

THE IMPLEMENTATION OF SHARIA MAQASHID IN TECHNICAL
SERVICE OF MARRIAGE AT THE OFFICE OF RELIGIOUS AFFAIRS
(KUA) DURING THE ENFORCEMENT OF RESTRICTIONS ON
COMMUNITY ACTIVITIES (PPKM)

(Case Study of Offices of Religious Affairs in Probolinggo City)

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Abstract

Marriage is a holy agreement that is strong and sturdy to live together legally between a man and a woman to build an eternal and happy family. However, in the current conditions of the Covid-19 pandemic, the Ministry of Religion issued Circular Number: P-001/DJ.III/Hk.007/07/2021 which contains Technical Instructions for Marriage Services at KUA Sub-Districts during the Emergency PPKM period so that many prospective brides who postponed or annulled his marriage. This is similar to the case that occurred in the KUA area of the City of Probolinggo. As a result of this delay, many sirri marriages have occurred. Various instructions and regulations have been

violated by some people, which even contradict the provisions of Law Number 1 of 1974 and the Compilation of Islamic Law.

The focus of the problems studied are: 1) How is the marriage service technical at KUA in Probolinggo City during the Maqashid Syariah Perspective PPKM Period? 2) How is the Implementation of Maqashid Syariah in Technical Marriage Services at KUA in Probolinggo City during the PPKM period? The aims of this research are 1) to describe how technical marriage services are at KUA in Probolinggo City during the Maqashid Syariah Perspective PPKM Period? 2) To describe the implementation of Maqashid Syariah in technical marriage services at KUAs throughout the city of Probolinggo during PPKM. This research is a field research. Using a sociological approach. Researchers used two sources of data, namely primary data derived from interviews on the object under study. While secondary data is obtaining data indirectly, namely through other people or through documentation.

The results of this study are 1) Marriage Services during the PPKM period can be said to be in accordance with Circular Number: P-001/DJ.III/Hk.007/07/2021 concerning Technical Instructions for Marriage Services at KUA Subdistricts during the PPKM Emergency period but lack of related socialization A circular letter regarding the provisions for marriage during the PPKM period was issued by the Ministry of Religion so that it became one of the factors for non-compliance with the law and public awareness about the importance of safety for themselves and their surroundings. 2) Marriage services at KUA during the PPKM period are in harmony with Maqashid Syariah which provides many benefits for the community, especially the benefits contained in Circular Letter Number: P-001/DJ.III/Hk.007/07/2021 concerning Marriage Services at KUA for PPKM. Of course, in the effort to prevent Covid-19, it is a part of caring for the soul (Hifdz an-nafs).

Keywords:*Maqashid Syariah, Marriage Services, PPKM.*

1. Introduction

1.1 Background Problem

Every human being, since his birth has a close relationship with his God. Unlike other creatures, humans are given the mandate to become caliphs whose job is to prosper the earth. This trust continues to be embedded in humans so that even marriage does not fade it. Marriage is the union of two people who were originally illegitimate to make it lawful to have sex with. Islam teaches that having a family is a means of maintaining human dignity and honor in order to avoid the despicable acts that Allah hates.

Marriage is a contract that makes it lawful to have intercourse between the opposite sex. Marriage is a holy bond that is strong and sturdy to wade through life together lawfully between a man and a woman to build a household that is eternal, loving, safe, peaceful, and happy. Marriage according to Islamic law is a marriage, namely a solid agreement *or mithaqan ghalidzanas* a form of obedience to God's commands and carrying them out

is worship. Based on Law Number 1 of 1974 concerning marriage it is stated that: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on Belief in One Almighty God".

Based on the word of Allah in the Qur'an Surah Ar-Rum, which reads;

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

It means: And among the signs of His power, He created for you wives of your own kind, so that you are inclined and feel at ease to him, and He made between you love and affection. Indeed, in that there are signs for people who think. (QS. Ar-Rum: 21)

Marriage can be declared valid if it is carried out according to their respective religious beliefs. Article 2 Paragraph (2) Law Number. 1 of 1974 concerning Marriage, stipulates that: "Every marriage is recorded according to the applicable laws and regulations". Then in Article 6 Paragraph (1) of the Compilation of Islamic Law it is explained: "Every marriage must take place in the presence of and under the Supervision of a Marriage Registrar." This provision is in line with the principle of Law Number 1 Number 1974, that the prospective husband and wife must be mentally and physically mature, in order to realize the purpose of a good and healthy marriage. Therefore, mental and material readiness is very important for both.

Marriage is not only as a halal sexual fulfillment, however, as a form of building a good family. In terms of building a family, it is sunnah to hold Walimah. However, in the current condition of the Covid-19 pandemic, many community activities have been postponed or cancelled.

In fact, there are strict rules in the form of Police Chief Notice Number: Mak/2/III/2020 regarding Compliance with Government Policies in Handling the Spread of the Corona Virus (Covid-19) which contains procedures for gathering in society.

On July 7, 2021 the Ministry of Religion issued Circular Number: P-001/DJ.III/Hk.007/07/2021 which contains Technical Instructions for Marriage Services at the Religious Affairs Office (KUA) in Subdistricts during the Implementation Period for Restricting Community Activities (PPKM) Emergency. This circular letter is instructed for the Java and Bali regions only. Meanwhile, KUA in sub-districts outside Java and Bali during the PPKM period continued to follow the provisions in the Circular of the Director General of Islamic Community Guidance Number: P-006/DJ.III/Hk.007/06/2020 concerning Marriage Services Towards a Productive Society Safe from Covid-19.

As a result of this circular letter, from 03 to 20 July 2021 the Office of Religious Affairs will not serve marriage registration. The implementation of the marriage contract is only intended for prospective brides who have registered before July 3, 2021 with the condition that they must complete the specified documents, while those who register after are postponed or canceled. This provision is carried out every working day from 08.00 to 14.00 local time. Marriage registration is carried out online through the site simkah.kemenag.go.id. The Ministry of Religion also requests that prospective brides and grooms who have registered their marriage complete the required documents to the sub-district KUA officers by complying with the existing health protocols. Documents required include:

1. Negative results of the Antigen Swab test for the bride and groom, marriage guardian, and two witnesses that are valid at least 1x 24 hours before the marriage contract is held.
2. The implementation of the marriage ceremony which is held at the District Office of Religious Affairs or at the home of the bride and groom is attended by a maximum of 6 (six) people.
3. The ceremony of the marriage ceremony held in a convention hall or hotel is attended by a maximum of 20% of the room capacity and no more than 30 (thirty) people.
4. The implementation of the marriage ceremony must strictly implement health protocols.
5. The prospective bride and groom sign a statement of ability to comply with the health protocol with a stamp as in the attached form.
6. If the health protocol is not complied with, the head of the KUA or the penghulu can postpone or cancel the marriage contract accompanied by written reasons.

The provisions above apply to all sub-district Religious Affairs Offices (KUA) in the islands of Java and Bali, and are declared to remain valid if the PPKM is extended. Whereas in Islamic law there is no such provision as a condition for a valid marriage. However, in Indonesia, the validity of a marriage will be recognized if it is registered based on the law and related regulations and carried out based on the provisions of their respective religions. So that in this case there is a juridical consequence that marriage registration is a must so that marriage can be recognized by the state. That way, all provisions must be able to be legally valid in Indonesia.

Marriage delays are also rife in Offices of Religious Affairs in Probolinggo City Districts. This delay was based on the fact that the bride

and groom refused to do an Antigen Swab test, they were worried that later they would be confirmed positive for Covid-19 and also could not hold a walimah. Even though the existence of the KUA policy provides security for people who are going to marry without reducing compliance with the Decree of the Minister of Religion Number 298 of 2003 concerning the supervision and registration of marriages.

Based on the cases above, the researchers found that many of the prospective bride and groom chose an alternative route by carrying out a sirri wedding and even carrying out a large-scale walimah event. In Law Article 14, anyone who obstructs the prevention of an epidemic as determined by the Ministry of Home Affairs can be subject to criminal sanctions. The existence of marriage provisions made by the Ministry during the PPKM period was none other than to protect the public and KUA employees from the spread of the co-19 outbreak. However, many parts of the community, especially those within the City of Probolinggo, are not abiding by the law and lack awareness of the importance of protecting themselves and their surroundings from the outbreak of epidemics.

In this discussion, researchers direct to the realm of Islamic law which focuses on the Implementation of Maqashid Syariah in Marriage Services at the Office of Religious Affairs during the PPKM period. Maqashid Syariah itself is composed of two words, namely Maqashid and Sharia. The word Maqashid is the plural of Maqshad which means intent and purpose. While Sharia means the provisions set by Allah SWT, in another sense that Sharia is all the laws of Allah that have been stipulated for humans to obey and follow throughout their lives. Therefore, Maqashid Syariah is a goal that will be achieved in a legal determination.

The content of Maqashid Sharia can be found through the statement of al-Syatibi, that a reformer of ushul fiqh who lived in the 8th century Hijriah in his book *al-Muwafaqat fi Ushul al-Syariah*, in which he stated that the Shari'a was established for the benefit of mankind in the world and in the afterlife. So basically the Shari'a was made to create happiness for the survival of humans with each other. It can be said that what is being discussed in Maqasid Sharia is the wisdom and illat of establishing a law. In the science of ushul fiqh, wisdom is different from illat. Illat is a clear characteristic (dlahir) that can be known objectively, has a benchmark (mundhabit), and is relevant or in accordance with legal provisions (munasib). While wisdom has no benchmark (mundlabit),

Maqashid Sharia is a guideline held by all Muslims so that something is done in accordance with Islamic law. Therefore, the existence of a Marriage Service Technical at the Office of Religious Affairs during the Imposition of Restrictions on Community Activities (PPKM) is in accordance with Maqasid Syariah or otherwise not at all. If the technical service is in accordance with Maqashid Syariah, the welfare of the people's life will soon be realized.

After the researcher knows the problems described above, the researcher is very interested in conducting research with the title "Implementation of Maqashid Syariah in Technical Marriage Services at the Office of Religious Affairs (KUA) During the Implementation of Restrictions on Community Activities (PPKM) (Case Study of Offices of Religious Affairs in Probolinggo City)".

A. Research focus

Based on the above background, The research focus is as follows:

1. What is the Maqashid Syariah Perspective in Technical Marriage Services during the Implementation of Restrictions on Community Activities (PPKM)?
2. How is the Implementation of Maqashid Syariah in Technical Marriage Services at Religious Affairs Offices throughout Probolinggo City during the Enforcement of Community Activity Restrictions (PPKM)?

B. Research purposes

3. To Describe What is the Maqashid Syariah Perspective in Technical Marriage Services during the Implementation of Restrictions on Community Activities (PPKM)?
1. To describe the Implementation of Maqashid Syariah in Technical Marriage Services at Religious Affairs Offices throughout Probolinggo City during the Enforcement of Community Activity Restrictions (PPKM).

2. Research methods

This research uses the type of empirical legal research or empirical legal research, which is a legal research with a function to see the law, in a real sense and examine how the pattern of law works in society. In this study, researchers used the legal sociology approach which is an approach in empirical legal research and also because in this study used an approach that analyzes how the reaction and interaction of the system of norms works in society.

The data collection technique is primary data, data is collected using observation systems, interviews and documentation. In a structured manner

the data will be processed qualitatively and descriptively. Secondary data, related to the collection of supporting and supporting data is carried out by reading the literature, citing its relation to the research problem.

Researchers will conduct data analysis with the following stages:

- Editing, checking the completeness of the researcher's notes, for the purposes of further processing
- Classification (clasifying), reducing data by classifying the data obtained into specific subject matter and focus
- Verifying (verifying), reviewing the information obtained so that its validity is guaranteed
- Analyzing, using the Islamic legal theory that has been described; analyze and present data that has been obtained in the field in the Bangkat War tradition, with an approach to Islamic law in Indonesia.

3. Results and Discussion

Writing the Results and Discussion section contains the results or research findings (scientific findings) followed by a scientific discussion. The description of the discussion in the Results and Discussion chapter is descriptive, analytical and critical. The description of the discussion must be adjusted to the sequence of legal issues which are the main elements in the study. Theories included in the theoretical framework should be cited in this chapter. The state of the art listed in the Introduction Section is also reviewed and elaborated on in the Results and Discussion Section. The analysis in the Results and Discussion section can be supported by tables that are presented horizontally. Table Presentation is equipped with "Table Title" and "Table Source." Each table is followed by an author's review and comments as part of the analysis of the tables presented. besides table,.

How to Write Results and Discussion as follows:

3. Results and Discussion

3.1 Technical Services for Marriage at Offices of Religious Affairs throughout the City of Probolinggo Implementation Period for Restricting Community Activities (PPKM) from the Maqashid Syariah Perspective.

Based on the level, Maqashid Syariah is divided based on 3 levels as follows:

- a. *Al-Daruriyyat*, namely the primary needs of religion and the world which, if not fulfilled, will threaten the existence of religion and the world.
- b. *Hajiyyat*, namely secondary needs in human life to be happy and prosperous and avoid difficulties.
- c. *Tahsiniiyyat*, tertiary needs related to beauty and enjoyment that usually apply in society and are far from actions that are not commendable or known as moral nobility.

Imam al-Ghazali emphasized that basic human needs are very important, where there are five important basic needs as follows:

- a. *Hifd ζ ad-din*(maintaining religion), namely the right to worship and carry out religious orders.
- b. *Hifd ζ an-nafs*(care for the soul), namely the right to self-defense which will create a better quality of human life than before in social life.
- c. *Hifd ζ al-aql*(maintaining reason), namely the right to fulfill intellectual needs in oneself which are applied in social life and maintain the ability of reason so that it benefits society and its surroundings

- d. *Hifdz al-amal*(maintaining property), namely the right to guard the property of other people who bring badness, and how to obtain wealth lawfully, or has the power to open jobs to help and support other people's families or the community.
- e. *Hifdz nasl*(maintaining offspring), namely protecting oneself and one's family from the slander of the world, and also being able to maintain the honor and dignity of humans in general

MAccording to the researcher's analysis, the Circular Letter regarding marriage services at KUA during PPKM is intended to prevent and avoid the spread of the Covid-19 virus and to protect KUA employees and the community when marriage services take place. However, this is even contrary to maintaining religion (*Hifdz ad-din*) if many prospective brides postpone their marriage ceremony schedule at the KUA to carry out an unregistered marriage.

In this study, based on the results of observations, it was found that several catins chose to carry out sirri marriages first, where the sirri marriages actually complicated household problems which led to damage in terms of maintaining offspring (*Hifdz nasl*).

Based on the hierarchy of *maslahah* and *mafsadatan*, the concept of *tarjih* based on *maqasid al-shariah* appears, which is better known as *al-tarjih al-maqasidi*. If the concept of *tarjih* is more directed to the strength of the argument, then in *al-maqashid's* study the concept of *tarjih* is more directed to the strength of the benefits that are pursued in establishing the law. There are many rules of *tarjih* in *al-maqashidi*, including: "When there is a conflict between each *al-maqasid*, then what is prioritized is the highest level of *maqasid*, namely *daruriyyat*,

hajjiyyat, then tahsiniyyat". If what the Shari'a aims at is maslahah, then what the Shari'a opposes is mafsadah.

If using one of the theories of tarjih al-maqashidi, namely "when there is a conflict between each al-maqashid, then what is prioritized is the highest level of maqashid, namely prioritizing daruriyyat, then hajjiyyat, then tahsiniyyat". So a wedding reception (maslahah tahsiniyyat) cannot be held because the level is below daruriyyat, namely protecting someone's life by not holding gatherings for fear of transmission of Covid-19. Therefore, the wedding reception must be postponed first in order to protect the lives of the people, including the lives of the bride and groom and their respective families.

DIIn efforts to prevent Covid-19 is a part of caring for the soul (Hifdz an-nafs). Even though the swab test has its advantages and disadvantages, in principle protecting the soul is the main and main need, both before God and humans. In an unhealthy condition of the human body, antibodies can decrease, so when the swab test becomes positive. Conversely, when a person is healthy, the result will be negative. Thus the antigen swab is very useful and in accordance with Maqashid Syariah if it is used for fast purposes. However, for certain purposes and requiring more valid data and accurate results, the antigen swab test will be more beneficial in protecting the soul (Hifdz an-nafs).

Based on Ar-Raisuni's statement in his book, namely "al-Fikr al-Maqashidi, and Qawa'iduhu wa Fawa'iduhu" confirms that there are four primary principles, including:

1. كُلُّ مَا فِي الشَّرِيْعَةِ مُعَلَّلٌ وَلَهُ مَقْصُودٌ وَمَصْلَحَةٌ.

This rule explains that all sharia perspectives have an intention, purpose, and benefit contained therein. In the event that there is a Circular on marriage services during the PPKM period, a law is determined to have a real nature with the intent and purpose of protecting the community from the spread of the Covid-19 outbreak.

2. لَا تُقْصِدُ إِلَّا بِدَلِيلٍ

This rule explains that there is no trivial practice of Islamic law based on Maqashid Sharia which is based solely on lust. In this study, explains that a law should not be underestimated just for the sake of lust. Such as choosing to do unregistered marriage by holding a large-scale walimah so that it triggered a crowd in the midst of society amid the rampant pandemic at that time.

3. تَرْتِيبُ الْمَصَالِحِ وَالْمَفَاحِصِ

This rule emphasizes that maslahah and mafsadah have different hierarchies based on the level of impact both have, the more good the impact, the higher the position of benefit. The greater the impact of the damage, the higher the position of the mafsadat. In this case, if people obey the government's instructions, the number of positive increases in Covid will decrease, but if they are violated, the number of increases in Covid will increase.

4. ???

This rule states that there is a contradiction between the intention of sharia and the intermediary (wasail) in that intention, in which wasail is a means that delivers the realization of the intention

of sharia. In this case, there is a difference between a law and the state of society. Therefore, the existence of socialization to get to the intent of the law will be more realized.

3.2 Implementation of Maqashid Syariah in Technical Marriage Services at Religious Affairs Offices throughout the City of Probolinggo Implementation Period for Restricting Community Activities (PPKM)

Maqashid Shari'ah is a supporting factor in understanding and practicing the syara' texts correctly, as well as being a guide in carrying out legal istinbat on issues for which there is no evidence. On the other hand, Maqashid Sharia is a benchmark for mujtahid to find out whether a law is still appropriate to be applied to a case because the underlying legal or illat objectives are not as they were in the beginning. According to Satria Efendi, Maqashid Syariah is the basis for establishing a law and is also the key to the success of a mujtahid in his ijihad. Therefore, mujtahids in developing legal thinking and answering all contemporary legal issues whose case is not in the Al-Qur'an and Hadith must understand Maqashid Sharia.

Muhammad Az-Zuhaili stated that previously he summarized the urgency of Maqashid Syariah into five points, namely:

- a. *Maqashid* can be used as a helper for them to know syara' law both kulliyah and juz'iyah.
- b. *Maqashid* able to help them understand the syara' texts and appreciate them properly.
- c. *Maqashid* help them find the meaning intended by the text correctly, especially for the lafadz which has more meaning.
- d. When there are contemporary cases whose evidence is unknown, the mujtahid can refer to Maqashid Sharia through

ijtihad, qiyas, istihsan, istislah, and so on in accordance with the objectives and principles of Islamic law.

- e. Helping mujtahid while carrying out tarjih related to issues of Islamic law when there are differences between universal propositions. In other words, Maqashid is a method of tarjih when ta'arudh (contradiction) occurs between texts.

So clear implementation *Maqashid Sharia* for humans, especially mujtahids and anyone who is involved in the field of Islamic law. So according to the researcher's analysis, there are several things related to why the implementation of Maqashid Syariah is very important in technical marriage services during the PPKM period, namely as follows:

- a. Opening insights for the Indonesian people, both Muslims and non-Muslims that the implementation of Maqashid Syariah has many benefits in life, one of which is in the Technical Service of Marriage during PPKM.
- b. Emphasizing that Circular Letter Number: P-001/DJ.III/Hk.007/07/2021 concerning Technical Guidelines for Marriage Services at the Religious Affairs Office (KUA) in the Sub-District during the Imposition of Emergency Community Activity Restrictions (PPKM) is in accordance with Maqashid Syariah both from terms of application and benefits.
- c. Shows that Maqashid Sharia is a sharia label that must be followed because it has many benefits for all of us.
- d. Make it easy to get to know general and specific laws, especially the benefits contained in Circular Letter Number: P-001/DJ.III/Hk.007/07/2021 concerning Marriage Services at KUA during PPKM.

The researcher clarifies that the implementation of Maqashid Syariah is to support the position of Maqashid Syariah both in terms of Islamic law and positive law as exemplified by the Prophet Muhammad and preserved by the companions in doing ijtihad because the changes in social conditions during the companionship were much more developed compared to the time of the Prophet Muhammad. Therefore, ijtihad carried out by friends, especially in matters of muamalah as long as the purpose of the law can be known, then legal development can be carried out through qiyas to answer contemporary problems that did not exist at the time of Rasulullah SAW.

4. Conclusion

From the description above the researcher concludes the following:

1. That marriage services at the Religious Affairs Office (KUA) during the PPKM period can be said to be in accordance with Circular Letter Number: P-001/DJ.III/Hk.007/07/2021 concerning Technical Instructions for Marriage Services at the District Religious Affairs Office (KUA) Emergency Community Activity Restrictions (PPKM) Period. However, the existence of marriage requirements that must be complied with by the bride and groom has an impact on legal disobedience committed by some people, especially the prospective bride and groom. The lack of socialization of the circular letter makes people not aware of the importance of maintaining their own health and those around them in the midst of the spread of the virus Covid-19 at that time. So that in

terms of postponing this marriage, many prospective brides and grooms do sirri marriages caused by several factors, namely; economic factors, factors pregnant out of wedlock,

2. Implementation of Maqashid Syariah in Technical Marriage Services at Religious Affairs Offices throughout the City of Probolinggo The Implementation Period for Restricting Community Activities (PPKM) is to add insight for all Indonesian people, especially in Probolinggo City that the implementation of Maqashid Syariah is very beneficial for life, especially in technical marriage services in KUA during the Emergency PPKM period, emphasized that Circular Letter Number: P-001/DJ.III/Hk.007/07/2021 concerning Marriage Services at KUA Emergency PPKM Period was in accordance with Maqashid Syariah both in terms of application and benefits, indicating that Maqashid Syariah is a symbol of sharia that must be followed because it has many benefits for all of us, and make it easier to find general and specific laws, especially the benefits contained in the Circular issued by the Ministry of Religion regarding Marriage Services at KUA during PPKM.

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