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Analysis of Maqasid al-Syari'ah (Primary Maslahat) on the Practice of Mute Marriage Contracts in Songing Village, South Sinjai District, Sinjai Regency

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Abstract:

This study aims to examine the Analysis of Maqasid al-Syari'ah (Primary Maslahat) on the Practice of Mute Marriage Contracts in Songing Village, South Sinjai District, Sinjai Regency. This is a qualitative study. The research design is field research. Data collection methods in this study include observation, interviews, and documentation. The results of this study indicate that the practice of mute marriage contracts in Songing Village, South Sinjai District, Sinjai Regency, is inconsistent with the Marriage Law of 1974, Article 2, Paragraphs 1 and 2, as well as KHI Article 4, which is considered inconsistent with one of the primary objectives of Maqasid al-Syari'ah, namely maslahat primer, hifz al-Din. This is due to the contradiction between the marriage contract practices and Islamic law, specifically the consensus of Islamic scholars, which is the primary cause of the violation of the Marriage Law of 1974, Article 2, Paragraph 1, and KHI Article 4. Furthermore, hifz al-Nasl. This is because the marriage is not recognised due to its violation of the Marriage Law of 1974, Article 2, Paragraph 1, and therefore the marriage is not registered as mentioned in the subsequent paragraph. This has implications for the status of children in the marriage under the applicable law in Indonesia. The subsequent effect is chaos in the realm of hifz al-Mal/maintenance/guardianship of property. This reality causes serious issues regarding the inheritance status of children and spouses, as well as joint property. Regarding the legal status of the marriage under Sharia law. This is exempted if the marriage officiant was unaware of the consensus of the scholars.

Keywords: Maqasid al-Syari'ah; Mute Marriage Contracts; Songing Village

INTRODUCTION

Every person with a disability has the same rights and obligations and must be protected. Persons with disabilities have the right to marry as a form of actualising religious values. Marriage is a religious practice that does not distinguish

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between people who are considered normal and those with disabilities.(Firdaus & Ch, 2022)

Unfortunately, the technical implementation of marriage signals for persons with disabilities is not clearly defined. Many persons with disabilities, especially those who are speech impaired, still experience confusion in the implementation of marriage signals. Marriages involving persons with disabilities are ultimately conducted based on everyday sign language and the communication habits of the bride and groom and their families (Al-Habies et al., 2024; De Veirman et al., 2016; Karwiyah et al., 2023; Kohrman, 1999)

Some KUA officials in the sub-district had to prepare suddenly to discuss sign language methods for marriage ceremonies, and some Penghulu (religious officials) had already decided on the signs to be used. There were no standard sign language or guidelines regulating what signs could be used and what could be considered acceptable in determining the validity of a marriage ceremony (Addlakha, 2007; Karwiyah et al., 2023; Mutswanga, 2017).

The emergence of different methods of signalling used by local officials or village heads when dealing with such cases. This issue should be regulated clearly, even though it is rarely encountered, so that there are relevant provisions to provide legal certainty, not only in relation to marriage in general. This is also part of the government's duty to provide equal rights and services to all citizens.(Karwiyah et al., 2023)

One of the marriage practices by deaf couples is in Songing Village, South Sinjai District, Sinjai Regency. The head of the South Sinjai Religious Affairs Office must use sign language during the wedding ceremony (Tohir, 2022). However, the issue that subsequently arose among the community was whether the marriage between the deaf couple was in accordance with regulations and whether the officiant and the groom understood each other's sign language.

With the majority of the population in Indonesia being Muslim, Islamic law is considered as part of Living Law, which is closely related to the percentage of the Muslim population. Maqasid al-Syari'ah was chosen as the perspective because of its role in applying Islamic law to appropriate legal objects(Amin, 2022; Sainul, 2018; Tahir & Hamid, 2024). Maslahat as the substance of Maqāṣid al- Syarī'ah(Kurniawan et al., 2025; Shidiq, 2009; Tarantang et al., 2023). . In this case, maslahat primer is used as a benchmark, as the foremost substance of maqasid al-syariah (Shidiq, 2009). The

maqashid referred to here comprise three main elements: dharuriyat, hajiyyat, and tahsinat. This classification is based on the level of need and scale of priority. The order of ranking will become apparent when the benefits of each rank compete with one another. Conceptually, daruriyat ranks first, followed by hajiyyat and finally tahsinat (Bakry, 2019).

Based on this, the researcher considers it necessary to conduct further studies in a research entitled "Analysis of Maqasid al-Syari'ah (Primary Maslahat) on the Practice of Mute Marriage Contracts in SONGING Village, South Sinjai District, Sinjai Regency".

The novelty of this study can be seen through a literature review, namely the results of previous relevant studies. Dwi Hidayatul Firdaus, et al. highlight marriage among people with disabilities: the perspective of Indonesian marriage law and fiqh (Firdaus & Ch, 2022). Kholilurrahman focus more on the implementation of ijab qobul (marriage contract) for people with disabilities (speech impaired) using sign language from the perspective of the Shafi'i school of jurisprudence in Banmaleng Village, Gili Genting District, Sumenep Regency. (Kholilurrahman, 2023) Meanwhile, Karwiyah et al. focus more on the validity of marriage contracts involving grooms with disabilities in relation to marriage laws and Islamic law. (Karwiyah et al., 2023) Anwar Hafidzi and Sisca Whulansari highlighted the use of writing in marriage contracts for the speech-impaired from the perspective of the Banjar community and Wahbah Az-Zuhaili. (Hafidzi & Whulansari, 2024) Thus, the four form a complementary framework on the practice of non-verbal marriage contracts, from upstream (policy) to downstream (technical implementation).

The fundamental difference between the four previous studies and this study is that this study specifically focuses on the Analysis of Maqasid al-Syari'ah (Primary Maslahat) on the Practice of Mute Marriage Contracts in SONGING Village, South Sinjai District, Sinjai Regency. Thus, based on this novel approach, the findings of this study can contribute to problem-solving in policy implementation regarding the practice of mute marriage contracts.

RESEARCH METHOD

This is a qualitative study. The research design is field research. Data collection methods in this study include observation, interviews, and documentation. The informants in this study consist of one family member of the female mute bride, the priest who married the mute couple, and a religious counsellor from the South Sinjai Subdistrict Office.


RESULTS AND DISCUSSION

The conduct of a deaf-mute marriage ceremony is a rare occurrence, particularly the deaf-mute marriage ceremony in Songing Village, Sinjai Selatan Sub-District, Sinjai Regency. The marriage ceremony for the deaf couple in Songing Village, Sinjai Selatan Sub-district, Sinjai Regency, which took place on 7 January 2022, proceeded smoothly using sign language and was assisted by the local marriage officiant. Despite initial challenges, as this was the first time such a ceremony had been conducted at the Religious Affairs Office (KUA) of Sinjai Selatan Sub-district in Sinjai Regency. According to an interview with one of the bride's family members, the marriage ceremony proceeded smoothly, as all witnesses present declared the ceremony valid during the proceedings. This was because both bride and groom were deemed to understand what the officiant communicated and also understood the sign language demonstrated by the officiant. There were no differences in the conduct of the sign language marriage ceremony held in Songing Village, Sinjai Selatan Sub-district, Sinjai Regency. All aspects of the wedding were the same as in a typical wedding, including the dowry, witnesses, marriage guardian, and officiant. The only difference was during the exchange of vows, which was conducted using sign language instead of spoken language. (Hasil Wawancara Dengan Bapak Mempelai Wanita, Jufri, Songing, 2 Oktober 2023, n.d.)

The marriage ceremony was witnessed by the village priest, Songing Ramli A, and a number of other community leaders. The ceremony was conducted using sign language as the only means of communication. (Hasil Wawancara Dengan Penghulu Mempelai Tunawicara, Aminullah, Sinjai Selatan, 5 September 2023., n.d.)

Based on the above description, the option of sign language as the only choice in the conduct of a marriage ceremony for deaf people is considered incorrect or invalid. This is evidenced by documentary evidence in the form of a letter of consent from the bride and groom or model N4 signed by both parties. The document states that the man's occupation is a student. Philosophically, it is unreasonable for a student/university student to engage in activities as a deaf person without the ability to write.

According to the statement of one of the bride's family members (the bride's father), sign language was understood by the priest, the witnesses present, and both bride and groom during the marriage ceremony. It was also mentioned that there

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were preparations made prior to the marriage ceremony by the officiant and the bride and groom. The family was satisfied with the services provided by the Religious Affairs Office (KUA) as the agency responsible for conducting marriage services, including the marriage ceremony for the deaf. The conduct of the deaf wedding ceremony does not incur any special fees, except for a fee of 600,000.00 (Six Hundred Thousand Rupiah) as stipulated by the Religious Affairs Office (KUA) of Sinjai Selatan Sub-District, Sinjai District. (Hasil Wawancara Dengan Bapak Mempelai Wanita, Jufri, Songing, 2 Oktober 2023, n.d.)

Based on the above explanation, it can be understood that the use of sign language in a marriage contract for deaf individuals in Songing Village, South Sinjai District, Sinjai Regency is not an issue, provided that the sign language is understood, especially if the groom is deaf and unable to write. Therefore, in this context, the use of sign language in a marriage contract for deaf individuals does not violate the agreement/consensus of the ulama. However, if the deaf groom uses sign language but is also able to write, in this context the use of sign language is not permitted according to the agreement/consensus of the ulama. In that context, the marriage contract for the deaf couple in Songing Village, Sinjai Selatan Sub-district, Sinjai District, was conducted. Therefore, it can be understood that this practice of the marriage contract violates or contradicts the agreement/consensus of the scholars. From the perspective of the concept of maqasid al-Syariah, the practice of the marriage contract for the deaf conducted by the marriage officiant of the Religious Affairs Office (KUA) of Sinjai Selatan is considered inconsistent with one of the primary objectives of maqasid al-Syariah, namely maslahat primer, which is hifz al-Din or the preservation of religion, as the marriage contract practice violates the consensus of the ulama. Unless the relevant marriage officiant was unaware of the consensus of the ulama.

According to information or interviews with local marriage officiants at the time of the silent marriage ceremony, obstacles or difficulties were encountered by the officiants in carrying out their marriage service duties, namely the silent marriage ceremony. In detail, it was mentioned that the difficulties or obstacles were experienced by the marriage officiant in conducting the marriage ceremony for the deaf, as they had never practised this before. (Hasil Wawancara Dengan Penghulu Mempelai Tunawicara, Aminullah, Sinjai Selatan, 5 September 2023., n.d.) So it is understandable that the relevant village head would be confused in carrying out his duties.

The solution to this problem is to consult or communicate with senior or more experienced religious leaders. Therefore, the Religious Affairs Office (KUA) of South Sinjai District, Sinjai Regency, found a solution and issued the following procedure:

- A. The Religious Affairs Office (KUA) of Sinjai Selatan Sub-district, Sinjai Regency, provides marriage services to the public in accordance with existing procedures that are straightforward, easy to understand, and can be implemented effectively.
- B. The religious officials from the Religious Affairs Office (KUA) of Sinjai Selatan Sub-district, Sinjai Regency, assess the situation and conditions of both parties.
- C. The marriage officiant from the Religious Affairs Office (KUA) of Sinjai Selatan Sub-district, Sinjai Regency, will determine whether the couple is in love or consenting and whether the parents of both parties approve of the marriage.
- D. The religious official from the Religious Affairs Office (KUA) of Sinjai Selatan Sub-district, Sinjai Regency, provides knowledge about the marriage ceremony.
- E. The religious official from the Religious Affairs Office (KUA) of Sinjai Selatan Sub-district, Sinjai Regency, provides knowledge related to family life, including rights and obligations, and other duties of husbands and wives. (Kantor Urusan Agama Kecamatan Sinjai Selatan, n.d.)

Based on the above description, it can be understood that the marriage contract services for the deaf in Songing Village, South Sinjai District, Sinjai Regency, are considered to be in accordance with procedures and not complicated, i.e., easy to understand and can be carried out properly and easily. However, this assumption is not entirely correct or accurate. This is because the marriage officiant himself admitted to being confused in carrying out his duties, thereby unable to provide proper services during the marriage ceremony for the deaf couple at that time. It was further stated that the marriage officiant from the Religious Affairs Office (KUA) of Sinjai Selatan Sub-district, Sinjai Regency, provided knowledge about the procedures for marriage, family matters, rights, and obligations of husbands and wives. This statement is not entirely accurate or appropriate, as the marriage officiant himself experienced confusion in performing his duties, rendering him unable to carry out his responsibilities effectively, including educating the prospective spouses adequately. From the perspective of the concept of *maqasid al-*

Syariah, the absence of a special programme for marriage counselling for persons with disabilities, including those who are deaf and mute, which was intended for the religious official of the KUA in Sinjai Selatan, has implications for the lack of education for persons with disabilities, including those who are deaf and mute, who will undergo the marriage process at the Religious Affairs Office (KUA), particularly in Sinjai Selatan. This reality is considered inconsistent with one of the core principles of maqasid al-Syariah, namely secondary public interest. The absence of secondary public interest may hinder the smoothness and ease of services for individuals with disabilities, including those with speech impairments, in marriage-related services at the KUA in Southern Sinjai.

After all preliminary procedures and preparations have been completed, the two deaf-mute bride and groom shall notify the PPN KUA of South Sinjai District, with the assistance of local KUA staff, at least ten working days before the marriage ceremony is conducted by the prospective bride and groom, bringing the necessary documents such as:

The bride and groom inform the PPN KUA Sinjai Selatan of their intention by bringing the following requirements:

- a. Letter of introduction from the village (N1)
- b. Marriage application form (N2)
- c. Letter of consent from both parties (N4)
- d. Letter of information about the parents (N5)
- e. Letter of permission from the employer if the bride or groom is a member of the Indonesian National Armed Forces (TNI) or the Indonesian National Police (POLRI).
- f. Extract from the divorce registration book or divorce certificate if the bride or groom is a widow or widower.
- g. Death certificate of the spouse (N6) issued by the village head or neighbourhood head if the bride or groom is a widow or widower due to death.
- h. A letter of dispensation if the prospective bride or groom is a minor as stipulated in Law No. 1 of 1974, Article 7, Paragraph 2, as amended by Law No. 16 of 2019, which states that the minimum marriage age for women is the same as the minimum marriage age for men, which is 19 (nineteen) years after the amendment of Article 7 of Law No. 1 of 1974, which states, "Marriage is only permitted if the male party has reached the age of 19

(nineteen) years and the female party has reached the age of 16 (sixteen) years.

- i. A dispensation letter from the district head if the marriage ceremony is conducted less than ten days after notification at the Religious Affairs Office (KUA).
- j. A certificate of inability to pay for the bride and groom if they are unable to do so.

Next, if the administrative requirements for marriage have been fulfilled, namely: N1, N2, N4, N5 and other administrative requirements such as photocopies of family cards, birth certificates and identity cards, then the South Sinjai Subdistrict Religious Affairs Office (KUA) will marry the bride and groom. (Kantor Urusan Agama Kecamatan Sinjai Selatan, n.d.)

Based on the above description, it can be understood that the administrative procedures for marriage registration for persons with disabilities, including those who are deaf, are not mentioned as a priority group in these services. Furthermore, marriage services for persons with disabilities, including those who are deaf and mute, are not carried out in accordance with the law, including Article 29(1) of Law No. 25 of 2009 on Special Treatment for Persons with Disabilities, including those who are deaf and mute. One concrete example of the inconsistency in marriage services for people with disabilities, including the deaf, is that the Religious Affairs Office (KUA) in South Sinjai has not established a special marriage service centre for the deaf. Furthermore, this is reinforced by the researcher's observations, which indicate that there are no special rooms or facilities for people with disabilities, including the deaf. Another factor reinforcing the inconsistency of the marriage services provided by the Sinjai Selatan Religious Affairs Office (KUA) with the law is the lack of training for marriage officiants in providing marriage services for people with disabilities, including the deaf, and the absence of specific guidelines for marriage services for people with disabilities, including the deaf. From the perspective of the maqasid al-Syariah concept, the absence of special service centres, including rooms, facilities, and special guidelines for marriage services for people with disabilities, including the deaf, is considered inconsistent with one of the secondary objectives of maqasid al-Syariah, namely *maslahat sekunder*. Given this reality, it may be difficult or burdensome for persons with disabilities, including those who are deaf and mute, to participate in the marriage service process, particularly at the Religious Affairs Office (KUA) in Southern Sinjai.

The procedure for conducting a marriage contract for the deaf in Songing Village, South Sinjai District, Sinjai Regency is as follows:

- A. Conducting preliminary training for the groom in performing the *ijab* and *qabul*.
- B. Beginning the *ijab* using normal language with the phrase, 'I marry and wed Risma Binti Jufri, whose guardian has been entrusted to me, with the dowry (*mahar*) that has been mentioned in cash for the sake of Allah.'
- C. Performing the *ijab* using gestures that can be understood by the groom.
- D. A mute groom performs the *qabul* using gestures, the essence of which must correspond to the *sighat qabul*, namely 'I accept to marry Risma Binti Jufri with the dowry mentioned, in cash, for the sake of Allah,' accompanied by a nod of the head and a clap of the hands. (Hasil Wawancara Dengan Penghulu Mempelai Tunawicara, Aminullah, Sinjai Selatan, 5 September 2023., n.d.)

According to the head of the village, training on how to conduct marriages for people who can't speak has never been done before. (Hasil Wawancara Dengan Penghulu Mempelai Tunawicara, Aminullah, Sinjai Selatan, 5 September 2023., n.d.) Meanwhile, according to the extension workers, training on marriage contracts for the deaf had previously been conducted in Makassar. (Hasil Wawancara Dengan Penyuluh Kantor Urusan Agama Kecamatan Sinjai Selatan, Wahyuddin Arifin, 14 September 2023, n.d.)

Based on the above explanation, it can be understood that the use of sign language in a marriage contract for deaf couples in Songing Village, South Sinjai District, Sinjai Regency is not a problem as long as the sign language is understood, if the groom is deaf and unable to write. Therefore, in this context, the use of sign language in a marriage ceremony for the deaf does not violate the agreement/consensus of the *ulama*. The procedure for conducting marriages for deaf individuals carried out by the KUA (Religious Affairs Office) in Sinjai Selatan is considered to violate Islamic law if the deaf groom uses sign language but is capable of writing. In such a context, the use of sign language is not permitted according to the agreement/consensus of the *ulama*. In this context, the marriage contract for the deaf couple in Songing Village, Sinjai Selatan District, Sinjai Regency, was conducted. Therefore, it can be understood that this marriage contract practice violates or contradicts the agreement/consensus of the *ulama*. Given the inconsistency between the practice of marriage contracts for the deaf in Songing


Village, Sinjai Selatan Sub-district, Sinjai Regency, and the consensus of religious scholars, it automatically violates the Marriage Law of 1974, Article 2, Paragraph 1, which states that a marriage is valid if conducted in accordance with the laws of each party's religion and beliefs. Therefore, such marriages should not be registered, as only valid marriages are included in marriage registration, as understood from the Marriage Law of 1974, Article 2, Paragraph 2. Additionally, the inconsistency between the practice of the marriage contract in Songing Village, Sinjai Selatan District, Sinjai Regency, and the consensus or agreement of religious scholars is also considered contrary to Article 4 of the KHI. From the perspective of the concept of maqasid al-Syariah, the inconsistency/non-compliance of the practice of marriage contracts for the deaf in Songing Village, South Sinjai District, Sinjai Regency, with the Marriage Law of 1974, Article 2, Paragraphs 1 and 2. Additionally, Article 4 of the KHI is deemed inconsistent with one of the primary objectives of maqasid al-Syariah, namely *maslahat primer*, *hifz al-Din*. This is due to the contradiction between the marriage contract practices and Islamic law, specifically the consensus of Islamic scholars, which is the primary cause of the violation of the Marriage Law of 1974, Article 2, Paragraph 1, and KHI Article 4. Furthermore, *hifz al-Nasl*. This is because the marriage is not recognised due to its violation of the Marriage Law of 1974, Article 2, Paragraph 1, and therefore the marriage is not registered as mentioned in the subsequent paragraph. This has implications for the status of children in the marriage under the applicable law in Indonesia. The subsequent effect is chaos in the realm of *hifz al-Mal*/maintenance/guardianship of property. This reality causes serious issues regarding the inheritance status of children and spouses, as well as joint property. Regarding the legal status of the marriage under Sharia law. This is exempted if the marriage officiant was unaware of the consensus of the scholars.

CONCLUSION

The inconsistency between the marriage practices of the deaf community in Songing Village, South Sinjai District, Sinjai Regency, and the consensus or agreement of religious scholars automatically violates the 1974 Marriage Law, Article 2, Paragraph 1, which states that a marriage is valid if it is conducted in accordance with the laws of the religion and beliefs of the parties involved. Therefore, such marriages should not be registered, as only valid marriages are included in marriage registration, as understood from the Marriage Law of 1974, Article 2, Paragraph 2. Additionally, the inconsistency between the practice of the

marriage contract in Songing Village, Sinjai Selatan District, Sinjai Regency, and the consensus or agreement of religious scholars is also considered contrary to Article 4 of the KHI. From the perspective of the concept of maqasid al-Syariah, the inconsistency/non-compliance of the practice of marriage contracts for the deaf in Songing Village, South Sinjai District, Sinjai Regency, with the Marriage Law of 1974, Article 2, Paragraphs 1 and 2. Additionally, Article 4 of the KHI is deemed inconsistent with one of the primary objectives of maqasid al-Syariah, namely maslahat primer, hifz al-Din. This is due to the contradiction between the marriage contract practices and Islamic law, specifically the consensus of Islamic scholars, which is the primary cause of the violation of the Marriage Law of 1974, Article 2, Paragraph 1, and KHI Article 4. Furthermore, hifz al-Nasl. This is because the marriage is not recognised due to its violation of the Marriage Law of 1974, Article 2, Paragraph 1, and therefore the marriage is not registered as mentioned in the subsequent paragraph. This has implications for the status of children in the marriage under the applicable law in Indonesia. The subsequent effect is chaos in the realm of hifz al-Mal/maintenance/guardianship of property. This reality causes serious issues regarding the inheritance status of children and spouses, as well as joint property. Regarding the legal status of the marriage under Sharia law. This is exempted if the marriage officiant was unaware of the consensus of the scholars.

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