

## Contestation between Fiqh and Culture in Indonesia: The *Maqāṣid al-Sharī'ah* Paradigm in Dangers of Forced Marriage against Women

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**Abstract:** This article addresses the contentious issues between Islamic Jurisprudence (*fiqh*) and cultural practices related to forced marriage. Motivated by the widespread prevalence of forced marriage in society, often perpetuated with religious arguments, the research aims to provide insights into the meaning of the term "*ijbar*" in *fiqh* discourse. While *fiqh* interprets "*ijbar*" as a custodian's right to coerce their daughter, the article highlights the specific term "*ikrah*" for coercion in Islamic law. Utilizing a qualitative method, the study involves document analysis through an in-depth examination of *fiqh* literature. Data sources include classical and contemporary jurisprudence literature, information on forced marriages in Indonesia, and religious fatwas from the Indonesian Women's Ulama Congress (KUPI). The article argues that forced marriage contradicts the *maqāṣid al-sharī'ah*, evidenced by spiritual and religious decline, domestic violence, restricted access to education, adverse reproductive effects, and limited economic resources.

**Keywords:** contestation; *fiqh* and culture; forced marriage; *maqāṣid al-sharī'ah*

**Abstrak:** Artikel ini membahas isu-isu yang diperdebatkan antara Hukum Islam (*fiqh*) dan praktik-praktik budaya yang berkaitan dengan pernikahan paksa. Dimotivasi oleh prevalensi kawin paksa yang meluas di masyarakat, yang sering kali dilanggengkan dengan argumen agama, penelitian ini bertujuan untuk memberikan wawasan tentang makna istilah "*ijbar*" dalam wacana *fiqh*. Sementara *fiqh* mengartikan "*ijbar*" sebagai hak wali untuk memaksa anak perempuan mereka, artikel ini menyoroti istilah khusus "*ikrah*" untuk pemaksaan dalam hukum Islam. Dengan menggunakan metode kualitatif, penelitian ini melibatkan analisis dokumen melalui telaah mendalam terhadap literatur *fiqh*. Sumber data termasuk literatur *fiqh* klasik dan kontemporer, informasi tentang pernikahan paksa di Indonesia, dan fatwa-fatwa keagamaan dari Kongres Ulama Perempuan Indonesia (KUPI). Artikel ini berargumen bahwa kawin paksa bertentangan dengan *maqāṣid al-sharī'ah*, yang dibuktikan dengan adanya kemerosotan spiritual dan agama, kekerasan dalam rumah tangga, terbatasnya akses pendidikan, dampak reproduksi yang merugikan, dan keterbatasan sumber daya ekonomi.

**Kata Kunci:** kontestasi; fikih dan budaya; pemaksaan perkawinan; *maqāṣid al-sharī'ah*

## A. Introduction

Forced marriage brings about various consequences. Apart from having an impact on oneself, forced marriages also have an effect on interpersonal relationships between parents and children as well as customs.<sup>1</sup> Apart from causing conflict and tyranny, the burden on women is multiplied when the victim becomes sick due to menstruation, fatigue (*kurhan*), and multiple burdens (*wahnan' alā wahnin*) due to pregnancy, childbirth,<sup>2</sup> parturition, breastfeeding, and others. The physical impacts of forced marriage are significant. Reproductive function may be disrupted due to, for example, abortion or forced sexual intercourse, which in this context includes rape, bleeding, uterine cancer, and even vaginal infections. Forced marriage not only has physical impacts but also biological ones.<sup>3</sup>

According to the National Commission on Violence against Women, forced marriages increased, along with the increase in child marriage by 300 percent. They also mentioned that the majority of victims are women and girls.<sup>4</sup> Between 2018-2022, there were 213 cases of problematic marriages due to forced marriages. From this data, 119 cases were decided for divorce by 80 Religious Courts in Indonesia, 211 cases were processed at the court of first instance, 1 case at the appellate level, and 1 case at the cassation level.<sup>5</sup>

Forced marriage has many unfavorable impacts (*mafsadat*) and dangers (*maḍarat*) that are detrimental to women, making it difficult to form a *sakinah* and *maṣlahah* family. The impacts are ruinous and systemic in women's lives. Socially, the impacts include; trauma, depression, negative stigma, divorce,

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<sup>1</sup> Ismali Marzuki and A. Malthuf Siroj, "Pemaksaan Perkawinan dalam Konteks Kajian Hak Asasi Manusia dan Undang-Undang Tindak Pidana Kekerasan Seksual," *Reusam Jurnal Ilmu Hukum* 10, no. 2 (2022): 216, <https://doi.org/10.29103/reusam.v10i2.10444>.

<sup>2</sup> Nur Rofiah, *Nalar Kritis Muslimah (Refleksi atas Keperempuanan, Kemanusiaan, dan Keislaman)* (Yogyakarta: Afkaruna, 2020), 3-5.

<sup>3</sup> Deby Santri Wuri, "Pemaksaan Perkawinan sebagai Faktor Terjadinya Kekerasan Seksual dalam Rumah Tangga Ditinjau dari Perspektif Hukum Pidana Indonesia," *Jurnal Ilmu Hukum Kerta Wicara*, 2020, 4-5.

<sup>4</sup> Fathiyah Wardah, "KUPI: Wajib Hukumnya Melindungi Perempuan dari Kawin Paksa," *voaindonesia*, March 8, 2023, <https://www.voaindonesia.com/a/kupi-wajib-hukumnya-melindungi-perempuan-dari-kawin-paksa/6994073.html>.

<sup>5</sup> Direktori Putusan, "Putusan Mahkamah Agung Putus Tahun 2022," *Mahkamahagung.go.id*, 2022, <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/ma>.

family conflict, infidelity, ostracism if they refuse marriage, and can even have fatal consequences such as suicide.<sup>6</sup>

Forced marriage also has negative effects on reproductive function, especially when sexual violence in marriage (the victim is conscious or made unconscious by the perpetrator), unwanted pregnancy, and unsafe abortion are involved. Falsification of documents for children born in unregistered marriages, rejection and hatred of children born from forced marriages by their mothers, as well as a decrease in the spirituality and religiosity of the victims, are also common in forced marriages.<sup>7</sup>

Economically, forced marriages that occur among the poor are also prone to lead to economic neglect. Family's fragile economic foundation also triggers conflicts that can lead to divorce. It is corroborated by the testimony of a young mother who was a victim of forced marriage who suffered domestic violence, was forced to become pregnant (if she didn't want to get pregnant, she had to give up her husband for polygamy), and economic neglect by her husband, resulted in her filing for divorce. When she filed for divorce against her husband, her family disowned her because she was considered disobedient, so she attempted suicide three times and was admitted to a mental hospital due to a mental disorder.<sup>8</sup>

Apart from the cultural side, understanding of *fiqh* literature is still very limited. So far, the meaning of *ijbar* is still understood as coercion from a custodian to someone under their care.<sup>9</sup> In fact, if traced in *al-mausū'ah al*

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<sup>6</sup> Agus Mahfudin and Siti Musyarrafah, "Dampak Kawin Paksa terhadap Keharmonisan Keluarga," *Jurnal Hukum Keluarga Islam* 4, no. 1 (2019): 27.

<sup>7</sup> Iklila Muzayyanah, "Kuasa Konsep Ijbar terhadap Perempuan: Studi atas Pengalaman Kawin Paksa di Keluarga Ndalem Pesantren Jawa Timur" ([Master thesis]. Universitas Indonesia, 2007). Other data was submitted by a female pesantren administrator in Makassar regarding the dangers of forced marriage from an educational perspective. In 2005, 100 female students were forced to drop out of the Islamic boarding school due to forced marriages. They stopped going to school because they felt ashamed that at an early age they had been married off, so they gave up hope. Especially if the girl immediately became pregnant, gave birth and breastfed. The fact is that 90% of the female students are divorced with a relatively short marriage age (about 1.5 years).

<sup>8</sup> Junnita Fanny Naenggolan, Ramlan Ramlan, and Rahayu R. Harahap, "Pemaksanaan Perkawinan Berkedok Tradisi Budaya: Bagaimana Implementasi CEDAW terhadap Hukum Nasional dalam Melindungi Hak-Hak Perempuan dalam Perkawinan?," *Journal of International Law* 3, no. 1 (2022): 55–82.

<sup>9</sup> 'Abd al-Rahman bin Muḥammad Iwaḥ al-Jāziri, *al-Fiqh 'Alā al-Madhāhib al-Arba'Ah IV* (Beirut: al-Dār al-'Alamiyyah li al-Tashri' wa al-Tawzi', 2003), 35.

*fiqhiyyah*, the meaning of *ijbar* is very broad.<sup>10</sup> In addition to physical, psychological, and *fiqh* substance problems, forced marriages also lead to methodological problems, in this case, *maqāṣid al-sharī'ah*. Up until today, *maqāṣid al-sharī'ah* is often positioned as an effort to safeguard the understanding so that someone does not deviate from the meaning of *Shāri'* (sharia maker). However, if so, in the case of forced marriage, *maqāṣid al-sharī'ah* cannot answer the problems in it. It is because the examples presented by the scholars so far have only revolved around matters of worship; they do not try to develop *maqāṣid al-sharī'ah* so that it can be understood more comprehensively.<sup>11</sup>

Forced marriage is a long-standing, centuries-old phenomenon whose prevalence does not seem to be decreasing anytime soon. Forced marriage in Indonesia is an iceberg phenomenon that is very concerning and has a serious and dangerous impact (*ḍarar*) on women, such as physical, psychological, economic, social, and other impacts. In some parts of Indonesia, there are still many traditions that lead to forced marriages, such as *kawin tangkap* in Nusa Tenggara Timur, *perjodohan anak* in Madura,<sup>12</sup> *tabaruk* marriage in Situbondo and Bondowoso,<sup>13</sup> *nikah sirit* among the indigenous people of Lampung Pepadun,<sup>14</sup> the *purse* tradition in Lombok, and the *pattongko siri* tradition in Gowa.<sup>15</sup>

From the cases above, the author is interested in discussing the new *maqāṣid al-sharī'ah* paradigm of forced marriage, which is still complicated. It is said to be complicated because forced marriages are intertwined with long-

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<sup>10</sup> Wahbah al-Zuhaili, *Mausū'ah al-Fiqh al-Islāmi wa al-Qaḍāyā al-Mu'āshirah* (Beirut: Dār al-Fikr, 2003), 124.

<sup>11</sup> Imam Nakha'i, "Kawin Paksa," in *Halaqah Metodologi Fatwa KUPI* (Surabaya: LBMNU, 2022), 4.

<sup>12</sup> Ita Sapitri, "Praktik Kawin Paksa pada Masyarakat Bugis Bone Akibat Adanya Hak Ijbar Orang Tua Perspektif Hukum Islam (Studi Dusun Atakka Kec. Palakka)" (Master thesis]. Institut Agama Islam Negeri Bone, 2021), 7.

<sup>13</sup> Muzayyanah, "Kuasa Konsep Ijbar terhadap Perempuan: Studi atas Pengalaman Kawin Paksa di Keluarga Ndalem Pesantren Jawa Timur," 27.

<sup>14</sup> Nancy Dela Oktora, "Tradisi Sirit Masyarakat Lampung Dalam Perspektif Hukum Keluarga Islam," *Istinbath: Jurnal Hukum* 14, no. 1 (2017): 110–30, <https://doi.org/10.32332/istinbath.v14i1.741>.

<sup>15</sup> Tim Perumus Musyawarah Keagamaan KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2* (Jakarta: KUPI, 2023), 120.

standing societal traditions in which perpetrators of forced marriages abuse power relations. The perpetrators are role models or community leaders with strong power and authority. Forced marriage is supported by law enforcers who are supposed to protect society, while *maqāṣid al-sharī'ah* still refuses to move from its initial position as interpreted by the scholars. Furthermore, religious interpretations used as justifications for the practice of forced marriages, such as custodians' *ijbar* rights of daughters, which still require academic clarification, emphasizes the importance of understanding in detail the new paradigm of *maqāṣid al-sharī'ah* in terms of the dangers of forced marriages against women.

On forced marriage, there is much research, eventhought, though there are empty spaces that need to be filled. Virginia Caputo argues that forced marriage is related to a person's learning received as a child; there is a correlation between feminism and the learning received as a child, according to them, behavior as an adult reflects social and local behavior. Caputo also reveals that in forced marriages, children are positioned as victims. Still, in her article, Caputo forgets to explain the relationship between education and the local traditions, because if seen from the community's experience, it is not tradition or education. Still, the law that regulates the age limit for marriage is the main factor in the occurrence of forced marriages because in Indonesia, limiting the age of marriage is part of a political issue; with the drafting of the Marriage Law,<sup>16</sup> Morevore, people are asking for marriage dispensations for the classic reason that parents are worried about having sexual relations before marriage, more than that.<sup>17</sup>

Ralph Grillo stated that the tradition of forced marriage has deep roots in Asia and is widely practiced by noble families such as kingdoms or Islamic boarding schools. However, Grillo's statement is still limited to discussing tradition and culture, while Ouattara explains more about forced marriage and deprivation of human rights.<sup>18</sup> There are several social implications in cases of

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<sup>16</sup> Susan Blackburn and Sharon Bessell, "Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia," *Indonesia* 63, no. 3-4 (1997): 107, <https://doi.org/10.2307/3351513>.

<sup>17</sup> Ralph Grillo, *Marriages, Arranged and Forced: The UK Debate, Gender, Generations and the Family in International Migration*, ed. Albert Kraler et al. (Amsterdam: Amsterdam University Press, 2018), 77-98.

<sup>18</sup> Mariam Ouattara, Purna Sen, and Marilyn Thomson, "Forced Marriage, Forced Sex: The Perils of Childhood for Girls," *Gender and Development* 6, no. 3 (1998): 27-33.

forced marriage, health, marriage where only one party agrees, and marital rape. What is interesting is that Ouattara describes the practice of forced marriage as the same as perpetuating slavery.

Therefore, this article will complement the shortcomings of previous research by examining religious texts that have been used to legitimize the ability to force marriage. This article describes how *maqāṣid al-sharī'ah* protects women from the dangers of forced marriage.

Furthermore, this article will clarify the meaning of *ijbar* which is widely understood as the custodian's coercive right to his daughter. However, the traditional leaders, parents, religious leaders, and the government only understand the concept of *ijbar* in part, so that women's human rights are lost in making their choices. To answer this problem, this article will classify several questions: how has *ijbar* been interpreted in *fiqh*? How does *maqāṣid al-sharī'ah* identify to forced marriage? and how does *maqāṣid al-sharī'ah* provides substantive meaning to the *ijbar*?

## B. Method

To obtain complete data, this article uses qualitative research methods. This research uses a library research method to search the literature by determining the topic of writing (*ijbar*). The data was collected by selecting themes, (*ijbar* and *maqāṣid al-sharī'ah*). The determination of literature based on year includes literature by *Salaf* scholars (scholars' opus before 350 H) and by *Khalaf* scholars (scholars' opus after 350 H). The strategy for collecting data was carried out by tracking literature from 35 books and 20 *journals*, classifying data on forced marriages in Indonesia from the supreme court decision in 2018 to 2022 and the religious fatwa of the Indonesian Women's Ulama Congress (Kongres Ulama Perempuan Indonesia - KUPI) regarding the dangers of forced marriage in 2019. KUPI identified the practice of forced marriage in three provinces including eastern, central, and western Indonesia. The analysis in this article is by tracing the meaning of the word *ijbar* in several *fiqh* literature, then determining keywords (*ijbar*, forced marriage, *maqāṣid al-sharī'ah*) and selecting several literatures as references including Shāfi'i school of jurisprudence literature, *qawā'id al-fiqhiyyah* (fiqh legal maxime) and the work of Wahbah al-Zuḥailī as a representation of fiqh works by contemporary scholars.

Sources of documents were taken from old and contemporary Islamic jurisprudence, articles in reputational journals that discuss the age of marriage, women's human rights, and *maqāṣid al-sharī'ah*.

Data analysis techniques are carried out by collecting library data, reading and taking notes, and managing research materials that specifically discuss forced marriage. From the data shown, Custom-based Forced Marriages in Indonesia are still widely believed, and the types of these forced marriages vary, among others, coerced marriages from parents, forced marriages from children to parents and forced marriages from custom to the community. The reasons for continuing the practice of forced marriages also vary as it is not only for material reasons, such as very expensive marriage costs, but also for other reasons, such as kinship and wish for better offspring.

Data from the Supreme Court Decision for 2018-2022 show that there were 213 cases of problematic marriages due to forced marriages. Of this number, 119 cases were decided in divorce by the Religious Courts. Meanwhile, the National Commission on Violence against Women (*Komnas Perempuan*) notes that there was a 300 percent increase in cases of forced marriage in line with the increase in cases of child marriage.<sup>19</sup> The Indonesia Women's Ulama Congress (KUPI) emphasizes that the data from the two institutions were not actual as many cases of forced marriage were not reported to the relevant institutions.<sup>20</sup>

Cases of forced marriage in Indonesia are increasingly complicated to deal with because it is strengthened by several factors, namely culture, interpretation, religion, and state regulations providing opportunities for forced marriage to legitimize. Even though Islam prohibits forced marriage according to the al-Qur'an arguments and the hadith of the Prophet Muhammad.<sup>21</sup>

Table 1 shows that six provinces in Indonesia still practice forced marriage. Even though, in practice, some forced marriages are registered and some are not registered, both of them have a negative impact on women,

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<sup>19</sup> Wardah, "KUPI: Wajib Hukumnya Melindungi Perempuan dari Kawin Paksa."

<sup>20</sup> Arifah Millati Agustina, "Assessing Women Ulama's Perspectives on Gender Contestation and Law Establishment in Indonesia," *Jurnal Ijil: Indonesian Journal of Law And Islamic Law* 4, no. 1 (2022): 2-7.

<sup>21</sup> Agustina.

because, through coercion, women’s rights as subjects are taken away. The whole practice of forced marriage is basically aimed at the good of women, but in reality, forced marriage has more negative impacts than positive impacts, such as *tabarruk* marriage in East Java, the choice of a prospective husband from someone who is respected seems to contain good but from this arranged marriage system many women experience trauma, stress and unwanted pregnancy.<sup>22</sup> Apart from *tabarruk* marriages, forced *kabihu* marriages in Sumba also show the same thing, even though the purpose of these marriages is to create honor in the family; in this case, women are again victims who suffer more harm, especially in terms of mental health.

Table 1  
Data of Custom-based Forced Marriage

Reason for Marriage	Province	Description
Married for reputation	Sumba, East Nusa Tenggara	<i>Kabihu</i> marriage (matchmaking); Of 21 custom matchmaking cases, 15 cases are unrecorded. <sup>23</sup>
Married to bring a closer kinship	Bone	Parents are worried if their children are abused by other people. <sup>24</sup>
Kidnapping/elopement women before marriage as a form of love from men	Lampung	<i>Sirit</i> marriages are elopement by force against women or women are kidnapped for marriages. <sup>25</sup>
Married to continue the lineage	East Java	<i>Tabarruk</i> marriages are marriages in the family tradition of the Islamic boarding school (pesantren) founders. <sup>26</sup>

<sup>22</sup> Khatidja Chantler, “Recognition of and Intervention in Forced Marriage as a Form of Violence and Abuse,” *Trauma, Violence, & Abuse* 13, no. 3 (2012): 176–83, <https://doi.org/10.1177/1524838012448121>.

<sup>23</sup> Rambu Hada Indah, “Perjodohan Adat: Dampak dan Implikasi Hukum UU No. 16 Tahun 2019 Tentang Perkawinan di Indonesia,” *al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 4, no. 2 (2022): 105–12, <https://doi.org/10.37680/almanhaj.v4i1.1577>.

<sup>24</sup> Marnawati Marnawati, Darmawati Darmawati, and Asrul Muslim, “Praktik Kawin Paksa di Desa Ulaweng Riaja Kecamatan Amali Kabupaten Bone,” *Jurnal Sosio Religius* 5, no. 2 (2020): 1–10, <https://doi.org/10.24252/sosioreligius.v5i2.23971>.

<sup>25</sup> Nancy Dela Oktora, “Tradisi Sirit Masyarakat Lampung dalam Perspektif Hukum Keluarga Islam,” *Istinbath: Jurnal Hukum* 14, no. 1 (2017): 110–30, <https://doi.org/10.32332/istinbath.v14i1.741>.

<sup>26</sup> Muzayyanah, “Kuasa Konsep Ijbar terhadap Perempuan: Studi atas Pengalaman Kawin Paksa di Kelurga Ndalem Pesantren Jawa Timur.”



Married to avoid child marriage and <i>sirri</i> marriage	Sasak, Lombok	<i>Merariq</i> marriages are marriages where a man has to kidnap or elope a woman (whom he wants to be married to) before performing the wedding rituals. <sup>27</sup>
Married to avoid expensive marriage costs	South Sulawesi	<i>Perkawinan lari bersama</i> and <i>Perkawinan bawa lari</i> , are types of forced marriages from children to their parents. <i>Perkawinan lari bersama</i> and <i>Perkawinan bawa lari</i> , are carried out to avoid expensive marriage costs (dowry money) or burdensome traditional wedding ceremonies—and to avoid relatives who do not agree with the marriage. These marriages can be identified with elopement. <sup>28</sup>

## Results

### Error in Understanding *Ijbar*

In *fiqh*, coercion is called *ikrah*, which is an act of urging others to do something against their will.<sup>29</sup> *Ikrah* is also interpreted as an act of coercing someone by abusing power relations.<sup>30</sup> Forced marriage is also considered a manipulative act because it places a person in an intimidated condition.<sup>31</sup> The coerced party is a person whose power or authority has been weakened so they cannot evade. From some of these definitions, forced marriage against women is an act of forcing a woman to marry or someone's action against another person who is under their power to enter into an unwanted marriage. Coercion is carried out in various ways to evoke the victim's obedience to submit, accompanied by threats that result in both psychological and physical disturbances to women.

<sup>27</sup> Ahmad Syaerozi, "Revitalisasi Adat Kawin Lari (Merariq) Suku Sasak sebagai Upaya Pencegahan Pernikahan Anak dan Sirri: Sebuah Pemikiran," *Harmoni* 18, no. 2 (December 31, 2019): 128–45, <https://doi.org/10.32488/harmoni.v18i2.334>.

<sup>28</sup> Padlan Zamzimi, "Perkawinan Lari Bersama dan Perkawinan Bawa Lari pada Masyarakat Adat sebagai Suatu Bentuk Pelanggaran Adat," *Jurnal Lex Specialis* 1, no. 12 (2010): 108.

<sup>29</sup> Ahmad ibn 'Alī ibn Ḥajar al-'Asqalānī, *Fatḥ al-Bārī bi Sharḥi Ṣaḥīḥ al-Bukhārī* (Riyāḍ: Maktabah al-Mulḳ, 2001).

<sup>30</sup> Aḥmad al-Sharbaṣī, *Yas'alūnaka fi al-Dīn wa al-Hayāt* (Beirut: Dār al-Jil, 2008), 31.

<sup>31</sup> Ministry of Waqf and Religious Affairs of Kuwait, *al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah* (Kuwait: Ministry of Waqf and Religious Affairs of Kuwait, 1983).

In *fiqh* discourse, the term *ijbar* is often interpreted as a coercion right by a custodian to their daughter, even though *ikrah* specifically means coercion. *Ijbar* linguistically is a derivation of the word *ajbara-yujbiru* which comes from the verb form *jabara*, which means *aṣṣlaḥa* and *aḥsana*. Thus, the meaning of *ijbar* terminologically cannot be separated from its base meaning. That said, *ijbar*, in *fiqh* terminology, means the responsibility of parents to choose a partner for their daughter, who cannot make a choice for herself. In the context of custodianship, Wahbah al-Zuhaili defines a custodian as more than *ṣāḥib al-sulṭah wa alqudrah* (a person who has power), namely *ṣāḥib al-maḥabbah wa al-nuṣrah* (a person who provides care and protection).<sup>32</sup> Taking into account the benefit of women in custodianship, forced marriages are not a reflection of giving care and protection, but the coercion of the perpetrator's will in the name of love.

Forced marriage, in general, might bring about negative impact (*mafsadat*) and dangers (*maḍarat*) to women. In some cases, the impact can be manifold. Victims of forced marriages may be traumatized, depressed, receive negative stigma from society, become victims of divorce, family ostracism, infidelity, and worse, suicide. Forced marriage can also affect reproductive health, such as unwanted pregnancy, marital rape, and abortion. Coercion in sexual intercourse can cause vaginal bleeding, irritation, and infection, resulting in prolonged trauma. Carrying out the reproductive function with the desired partner is already painful for women, let alone with an undesired partner; in this case, the impact is twofold (physical and psychological).

Letting women experience the bad effects and dangers of coercion is contrary to the Qur'an, hadith, and the principles of Islamic law. Forced marriage in women contradicts the purpose of marriage as set forth in the Qur'an Surah al-Rūm: 21<sup>33</sup> because these actions do not glorify fellow creatures as explained in the Qur'an al-Isrā', 70.<sup>34</sup> In principle, marriage must be carried out with full awareness and willingness (*tarāḍin*) because men and women are complete subjects in life. Allah forbids coercion against someone that results in bad effects.<sup>35</sup> Therefore, utmost readiness and willingness are required in

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<sup>32</sup> al-Zuhaili, *Mausū'ah al-Fiqh al-Islāmi wa al-Qaḍāyā al-Mu'āshirah*, 24.

<sup>33</sup> QS. al-Rūm, 21

<sup>34</sup> QS. al-Isrā', 70

<sup>35</sup> QS. al-Nūr, 33

marriage.<sup>36</sup> Allah also commands a person to treat women well in marriage.<sup>37</sup> In the Qur'an surah al-Nūr 33, Allah also strictly forbids someone who forces other people to commit *mafsadat*, such as forcing women to marry.<sup>38</sup>

Forced marriage against women also contradicts the spirit of hadith that grants women with rights to decide their partners.<sup>39</sup> Rasulullah explained the strictness of the *sharī'ah* by requiring a dialogue process and placing women as decision-makers in determining partners.<sup>40</sup> Women also have rights over their body, thus, the Prophet emphasizes the importance of consent from women before marrying, whether girls and widows.<sup>41</sup> Not protecting women from the dangers of forced marriage is contrary to the five objectives of the sharia (*maqāṣid al-sharī'ah*),<sup>42</sup> namely: protecting the religion (*hifẓ al-dīn*). Forced marriage and its negative consequences contradicts the principle of protecting the religion because it can result in reduced faith in God. A person who is coerced will be more likely to blame divine destiny for injustice towards them; protecting wealth (*hifẓ al-māl*).

Forced marriage often leads to women being unable to access economic sources and vulnerable to economic neglect; Protecting the mind (*hifẓ al-'aql*). In this case, women, especially underage children, are likely to suffer one of the consequences of forced marriage, namely dropping out of school; protecting soul (*hifẓ al-nafs*). In this case, women in forced marriages are vulnerable to domestic violence because after marriage women will go through a long-term reproductive process. Unwanted pregnancy has significant physical and psychological effects; protecting lineage (*hifẓ al-nasl*). Forcing a marriage on women might lead to reproduction-related problems, such as marital rape, child intercourse, unwanted births, reproductive health disorders, mental health disorders in the mother, and fetal underdevelopment.

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<sup>36</sup> QS. al-Nisā', 232

<sup>37</sup> QS. al-Nisā', 19

<sup>38</sup> QS. al-Nūr, 33

<sup>39</sup> al-'Asqalānī, *Fatḥ al-Bārī bi Sharḥi Ṣaḥīḥ al-Bukhārī*, 177.

<sup>40</sup> al-Qaṣṭalānī, *Irshād al-Sārī li Sharḥ Ṣaḥīḥ al-Bukhārī* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1996), 195.

<sup>41</sup> al-Qaṣṭalānī, 178.

<sup>42</sup> Arifah Millati Agustina, "Gender Construction in the Perspective of Living Fiqh in Indonesia," *Justicia Islamica Jurnal Kajian Hukum dan Sosial* 18, no. 2 (2021): 203.

From this explanation, *maqāsid al-sharī'ah* can be interpreted with a new paradigm. The implementation of *ḥifẓ al-dīn* is to allow women to marry someone who is beneficial for them. The implementation of *ḥifẓ al-māl* is to give opportunities to women to be more productive and have economic independence. The examples of *ḥifẓ al-'aql* include respect women's ideas and thoughts for their future in a way that is not intimidating or restraining. In *ḥifẓ al-nasl*, women have the rights to choose the lineage, status and quality of the potential partner. For the implementation of *ḥifẓ al-nafs*, women have the rights to protect themselves from the forced marriage that might affect them negatively, physically and psychologically.<sup>43</sup>

The implementation of *maqāsid al-sharī'ah* above is in line with the *fiqh* principles of *la dharara wala dhirara* (not doing harm and repaying harm with another harm),<sup>44</sup> because it can minimize the negative effects of forced marriages. Furthermore, the dangers of forced marriage are also corroborated by the rule of *dar 'al-mafāsīd muqaddamun 'alā jalb al-maṣāliḥ* (preventing damage is more important than taking benefit), prioritizing preventing forced marriages rather than marrying women to unwanted partners<sup>45</sup> and the rule of *al-ḍararu yudfa'u bi-qadr al-imbkān* (harm should be prevented as much as possible) that strongly support action to minimize the negative impact on women in forced marriages.<sup>46</sup>

As stipulated in law, culture is also very complex in society's. Because culture is the highest value that is highly respected and guarded, culture will even have the force of law to be guarded and preserved.<sup>47</sup> In this context, the

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<sup>43</sup> The fatwa of the Congress of Indonesian Women's Ulama on 24-26 November 2022 in Jepara resulted, the law protecting women from the dangers of forced marriage is mandatory as stipulated in the Qur'an surah al-Nisa' verse 19 which orders to treat women well, the basic another is the Hadith of the Prophet SAW which also prohibits someone from committing injustice to women, and including a form of injustice is to force marriage to women. The fatwa of Indonesian women's Ulama also explains that women are full subjects of life and personally have bodily rights. Tim Perumus Musyawarah Keagamaan KUPI, *Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2*, 120.

<sup>44</sup> Jalāluddīn Abdurrahmān al-Suyūṭī, *al-Ashbāh wa'l-Nazāir* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998).

<sup>45</sup> Muḥammad Muṣṭafā al-Zuhailī, *al-Qawā'id al-Fiqhiyyah wa Tatbīqātuhā Fī al-Madhāhib al-Arba'ah* (Beirut: Dār al-Rashīd, 2000).

<sup>46</sup> al-Zuhailī.

<sup>47</sup> Akhmad Arif Junaidi, "Kongres Ulama Perempuan Indonesia (KUPI) and Mubādalah Approach in Interpreting the Gender Biased-Qur'anic Verses," *Sawwa: Jurnal Studi Gender* 18, no. 1 (2023): 1–24, <https://doi.org/10.21580/sa.v18i1.17269>.

contestation between *fiqh* as a product of Islamic law and culture is difficult to find a common ground. Contemporary jurisprudence, which prohibits forced marriage, is contrary to the practice of forced marriage, which has mushroomed in society. As in the previous explanation regarding the meaning of *ijbar*, namely the custodian's love and responsibility for the child under his care, Islamic law strengthens the position of the custodian as the party who has responsibility, not the party who coerces and eliminates women's human rights. Changing culture is not easy, but at least someone must have an understanding or perspective that Islam does not support forced marriage.

The contestation between culture and jurisprudence in forced marriage is more influenced by power relations. Traditional leaders to residents, parents to children, or colleagues who belong to the elite class to proletarian groups. This power of power arises, among other things, from religious doctrine which is only read in fragments, including interpreting the *ijbar* with a very patriarchal meaning, that women are governed,<sup>48</sup> not regulated, positioning children as objects that can be controlled, whose fate is determined without being given choices. a person who has the authority to coerce, has the driving force to coerce someone who is under his control.

### ***Maqāṣid al-Sharī'ah: From Protection to Development***

*Maqāṣid al-sharī'ah* is an alternative method of law discovery.<sup>49</sup> The aim of understanding *maqāṣid al-sharī'ah* is to identify the scale of priorities in various issues and maintain the values contained in the texts so that they are in accordance with the aims and objectives of the sharia makers (*shāri'*).<sup>50</sup> Islamic legal theorists regard *maqāṣid al-sharī'ah* an important tool to be mastered by every mujtahid, because the main goal of *maqāṣid al-sharī'ah* is to create benefit and avoid harm, or to benefit and reject harm.<sup>51</sup>

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<sup>48</sup> M. Thahir and Ismail Nasution, "Analysis of the Legal Status of Forced Marriage (Ijbar) by Wali Mujbir in Marriage from the Perspective of Islamic Law," *Riwayat: Educational Journal of History and Humanities* 6, no. 3 (2023): 1390–99, <https://doi.org/https://doi.org/10.24815/jr.v6i3.33897>.

<sup>49</sup> Ibrāhīm ibn Mūsā al-Lakhmi al-Gharnaṭi Abū Ishāq al-Shāṭibi, *al-Muwāfaqāt Fi Uṣūl al-Sharī'ah* (Beirut: Dār al-Kutub al-Ilmiyyah, 2004).

<sup>50</sup> Ahmad Syafi'i Sulaiman Jamrozi et al., "Maqāṣid al-Sharīa in the Study of Hadith and Its Implication for the Renewal of Islamic Law: Study on Jasser Auda's Thought," *Justicia Islamica* 19, no. 1 (2022): 74–93, <https://doi.org/10.21154/justicia.v19i1.3269>.

<sup>51</sup> Muḥammad Sa'id bin Aḥmad bin Mas'ūd al-Ayyubi, *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'Alaqaṭuhā bi al-'Adillah al-Shar'iyyah* (Riyād: Dār al-Hijrah, 1998), 27.

Meanwhile, in relation to *fiqh*, if *maqāsid al-sharī'ah* focuses on the methodology of law discovery, *fiqh* focuses on the actions of a person which ultimately gives birth to Islamic law. Basically, *fiqh* uses revelation as a source to obtain its esoteric values. Al-Qur'an is used as a proposition that is explained and detailed by al-Sunnah, and substantively *fiqh* must still interact with realities, new cases, and different experiences of each individual, and *fiqh* must stay in touch with culture.<sup>52</sup> In the formation of Islamic law, culture is one of the sources which is usually referred to as '*urf*'.<sup>53</sup>

*Fiqh* study is overarching. The area of discussion penetrates into the personal and social realms. For the product of *fiqh* to benefit the people, it must be oriented theocentrically and anthropocentrically.<sup>54</sup> Theocentric *fiqh* study will only result in religion becoming harder to be accepted among society, because it is too sophisticated, difficult to understand, and inclusive in making a contribution to the social order. On the contrary, anthropocentric *fiqh* study produces beneficial legal products that align with God's will.<sup>55</sup> *Fiqh* should be grounded, empowering and liberating humankind from the shackles of exclusivism, fundamentalism to radicalism. When *fiqh* is understood solely as a set of rules favoring God,<sup>56</sup> a legal product cannot manifest its benefits. God sent messengers with treatises aimed at the benefit of humankind.<sup>57</sup>

Human problems are ever-changing in complexity and even appear to be too overwhelming for the legal norms of the Qur'an and al-Sunnah. Qaradhawi interprets this expression in the context of *Tatanahā al-nuṣūṣ walā tatanahā al-*

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<sup>52</sup> Nidhal Guessoum, *Islam's Quantum Question: Reconciling Muslim Tradition and Modern Science* (London: I.B. Tauris, 2011), xix–xx.

<sup>53</sup> Arifah Millati Agustina, "Between Culture and the Sacredness of Fiqh: The Role of Lebe in Child Marriage Practices in Brebes, Indonesia," *JIL: Journal of Islamic Law* 3, no. 2 (2022): 212–31, <https://doi.org/10.24260/jil.v3i2.858>.

<sup>54</sup> Ahmad Badri Abdullah et al., "Postmodernism Approach in Islamic Jurisprudence (Fiqh)," *Middle East Journal of Scientific Research* 13, no. 1 (2013): 33–40, <https://doi.org/10.5829/idosi.mejsr.2013.13.1.1756>.

<sup>55</sup> This Anthropocentric-minded term by Waell. B. Hallaq is translated by the term Religious Liberalism, in which law is not only concerned with God's message which contains divine values, but also contains humanist values. Wael B. Hallaq, *A History of Islamic Legal Theories, An Introduction to the Sunni Ushul al-Fiqh* (Cambridge: Cambridge University Press, 2007), 231.

<sup>56</sup> M. Abed al-Jabiri, *Fahm al-Qur'an al-Hakim: al-Tafsir al-Wadith Hasb Tartib al-Nuzul* (Beirut: Markaz Dirasat al-Wihdah al-'Arabiyyah, 2008), 12.

<sup>57</sup> see Ahmad Imam Mawardi, *Fiqh Minoritas (Fiqh al-Aqalliyat dan Evolusi Maqashid al-Syari'ah dari Konsep Ke Pendekatan)* (Yogyakarta: LKIS, 2010).

*waqā'i* (revelations are no longer revealed, while events/legal needs continue to develop), propelling *mujtahid* (scholars/legal experts) to carry out *ijtihad* for legal reform and formulate a complete understanding of *fiqh*.<sup>58</sup>

The collaboration of several keywords above gives birth to a new paradigm important in studying *fiqh* discourse. First is the principle of “permissibility” (*al-ibāḥah al-aṣliyah/original permissibility*), where the legal status of *mubāḥ* is the original law of everything. This principle conveys the message that all *mukallaf* actions other than ritual worship carry *mubāḥ* status, unless there are instructions stating otherwise.<sup>59</sup>

However, in its implementation, the principle is closely related to the second value in the axiological domain, or commonly known as al-Shathibi or “impact analysis” (*i'tibar al-ma'al*), namely positive impact (*al-maṣlaḥah*) and negative impact (*al-mafṣadat*) or human actions.<sup>60</sup> The logic is that if an action is positive, that very action acts as a “means” (*wasīlah/dhari'ah*) that must be realized so that the positive impact can be realized. This logic commonly known as *fath al-dhari'ah* is manifested in the popular *fiqh* rule, *mā lā yatimm al-wājib illā bihi fahuwa wājib*, which means that a supporting tool has obligatory status if it affects human actions that are legally obligatory.

Meanwhile, if the resulting impact is negative, the human action must be prevented to avoid the negative impact that arises. This logic is known as *sadd al-dhari'ah*, which broadly means the same as legal “preventive” measures, namely preventing human actions with permissible status (*mubāḥ*) if they have a strong potential to bring about negative impacts (*mafsadah*).<sup>61</sup> However, according to Jasser Auda, if the purpose of Islamic law is only to maintain, then the law will not develop.<sup>62</sup> Therefore, Auda proposes a change in the *maqāṣid*

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<sup>58</sup> Yūsuf al-Qardāwī, *Fiqh al-Awlawiyat Dirāsah Jadīdah fi Zaw' al-Qur'an wa al-Sunnah* (Kairo: Maktabah Wahbah, 2005), 7.

<sup>59</sup> Musfir Bin 'Ali bin Muhammad al-Qathani, *Manhaj al-Istinbath al-Ahkam al-Nawazil al-Fiqhiyah al-Mu'ashirah Dirasah Ta'shiliyat Tathbiqiyat* (Jeddah: Dar al-Andalus al-Khadhra' li al-Nasr wa al-Tawzi', 2003), 17.

<sup>60</sup> al-shāṭibī, *al-Muwāfaqāt fi Uṣūl al-Sharī'ah*, 104.

<sup>61</sup> Yūsuf 'Abd al-Raḥmān al-Furt, *al-Taṭbīqāt al-Mu'āshirah li Sadd al-Dharī'ah* (Cairo: Dār al-Fikr, 2003), 11–12.

<sup>62</sup> Dayu Aqraminas, “Kontribusi Jasser Auda dalam Kajian al-Qur'an: Interpretasi Berbasis Sistem,” *Ushuluna: Jurnal Ilmu Ushuluddin* 4, no. 2 (2018): 126–130.

*al-sharī'ah* paradigm from its original role of maintaining to developing and taking human rights into account, to respond to new problems.<sup>63</sup>

In line with this, M. Amin Abdullah explains that the measure of the truth of both law and human action in general, which is associated with the concept of good (*taḥsīn*) and bad (*taqbiḥ*),<sup>64</sup> no longer needs to be debated.<sup>65</sup> The most important thing at this time is addressing the impact and consequences of the opinion of a person or group, be it socially, politically, economically or culturally, in accordance with local values and line with the mission of religion.<sup>66</sup> In addition, Islamic law must rest on the foundation of Islamic ethics, which rests on the universal messages of Islamic sharia (*maqāṣid al-sharī'ah*).<sup>67</sup>

Of course, the dynamics of *fiqh* cannot be separated from the discourse of Islamic legal philosophy that strives to produce beneficial Islamic law. In the study of classical Islamic legal philosophy,<sup>68</sup> there are universal messages manifested in five fundamental pillars (*al-ḍarūriyyāt al-khams*),<sup>69</sup> namely 1) religion (*al-dīn*), 2) soul (*al-nafs*), 3) intellect (*al-'aql*), 4) lineage (*al-nasl*), and 5) wealth (*al-māl*), and popularly known as the five pillars (*uṣūl al-khamsah*) of Islamic law.<sup>70</sup> According to Auda, *maqāṣid al-sharī'ah* coined by classical ulamas

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<sup>63</sup> Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon: The International Institute of Islamic Thought, 2010), 44–45.

<sup>64</sup> Arifah Millati Agustina, "Hak-Hak Perempuan dalam Pengarusutamaan Ratifikasi CEDAW dan Maqāṣid Asy-Syariah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2016): 201–10.

<sup>65</sup> Tahsin comes from the origin of the word *ḥassana yuhassinu taḥsīnan* in Muhammad bin Husain. A Hanabilah scholar defines *al-taḥsīn* with *mā lahu fī'lihu*: everything that is in harmony with the goals of the doer. On the other hand, *al-qubḥ*, namely *mā laisa lahu fī'lihu*, namely things that are contrary to the intentions of the doer. Abu Luwis Ma'lūf al-Yasū'i, *al-Munīd fī al-Lughāh wa al-Adab wa al-'Ulūm* (Beirut: Maktabah Wahbah, 2002), 134.

<sup>66</sup> M. Amin Abdullah, *Islamic Studies di Perguruan Tinggi Perguruan Integratif-Interkonektif* (Yogyakarta: Pustaka Pelajar, 2006), 258.

<sup>67</sup> Abū Ya'la Muhammad bin al-Ḥusain al-Farā', *al-Uddah fī Uṣūl al-Fiqh* (Makkah: al-Mamlakah al-'Arabīyyah al-Su'udīyyah, 1993), 167.

<sup>68</sup> Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*, 44–45.

<sup>69</sup> Figures who contributed greatly to the discourse of classical Islamic legal philosophy, including: Imam al-Haramayn al-Juwayni (1028-1085), Abu Hamid al-Ghazali (1058-1111), Fakhr al-Dīn al-Rāzī (1149-1209), Sayf al-Dīn al-Amīdī (1156-1233), 'Izz al-Dīn ibn 'Abd al-Salam (1182-1261), Syihab al-Dīn al-Qarāfī (1228-1285), Najm al-Dīn al-Thufī (1276-1316), Ibn Taymiyyah (1263-1328), Ibn al-Qayyim al-Jawziyyah (1292-1350), and Abu Ishaq al-Syatibi (1328-1388). Read: 'Abd al-'Azīz ibn 'Abd al-Rahmān ibn 'Alī ibn Rabī'ah, *Ilm Maqāṣid al-Sharī'ah* (Riyāḍ: Maktabah al-Malik Fahd al-Waṭaniyyah, 2002).

<sup>70</sup> al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah* I: 38; II: 10, 179 and 299; III: 47; IV: 27.



is individualistic and incomprehensive.<sup>71</sup> Therefore, it is necessary to reformulate *maqāṣid al-sharī'ah*.<sup>72</sup>

The five pillars above must be understood broadly beyond the purpose of maintaining with the help of a new paradigm.<sup>73</sup> *Fiqh* must also be weaned from its ideological overtones. If fiqh and Islam are still understood as ideologies, then both of them will forever be detached from their human values and become battlefields that subvert justice, reason and morality. *Fiqh* must personify itself in historical locality and temporal movement. The existence of *fiqh* in particular, and Islam in general, actually has an authoritative basis.<sup>74</sup>

*Maqāṣid al-sharī'ah* is an attempt by *shāri'* (lawmakers) to show ontology in a case, therefore the following is an example of the implementation of *maqāṣid al-sharī'ah* in several cases: 1) The context of dangers of forced marriage against women is the most relevant with the core tenet of *ḥifẓ al-nafs* in protecting women's physical and psychological health from threats and intimidation against them. This statement is supported by al-Hariri affirming that benefit must be free from coercion (*waliyy al-amri ma'mūrun bi-mura'ah al-maṣlahah, walā maṣlahata fi ḥaml al-naṣ 'ala fi'l al-makrūh*).<sup>75</sup> 2) Protecting women from the dangers of forced marriage is mandatory, because any harm in any form must be avoided and the meaning of the concept of *mujbīr* custodian in *fiqh* needs to be expanded. *Wāli mujbīr*, referred to as a custodian who holds coercive rights to someone under their care, must be reinterpreted, because in *fiqh* study, the term coercion often uses the term *ikrah*.<sup>76</sup>

Al-Qur'an Surah al-Nisā' verse 19 also hints at treating women well. Furthermore, the hadith of the Prophet Muhammad also prohibits someone

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<sup>71</sup> Zaprul Khan Zaprul Khan, *Maqāṣid al-Shariah in the Contemporary Islamic Legal Discourse: Perspective of Jasser Auda*, *Walisongo: Jurnal Penelitian Sosial Keagamaan*, vol. 26, 2018, <https://doi.org/10.21580/ws.26.2.3231>.

<sup>72</sup> Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*, 46.

<sup>73</sup> Junaidi, "Kongres Ulama Perempuan Indonesia (KUPI) and Mubādalah Approach in Interpreting the Gender Biased-Qur'anic Verses."

<sup>74</sup> Ziauddin Sardar, "Rethinking Islam," in *Islam, Postmodernism, and Other Future: A Ziauddin Sardar Reader*, ed. Sohail Inayatullah and Gail Boxwell (London: Pluto Press, 2003), 30, <https://doi.org/10.2307/j.ctt18fs3rt>.

<sup>75</sup> Ibrāhīm Muḥammad Maḥmūd al-Hariri, *al-Madkhal Ilā al-Qawā'id al-Fiqhiyyah al-Kulliyah* (Amman: Dar 'Ammar, 1998), 170.

<sup>76</sup> al-Zuhailī, *Mausū'ah al-Fiqh al-Islāmi wa al-Qaḍāyā al-Mu'āshirah*, 124.

from being unjust to women, including forcing marriage on them.<sup>77</sup> In Nur Rofiah's words, women are complete subjects in life and personally have bodily rights that only women can understand.<sup>78</sup> Some ulamas also affirm the obligation to protect women from the dangers of forced marriages because, in a marriage contract, there should be no coercion.<sup>79</sup>

Since forced marriage is not only imposed by parents onto their children but also vehemently supported by custom, some parties need to be actively involved in protecting women, such as community leaders, religious leaders, traditional leaders, communities, and parents. They must join forces to protect women from the dangers of forced marriage. Traditional leaders or parties with authority must participate in minimizing forced marriages on women. This statement is in line with the substance of the Qur'an Surah al-Nūr verse 31, which prohibits all parties from doing damage (*mafsadat*).

## Conclusions

In the context of the dangers of forced marriage against women, which is still a tradition in several regions and supported by a partial understanding of the concept of *ijbar*, where it is understood that a custodian has the right to force a marriage on a woman in their care (the meaning of *ijbar* is not only about custody but also affection for the person being supported), there must be an alignment between rules and tradition in Indonesia. Traditions believing that forced marriages are permissible do not have to be followed if the negative impact on women outweighs the positive.

The contestation between Islamic *fiqh* which does not support forced marriage with several cultural practices which still practice coercion against women in Indonesia, shows that there is no synergy between religion and culture. However, this situation is influenced by society's understanding which is also in the name of religion. The majority of Shafi'iyah *fiqh* literature which defines *ijbar* as the right of coercion by a guardian to a daughter must be re-understood, because forced marriage is not in line with *maqāṣid al-sharī'ah*.

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<sup>77</sup> al-'Asqalānī, *Fatḥ al-Bārī bi Sharḥi Ṣaḥīḥ al-Bukhārī*, 75.

<sup>78</sup> al-'Asqalānī, 77.

<sup>79</sup> al-Jāziri, *al-Fiqh 'Alā al-Madhāhib al-Arba'ah IV*, 27.

Viewing *maqāṣid al-sharī'ah* is important, especially to avoid the stagnation of thinking in the discovery of Islamic law. In this case, the big idea of Jasser Auda, namely the migration of the *maqāṣid al-sharī'ah* paradigm from prevention to development and human rights, can be beneficial for the development of Islamic law. *Maqāṣid al-sharī'ah* so far is very individualistic and incomprehensive. The original concept that *maqāṣid al-sharī'ah* revolves around the *al-aḥkām al-khamsah* (five pillars of Islamic law) is not necessarily wrong. Still, the ever-evolving contemporary problems necessitate these five pillars to evolve to adapt.[s]

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