesia which can be implemented by law enforcement officials and also by the Muslim community in Indonesia. *Second*, due to unequal perceptions regarding sharia which results in non-uniformity in determining the Islamic law to be applied, there is no clarity on how to implement sharia and there is no ability to implement the tools available in the 1945 Constitution and other regulations. *Third*, there are countries that have implemented Islamic law as legislation.<sup>1</sup>

As for KHI, which in its first book discusses marriage law according to Islam, the basis for its implementation is through Presidential Instruction Number 1 of 1991. Regarding the pillars of marriage, article 14 of the Compilation of Islamic Law requires that there be a prospective husband and wife, a guardian, two witnesses and a contract (*ijab-qabul*). From the description of the pillars of marriage in the KHI, no one has decided on marriage registration as one of the pillars of marriage. Meanwhile, Musdah Mulia believes that there needs to be sanctions for violators of the applicable marriage registration provisions. And he proposed that marriage registration be made one of the pillars of marriage, then the state is obliged to record all marriage events that occur in society.<sup>2</sup>

Regarding the marriage registration that has been described, in fact in Indonesia up to now, marriage registration has not been included as a pillar of marriage, but is still administrative at the Ministry of Religion institutions in the sub-districts (in this case the Office of Religious Affairs), as well as in Jambi Province. In fact, legal rules, whether in the form of laws or other regulations as derivatives, must be absolute, binding and have legal force. Apart from that, it is also firm, clear and does not give rise to double meanings. So that in the implementation of laws or regulations, in this case the KHI can run as it should, in accordance with its basic function, namely organizing and guaranteeing legal certainty for citizens.<sup>3</sup>

The marriage provisions contained in the KHI, especially in Chapter II article 5 paragraphs 1 and 2, as well as article 6 paragraphs 1 and 2 are only normative, because even unregistered marriages become valid if they fulfill the five pillars of marriage, namely prospective husband, prospective wife, marriage guardian, two witnesses as well as consent and acceptance.<sup>4</sup> Here the author wants to clarify that the importance of marriage registration is strongly related to the status of the marriage itself. Marriage can be proven only with a

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<sup>1</sup> Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam, Studi Kritis Perkembangan Hukum Islam Dari Fikih, UU No.1/1974 Sampai KHI* (Jakarta: Prenada Media, 2004).

<sup>2</sup> Muhammad Amin Sayyad, "Urgensi Pencatatan Nikah Sebagai Rukun Nikah Studi Kritis Pemikiran Siti Musdah Mulia Dan Khoiruddin Nasution," *El-Maslahah Journal* 8, no. 1 (2018), 1-15. <https://doi.org/10.23971/el-mas.v8i1.1097>.

<sup>3</sup> Dwiky Bagas Setyawan and Siti Kasiyati, "Praktek Pemenuhan Hak Dan Kewajiban Perkawinan Disabilitas Perspektif Kompilasi Hukum Islam Dan Analisis Gender," *Jurnal Al-Hakim* 4, no. 1 (2022): 129–150, <https://ejournal.uinsaid.ac.id/index.php/al-hakim>.

<sup>4</sup> Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam (KHI).

marriage certificate. A marriage certificate can only be obtained if the marriage is registered. Unregistered and unregistered marriages are considered empty marriages and have no legal force. Apart from that, registered marriages are closely related to inheritance issues and are also related to the status of children born.

In previous research, there were many studies that discussed marriage registration from various perspectives, such as research written by Amnawaty and Ade Oktariatas K. with the title “*Reformulasi Sistem Hukum Pencatatan Perkawinan Warga Muslim dan Perlindungan Hukum Anak Dari Nikah Siri*”. This research discusses a portrait of the legal system for marriage registration and child protection. That all regulations in the form of laws, the Compilation of Islamic Law, and Decrees of the Minister of Religion in formulating valid marriages still refer to Article 2 paragraph (1) and paragraph (2) of the Marriage Law. This means that children in unregistered marriages are not protected by the state. After Constitutional Court Decision No. 46/PU-VIII/2010 has protected the rights of children born from unrecorded marriages, however, the Constitutional Court's decision has not been followed by other regulations so the decision cannot yet be implemented. Islamic law fully protects the rights of these children, but is not positive law. As a result, impacts such as legal smuggling and ignoring the law arise.<sup>5</sup>

Likewise, research written by Oyah Bariah with the title “*Rekonstruksi Pencatatan Perkawinan Dalam Hukum Islam*”. This research reveals that marriage in Islam is a great and noble event. Events that justify two types of people of different genders in a strong bond and agreement to build a good family and household to determine a strong building and a commendable identity of a nation.<sup>6</sup> The same theme was also written by Nurhadi with the title “*Undang-Undang No. 1 Tahun 1974 Tentang Pernikahan (Perkawinan) Ditinjau Dari Maqāṣid Syarīah*”. This research states that the modern era and digital globalization have ushered in a new era, so that temptation after temptation comes as a test and sometimes disaster for marriage practitioners. So the purpose of marriage in Islam today is as a preventive measure to protect against unlawful acts (adultery and heinous acts).<sup>7</sup>

Apart from that, there are also articles related to recording written by Mohsi,<sup>8</sup> and also Amir Nuruddin.<sup>9</sup> Based on the background and analysis of several previous studies, it encourages the author to do further research on marriage registration, the implementation of which has not been optimal. So the academic questions are to what extent is it important and

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<sup>5</sup> Amnawaty and Ade Oktariatas, “Reformulasi Sistem Hukum Pencatatan Perkawinan Warga Muslim Dan Perlindungan Hukum Anak Dari Nikah Siri,” *Nizham* 7, no. 1 (2019), 1-17. <http://repository.lppm.unila.ac.id/id/eprint/15625>.

<sup>6</sup> Oyah Bariah, “Rekonstruksi Pencatatan Perkawinan Dalam Hukum Islam,” *Majalah Ilmiah Solusi* 1, no. 4 (2015), 1-16. <https://doi.org/10.35706/solusi.v1i04.65>.

<sup>7</sup> Nurhadi, “Undang-Undang No. 1 Tahun 1974 Tentang Pernikahan (Perkawinan) Di Tinjau Dari Maqashid Syariah,” *UIR Law Review* 2, no. 2 (2018): 1–5. [https://doi.org/10.25299/uirlrev.2018.vol2\(02\).1841](https://doi.org/10.25299/uirlrev.2018.vol2(02).1841).

<sup>8</sup> Mohsi, “Pencatatan Perkawinan Sebagai Rekonseptualisasi System Saksi Perkawinan Berbasis Masalah,” *Al-Adalah: Jurnal Syariah dan Hukum Islam* 4, no. 2 (2019), <https://e-journal.ikhac.ac.id/index.php/adlh/article/view/529/379>.

<sup>9</sup> Nuruddin and Tarigan, *Hukum Perdata Islam, Studi Kritis Perkembangan Hukum Islam Dari Fikih, UU No.1/1974 Sampai KHI*.

crucial for marriage registration to be carried out?, what impacts will arise if a marriage is not registered?, and what is the response in society. Of course, the most important and main aspects of marriage, if studied based on the *maqāṣid al-syariah* perspective, do not just fall into the tertiary category or in Islamic law it is called *tahsinīyāt*, or fall into the secondary category which in Islamic law is called *hajiyyāt*, but also fall into the main category, or in Islamic law called *darūriyyāt*.

When discussing *tahsinīyāt*, *hajiyyāt*, and *darūriyyāt*, of course we will discuss *maqāṣid al-syarīah*. The concept of *maqāṣid al-syarīah* emerged in the context of realizing and maintaining the benefit of humanity. This concept has been recognized by the ulama and has become a basic reference in Islam and in determining the laws that apply to the *mukallaḥ*. The spirit of the concept of *maqāṣid al-syarīah* is to realize goodness, while avoiding evil or attracting benefits and rejecting *mudarāt*.<sup>10</sup> On this basis, the author is interested in conducting research on the urgency of registering marriages in the KHI based on a *maqāṣid al-syariah* perspective, especially in Jambi Province.

## METHOD

This type of research is qualitative research with the field research category. Therefore, the data collected comes from field data as a research object. This research also includes social science research, social problems, social phenomena, including legal research, which is the mainstay of constructive, naturalistic (interpretive), perspective and postmodern understanding.<sup>11</sup> This research is also called normative legal research, examining norms in the fields of justice, legal certainty, order, legal usefulness and efficiency, legal authority, as well as legal norms and doctrines, which underlie the implementation of these elements in the procedural legal field and substantive.<sup>12</sup> In this research, the object is marriage law.<sup>13</sup>

This research was conducted in Jambi Province. The data sources in this research consist of primary and secondary data sources. Primary data is data obtained from informants directly, observed or recorded for the first time, by carrying out documentation at locations and interviews with KUA employees in Jambi Province. Meanwhile, secondary data is data obtained from informants indirectly, for example archives, documents and other publications, which in this research are the Compilation of Islamic Law and studies related to *maqashid al-syari'ah*, and secondary sources in the form of books, essays, scientific articles, interviews, and discussions.<sup>14</sup>

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<sup>10</sup> M. Musolli, "Maqasid Syari'ah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer," *At-Turās* 5, no. 1 (2018): 62, <https://doi.org/https://doi.org/10.33650/at-turas.v5i1.324>.

<sup>11</sup> Munir Fuady, *Metode Riset Hukum, Pendekatan Teori Dan Konsep* (Depok: Raja Grafindo Persada, 2018).

<sup>12</sup> Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, xiv. (Jakarta: Rajawali Pers, 2014).

<sup>13</sup> Fuady, *Metode Riset Hukum, Pendekatan Teori Dan Konsep*.

<sup>14</sup> Noeng Muhajir, *Metodologi Penelitian Kualitatif* (Yogyakarta: Rake Sarasin, 1996).

The data collection techniques used in this research are observation, interviews and documentation. In the analysis, the data that has been collected will be described in such a way and grouped in order to see the relationship between the elements, then the data will be interpreted and analyzed according to the existing possibilities. While the approach; contents analysis, comparative approach, and historical approach.<sup>15</sup>

## RESULTS AND DISCUSSION

### Overview of Marriage Registration

In Indonesian legislation regarding marriage law, there is no definition regarding marriage registration, but we will only find norms regarding orders regarding marriage registration. Marriage registration is a recording carried out by state officials regarding marriage events when a marriage contract is entered into between a prospective husband and a prospective wife. In this case, the marriage officer carries out the registration. Marriage registration is also a form of administration of a marriage carried out by Marriage Registrar Employees (PPN) at the Religious Affairs Office (KUA) in the area where the prospective bride and groom are getting married who are Muslim, and at the Civil Registry Office (KCS) for those with religions other than Islam.<sup>16</sup>

Marriage registration as an effort to create a *sakinah, mawaddah and rahmah* household is a necessity and a necessity. So it is regulated through legislation, both Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. Marriage registration will guarantee legal protection to husbands, wives and children.<sup>17</sup> The provisions in the law which require that marriage registration must be carried out by the Marriage Registrar. Marriages carried out outside the legal provisions will be subject to criminal sanctions and the marriage may even be considered annulled.<sup>18</sup>

In Indonesia, historical marriage registration regulations were established not long after Indonesia's independence, namely the promulgation of Law Number 22 of 1946 concerning Marriage Registration, Divorce and Reconciliation. This law states that marriage must be notified to the Marriage Registrar (Article 1 paragraph (1)). Then the promulgation of Law Number 1 of 1974 concerning Marriage after undergoing several processes for 15 months, in this law it is stated in Article 2 paragraph (2) that every marriage is recorded according to the applicable laws and regulations.<sup>19</sup>

Marriage registration is an important event and is proof that a marriage has been held. Registration is not one of the events that determines the validity or invalidity of a marriage,

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<sup>15</sup> Sutrisno Hadi, *Metodologi Penelitian* (Yogyakarta: Andi Offset, 1990).

<sup>16</sup> Barzah Latupono, "Prinsip Pencatatan Perkawinan Menurut Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan", *Disertasi*. (Universitas Airlangga, 2015).

<sup>17</sup> MR Matiman Prodjohamidjojo, *Hukum Perkawinan Indonesia* (Jakarta: Indonesia Legal Center Publishing, 2011).

<sup>18</sup> Latupono, "Prinsip Pencatatan Perkawinan Menurut Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan."

<sup>19</sup> Liky Faizal, "Akibat Hukum Pencatatan Perkawinan," *Asas: Jurnal Hukum Ekonomi Syariah* 8, no. 2 (2016), 1-15. <https://doi.org/10.24042/asas.v8i2.1247>.

a marriage is valid if it has been carried out according to the provisions of each respective religion, even though it has not been registered with a marriage registrar (PPN).<sup>20</sup> Marriages that are not registered in the State administration result in women not having legal authority regarding child care status, inheritance rights and other rights, so that it is very detrimental to women. Therefore, marriage registration plays a very important role so that problems do not occur in the future.<sup>21</sup>

Marriage registration has several benefits, including preventing irregularities and lack of harmony and marriage requirements, both according to religious law and belief and the law. This is because before the marriage process occurs and the marriage registration is carried out, the marriage registration officer will first examine whether the bride and groom have fulfilled the requirements and harmony of marriage. Meanwhile, legally, by registering their marriage, their marriage can be protected.<sup>22</sup>

### **General Explanation of the Compilation of Islamic Law**

The Compilation of Islamic Law or what is more familiarly known as KHI is the highest expectation that Islamic law can currently achieve, especially in Indonesia. Even though it has had a positive impact both in terms of institutions, society and the dynamics of Islamic legal thought, the existence of KHI still brings polemics. Not only the enactment process, the naming of the compilation also provides its own debate among scholars.<sup>23</sup>

To get an overview of the Compilation of Islamic Law (KHI), it is necessary to first explain the meaning of compilation and its origins. This explanation is necessary considering the fact that there are still many people who do not properly understand the meaning of compilation. This is because the term is less popularly used, even among legal scholars.<sup>24</sup> In a legal context, it is rare to hear the term compilation, even though the term compilation is relatively easy to search for in dictionaries, encyclopedias, or books related to legal terminology. However, there is no specific explanation regarding the meaning of compilation. This is due to the minimal use of this term in its application.<sup>25</sup> In fact, the term codification is more familiar and more familiar than compilation..<sup>26</sup>

In legal terms, codification is defined as the complete and systematic recording of a particular type of law in one law book. In its application, codification is translated with the

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<sup>20</sup> Peraturan Pemerintah (PP) No. 21 Tahun 1994 tentang Penyelenggaraan Pembangunan Keluarga Sejahtera.

<sup>21</sup> Amnawaty and Oktariatas, "Reformulasi Sistem Hukum Pencatatan Perkawinan Warga Muslim Dan Perlindungan Hukum Anak Dari Nikah Sirri."

<sup>22</sup> Latupono, "Prinsip Pencatatan Perkawinan Menurut Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan."

<sup>23</sup> M. Yahya Harahap, "Informasi Materi Hukum Islam: Mempositifkan Abstraksi Hukum Islam," in *Kompilasi Hukum Islam Dan Peradilan Agama Dalam Sistem Hukum Nasional* (Jakarta: Logos Wacana Ilmu, 1999).

<sup>24</sup> Abdurrahman Nahlawy, *Pendidikan Islam Di Rumah, Sekolah Dan Masyarakat* (Bandung: Gema Insani Press, 2008).

<sup>25</sup> Ryan Kurniawan, "Nikah Tahlil Pada Pasal 120 Kompilasi Hukum Islam Perspektif Hukum Islam". *Tesis*. (UIN Sultan Syarif Kasim Riau, 2022).

<sup>26</sup> Harahap, "Informasi Materi Hukum Islam: Mempositifkan Abstraksi Hukum Islam."

term "Kitab Undang-Undang" (Wetboek) which is differentiated from "Undang-Undang" (Wet). The difference between a codification/book of laws and a law lies in the material. Codification has broad material, not just one regulatory sector but can cover all areas of law in one frame, such as the Criminal Code (KUHP) or the Civil Code (KUHPdt). Meanwhile, the law only covers one sector of law, such as Law no. 1 of 1974 concerning marriage.<sup>27</sup>

Therefore, we can interpret the Compilation of Islamic Law as a collection or summary of various Islamic legal opinions taken from various sources of mu'tabar legal books (*fiqh*) which are used as reference sources or to be developed in the Religious Courts consisting of chapters on marriage, inheritance, and waqf. Uncertain use of this term should not occur. This is because from its formulation until it was established in 1991 there was no clear understanding of the meaning of compilation and compilation of Islamic law itself. Thus, the compilers of the compilation did not firmly adhere to one understanding regarding what they were making.<sup>28</sup>

The need for a Compilation of Islamic Law for Religious Courts has long been noted in the history of the Department of Religion. Issuance of Circular Letter from the Head of the Religious Justice Bureau No. B /1/735 dated 18 February 1958 concerning the implementation of government regulation Number 45 of 1957 which regulates the establishment of Religious Courts / Syar'iyah Courts outside the islands of Java and Madura shows one proof of this. From the perspective of the meaning of 'the ideal law', the presence of the Compilation of Islamic Law is a series of national legal histories that can reveal the various meanings of life in Indonesian society.<sup>29</sup>

These are some views and explanations related to the background of holding the Compilation of Islamic Law, the problem of which is based on the implementation of Islamic law in the Religious Court Environment. However, this does not mean that the reasons stated above are accepted immediately. Like Ahmad Rofiq in his book *Hukum Perdata Islam di Indonesia* states that KHI is an accumulation of the political configuration of Islamic law in Indonesia as a result of the influence of the political configuration that played out at the beginning of independence.<sup>30</sup>

In terms of constellation/politics, the background to the drafting of the KHI cannot be separated from the interests of the government itself, although on the other hand the law will not exist without government intervention (power). Pragmatically, what was stated by the KHI drafting team and the government is indeed true. However, the big question is when it is felt that there is a real need for uniformity in deciding cases in the Religious Courts. The government, represented here by the team forming the Supreme Court and the Minister of

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<sup>27</sup> R.T. Subekti, *Kitab Undang-Undang Hukum Perdata, Burgerlijk Wetboek Dengan Tambahan Undang-Undang Pokok Agraria Dan Undang-Undang Perkawinan* (Jakarta: PT. Pradnya Paramita, 1992).

<sup>28</sup> Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam (KHI).

<sup>29</sup> Abdul Gani Abdullah, *Pengantar Kompilasi Hukum Islam Dalam Tata Hukum Indonesia* (Jakarta: Gema Insani Press, 1994).

<sup>30</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* (Jakarta: PT. Raja Grafiika, 2013).

Religion, adopted compilation terms that were unclear both in legal terminology and the empirical practice of these regulations.<sup>31</sup>

### ***Maqāṣid al-Syarīah Approach***

Allah SWT establishes laws for mankind with the aim of providing benefit to mankind itself which is encapsulated in *maqāṣid al-syarīah* (the main goal of Islamic Shari'a). Imam al-Syatibi divides the benefits that will be realized into three levels, namely; a) *ḍarūriyāt*, b) *hajiyāt* and c) *tahsiniyāt*.<sup>32</sup>

The first level, *ḍarūriyāt*, is the level of needs that must exist or is called primary needs. If this level of need is not met, the safety of humanity will be threatened both in this world and in the afterlife. According to al-Syatibi, there are five things that fall into this category, namely *hifdz al-din* (maintaining religion), *hifdz al-nafs* (maintaining the soul), *hifdz al-aql* (maintaining reason), *hifdz al-nasl* (maintaining offspring), and *hifdz al-mal* (maintaining wealth). It is in order to maintain these five principles that Islamic Sharia was revealed. If each legal paragraph is examined, the reason for its formation will be found, which is none other than to maintain the five points above. The five types of protection and basic needs above are needed by all humans in every situation and time, as a result of which some translate them into the public interest.<sup>33</sup>

The second level, *hajiyāt* are secondary needs, where if they are not realized they will not threaten their safety, but will experience difficulties. Islamic Sharia eliminates all these difficulties.<sup>34</sup> The existence of *rukhsah* (leniency) laws, such as being allowed not to fast when sick or when traveling, is an example of Islamic law's attention to this need. The third level, *tahsiniyāt*, is the level of needs which, if not met, do not threaten the existence of any of the five points above and also do not cause difficulties. This level of need is in the form of complementary needs, things that are appropriate according to customs and in accordance with moral and moral demands.<sup>35</sup>

Thus, if analyzed further, in an effort to achieve perfect maintenance of the five basic elements, the three levels of *maqāṣid* cannot be separated. It seems that for al-Syatibi, the *hajiyat* level is a refinement of the *ḍarūriyāt* level, the *tahsiniyat* level is a refinement of the *hajiyāt* level, while the *ḍarūriyāt* level is the basis of *hajiyāt* and *tahsiniyāt*. To clarify the levels of *maqāṣid al-sharīah* based on the classification of *ḍarūriyāt*, *hajiyāt* and *tahsiniyāt* and their relationship to each other can be seen from the following examples:<sup>36</sup>

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<sup>31</sup> Amnawaty and Oktariatas, "Reformulasi Sistem Hukum Pencatatan Perkawinan Warga Muslim Dan Perlindungan Hukum Anak Dari Nikah Sirri."

<sup>32</sup> Abu Ishaq al-Syatibi, *Al-Muwafaqat Fi Usul Al-Syari'ah* (Saudi Arabia: Kementerian Urusan Islam, Wakaf, Dakwah dan Penyuluhan, 1999).

<sup>33</sup> Al Yasa' Abu Bakar, *Metode Istishlahiah Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh* (Banda Aceh: CV. Diandra Primamitra Media, 2012).

<sup>34</sup> Amirus Sodik, "KONSEP KESEJAHTERAAN DALAM ISLAM," *EQuilibrium, Jurnal Ekonomi Syariah* 3, no. 2 (2015): 381–405. <https://doi.org/10.21043/equilibrium.v3i2.1268>.

<sup>35</sup> Bakar, *Metode Istishlahiah Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh*.

<sup>36</sup> Muhammad Said al-Ayubi, *Maqasid Al-Syari'ah Al-Islamiyyah Wa 'Alaqtuha Bi Al-Adillah Al-Syar'iyah* (Riyadh: Dar Al-Hijrah, 1998).



*First*, maintaining religion, which means maintaining and maintaining religion based on its level of importance, can be divided into three levels: 1) maintaining religion in the *darūriyāt* level, namely maintaining and carrying out religious obligations which are included in the primary level, such as: carrying out the fardhu (five daily) prayers. If the obligation to pray is ignored, the existence of religion will be threatened. 2) maintaining religion at the level of *hajiyāt*, namely carrying out religious provisions, with the aim of avoiding difficulties, such as: performing congregational prayers and qashar when traveling. If this provision is not implemented, it will not threaten the existence of religion, but it could make its implementation difficult. 3) maintaining religion at the level of *tahsiniyāt*, namely following religious instructions in order to uphold human dignity, as well as completing the implementation of obligations to God, such as: covering the private parts both during prayer and outside prayer and also cleaning the body, clothes and place. This activity is closely related to commendable morals. If all this is not done because it is not possible, then it does not threaten the existence of religion. However, this does not mean that *tahsiniyāt* is considered unnecessary, because this level will strengthen *darūriyāt* and *hajiyāt*.<sup>37</sup>

*Second*, maintaining the soul, namely based on the level of importance it can be divided into three levels: 1) Maintaining the soul at the *darūriyāt* level is fulfilling basic needs in the form of food and drink to maintain survival. If these basic needs are ignored, it will threaten the existence of the human soul. 2) Maintaining the soul at the level of *hajiyāt* is recommended to make efforts to obtain halal and delicious food. If this activity is ignored, it will not threaten the existence of human life, but can only make life difficult. 3) Maintaining the soul at the level of *tahsiniyāt* such as determining the rules for eating and drinking. This activity is only related to politeness and ethics. In no way will it threaten the existence of the human soul or make it difficult.<sup>38</sup>

*Third*, maintaining reason, seen from the level of importance, can be divided into three levels: 1) Maintaining reason at the level of *darūriyāt*, such as consuming alcoholic drinks and the like is prohibited. If this provision is ignored, it will threaten the existence of human reason. 2) Maintaining intelligence at the level of *hajiyāt*, as recommended for the pursuit of knowledge. If this provision is ignored, it will not damage the existence of reason, but it can make it difficult for someone to develop science and ultimately result in difficulties in their life. 3) Maintaining reason at the level of *tahsiniyat*, avoiding activities of fantasizing and listening to or seeing things that are not useful. These activities do not directly threaten the existence of the human mind.

*Fourth*, maintaining offspring, in terms of the level of need, can be divided into three: 1) Maintaining offspring at the *darūriyāt* level, such as the recommendation to marry and the prohibition of adultery. If this is ignored, it can threaten the existence of offspring and human dignity. 2) Maintaining offspring at the *hajiyāt* level, as determined by Talak as the completion of the husband and wife bond. If divorce cannot be carried out, it will make

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<sup>37</sup> Syatibi, *Al-Muwafaqat Fi Usul Al-Syari'ah*.

<sup>38</sup> Bakar, *Metode Istishlahiah Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh*.

things difficult for the household which cannot be maintained any longer. 3) Maintaining offspring at the level of *tahsinīyāt*, such as the provision of *khitbah* (proposal) and *walimah* (reception) in marriage. This is done to complete the wedding ceremony. If this is not done, it will not threaten the existence of offspring or human dignity and will not make life difficult.<sup>39</sup>

*Fifth*, maintaining property, in terms of the ranking of its importance, can be divided into three levels: 1) Maintaining property at the *ḍarūriyāt* level, as required by religion to obtain ownership through buying and selling transactions and it is prohibited to take other people's property in an improper way such as stealing, robbing etc. If these rules are violated, it will threaten the existence of assets. 2) maintaining assets at the *hājīyāt* level, such as allowing sale and purchase transactions of *salam* and *istishna'* (buying and selling orders). If these provisions are ignored, it will not threaten the existence of the property, but will create difficulties for the owner in carrying out its development. 3) Maintaining assets at the level of *tahsinīyāt*, such as the command to avoid fraud and speculative. This is just an ethic of *muamalah* and does not threaten property ownership at all if ignored.<sup>40</sup>

Therefore, Allah SWT commands humans to make efforts for their existence and perfection. On the other hand, Allah SWT forbids carrying out actions that can eliminate or reduce one of the five *ḍarūriyāt*. All actions that can realize or maintain the five basic elements are good, and therefore must be done. Meanwhile, all actions that damage or reduce the value of the five basic elements are not good, and therefore must be abandoned. All of this contains benefits for humans.<sup>41</sup>

### Urgency of Marriage Registration in Jambi Province Based on *Maqāṣid al-Syarīah*

In Islamic law, there is the concept of *maqāṣid al-syarī'ah* where the goal, target or end result is in the form of true benefit through the enactment of law on humans. *Maqāṣid al-syarī'ah* can also be interpreted as the final and secret goal, even the values or norms and meanings of establishing a law.<sup>42</sup> In marriage, there is a primary *maqāṣid al-syarī'ah* (*ḍarūriyyāh*), namely *hifẓ an-nasl* whose application is to protect offspring and prevent adultery. Then, marriage contains secondary *maqāṣid al-syarī'ah* (*hājīyyāh*), namely to create a family that is *sakinah*, *mawaddah*, *warahmah*. Meanwhile, tertiary (*tahsīniyyah*) is to fulfill human psychological needs, because every human actually lives in pairs.<sup>43</sup>

Marriage registration is very important and must be done. According to Djubaidah, marriage registration is the recording of marriages that are valid according to law and Islamic

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<sup>39</sup> Amin Farih, *Kemaslahatan Dan Pembaruan Hukum Islam Abu Ishaq Ibrahim Al-Syatibi* (Semarang: Walisongo Press, 2008).

<sup>40</sup> Hamka Haq, *Al-Syathibi: Aspek Teologis Konsep Masalah Dalam Kitab Al-Muwafaqat* (Jakarta: Erlangga, 2007).

<sup>41</sup> Haq, *Al-Syathibi: Aspek Teologis Konsep Masalah Dalam Kitab Al-Muwafaqat*.

<sup>42</sup> M. Ainur Rifqi and A. Halil Thahir, "Tafsir Maqasidi; Building Interpretation Paradigm Based on Mashlahah," *Millah: Jurnal Studi Agama* 18, no. 2 (2019): 335–356. <https://doi.org/10.20885/millah.vol18.iss2.art7>.

<sup>43</sup> M Musolli, "Maqasid Syari'ah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer," *At-Turās* 5, no. 1 (2018), 1-16. <https://doi.org/10.33650/at-turas.v5i1.324>.

law or marriages that have fulfilled the pillars and requirements of marriage in accordance with Islamic law, which is carried out at the District Religious Affairs Office (KUA). In another view, this definition can be interpreted as a stage or process that must be carried out in marriage. Where through marriage registration, a husband and wife will get a marriage certificate.<sup>44</sup>

In essence, Islamic law does not require registration of every marriage contract, but from the perspective of its benefits in society, marriage registration is very necessary, because marriage registration can be used as authentic evidence so that someone can obtain legal certainty. So it is regulated through legislation, both Law Number 1 of 1974 and through the Compilation of Islamic Law. This is in line with Islamic law based on the theory of *maqāṣid al-syarī'ah*.<sup>45</sup>

In the *maqāṣid al-syarī'ah* theory, marriage registration is included in the *ḍarūriyyāh* (primary) needs, namely *hifẓ an-nasl*, namely preserving offspring and preventing adultery. The benefit of the Indonesian state lies in every behavior that is limited by laws made by the government. Likewise, with marriages in Jambi Province, there needs to be regulations that limit human behavior so that it does not harm other people. Marriage registration is a necessity for the people of Jambi Province to help marriages that are carried out legally according to the State, because if the marriage does not receive legal approval then the marriage will not receive legal protection.<sup>46</sup>

Marriage registration is the most important part that must be done to protect the people of Jambi Province. The *ḍarūriyyāh* (primary) need that is considered for marriage registration is that as a country that is based on positive law, the nature of non-recognition of marriages that are not registered is very important, because if marriage registration is not carried out it will affect the future of the marriage and will also have an impact on heirs who cannot prove legitimate descent in the eyes of the law.<sup>47</sup>

To maintain offspring or *hifẓ an-nasl*, such as the law on marriage, to prevent adultery. Allah commands to carry out legal marriages so that offspring are protected. The maintenance of offspring is very important so that the purity of offspring blood can be maintained and the continuation of the human race can be continued. Registration of marriages for the people of Jambi Province is a step in preserving offspring, because if a marriage is not valid according to the Marriage Law then the child will only have a civil relationship with his mother and his mother's family and will not have a civil relationship

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<sup>44</sup> Neng Djubaidah, *Pencatatan Perkawinan Dan Perkawinan Tidak Dicatatkan* (Jakarta: Sinar Grafika, 2010).

<sup>45</sup> Fathurrahman Djamil, "Mencari Format Hukum Islam Yang Progresif Berkearifan Lokal: Pendekatan Socio-Cultural Dan Maqashid Al-Syariah," *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 16, no. 1 (2017): 1–14. <https://doi.org/10.15408/kordinat.v16i1.6450>.

<sup>46</sup> Musolli, "Maqasid Syari'ah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer."

<sup>47</sup> Mohsi, "Pencatatan Perkawinan Sebagai Rekonseptualisasi System Saksi Perkawinan Berbasis Maslahah."

with his father, so that by registering the marriage the child can have proof in the form of a birth certificate.<sup>48</sup>

Even marriages carried out without registration procedures are known as *sirri* marriages. *Sirri* marriages according to the Compilation of Islamic Law do not have legal force, so these marriages are categorized as haram marriages. Even though the marriage is considered valid according to conventional jurisprudence, statutory regulations do not guarantee its rights. This view illustrates that there is enormous harm that will be received from the consequences of a marriage that is not registered.<sup>49</sup>

## CONCLUSION

In the *maqāṣid al-syarī'ah* theory, marriage registration for the people of Jambi Province is included in the *ḍarūriyyāh* (primary) needs, namely *hifẓ an-nasl*, namely preserving offspring and preventing adultery. The benefit of the Indonesian state lies in every behavior that is limited by laws made by the government. Likewise, with marriage there needs to be regulations that limit human behavior so that it does not harm other people. Marriage registration is a necessity for the people of Jambi Province to help marriages that are carried out legally according to the state, because if the marriage does not receive legal approval then the marriage will not receive legal protection.

Marriage registration for the people of Jambi Province is the most important part that must be done to protect the community. The *ḍarūriyyāh* (primary) need that is taken into consideration for marriage registration is that as a country that is based on positive law, the nature of non-recognition of marriages that are not registered is very important, because if marriage registration is not carried out it will affect the future of the marriage and will also have an impact on heirs who cannot prove legitimate descent in the eyes of the law.

Marriage registration for the people of Jambi Province is very important, in all respects, where there are benefits in registering marriages, namely to provide protection for husbands and women and even children. If you pay attention to the validity of marriages in Indonesia, the state only recognizes marriages that are registered on the basis of Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage. Marriage registration is marriage administration handled by the Marriage Registrar (PPN) located at the Religious Affairs Office (KUA) with the aim of creating legal order.

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<sup>48</sup> Herien Puspitawati et al., "Relasi Gender, Ketahanan Keluarga Dan Kualitas Pernikahan Pada Keluarga Nelayan Dan Buruh Tani 'Brondol' Bawang Merah," *JURNAL ILMU KELUARGA DAN KONSUMEN* 12, no. 1 (2019): 1–12. <https://doi.org/10.24156/jikk.2019.12.1.1>.

<sup>49</sup> Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia," *Islam and Christian-Muslim Relations* 31, no. 2 (2020): 131–150. <https://doi.org/10.1080/09596410.2020.1773618>.

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