

Punishment for Prostitution Offenders in the Review of *Maqashid Syariah*

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Abstract: *Prostitution which is prostitution is very dangerous for the maintenance of offspring (hifz al-nasl) and lead to criminal acts of crime under Islamic law. This library research was conducted by studying books and journals that are relevant to the writing of this article. In the Islamic perspective there is no nomenclature implicitly mentioning prostitution. Prostitution is the provision of sexual services by a man or a woman for money or satisfaction. Prostitution or prostitution is defined as adultery. Prostitution is a practice that destroys the foundations of family life, morality, morality, law and religion. In the Qur'an it is explained that the appropriate punishment for adultery muhsan in the form of punishment of stoning and adultery ghairu muhsan was subject to a penalty of 100 lashes. Give punishment to the perpetrators of prostitution to prevent the occurrence of acts of adultery that can damage the sustainability of human life, especially aspects dharuriat, namely maintenance hifz al-nasl. Punishments are given in order to create sharia goals and punishment in Islamic law which includes prevention and guidance can be achieved and creates a deterrent effect for perpetrators, and not to repeat the act.*

Keywords: *Punishment, Prostitutes, Maqashid Sharia*

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Abstrak: Prostitusi merupakan pelacuran yang sangat membahayakan terhadap pemeliharaan keturunan (*hifz al-nasl*) dan menimbulkan tindak pidana kejahatan secara ketentuan Islam. Penelitian kepustakaan ini dilakukan dengan mempelajari buku-buku dan jurnal yang ada relevansinya dengan penulisan artikel ini. Dalam perspektif Islam tidak ditemukan nomenklatur secara implisit menyebut prostitusi. Prostitusi adalah penyediaan layanan seksual yang dilakukan oleh laki-laki atau perempuan untuk mendapatkan uang atau kepuasan. Prostitusi atau pelacuran diartikan dengan zina. Prostitusi merupakan praktek yang merusak sendi kehidupan keluarga, sendi-sendi moral, susila, hukum, dan agama. Dalam Alquran dijelaskan bahwa hukuman yang patut bagi pelaku zina *muhsan* berupa sanksi hukuman rajam dan pelaku zina *ghairu muhsan* dikenakan sanksi hukuman 100 kali cambuk. Memberikan hukuman terhadap pelaku prostitusi untuk mencegah terjadinya perbuatan perzinahan yang dapat merusak keberlangsungan kehidupan manusia, khususnya aspek *dharuriyat*, yaitu *hifz al-nasl*. Hukuman diberikan agar menciptakan tujuan syariah serta pemidanaan dalam Islam yang meliputi pencegahan dan pembinaan dapat tercapai serta menimbulkan efek jera bagi pelaku, dan tidak mengulangi perbuatan tersebut.

Kata Kunci: *Hukuman, Pelaku Prostitusi, Maqashid Syariah*

INTRODUCTION

One of the most common disasters in the modern world today is prostitution. The Islamic view of prostitution has been accepted, not only by Muslims themselves, but also by the wider community of different religions. In addition to being forbidden and a major sin, Islam views the act as a despicable act and has severe sanctions. Islam does not differentiate whether the act of adultery is committed based on mutual consent, coercion, by bachelors or those who are married. It is no different whether there is a lawsuit or not, all are seen as adultery.

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Allah has given a predicate to the act of adultery through the verse of the Qur'an, Surah Al-Isra (17) verse 32 as a heinous and cursed act. Not only that, Allah even forbids committing acts that are close to adultery. In addition, Allah also equates the position of adultery with other major sins and threatens the perpetrators with severe punishment on the Day of Judgment.¹

The problem of prostitution is a complicated problem, there are many things related to it, therefore this problem really needs special attention from society. Prostitution not only affects those who do it, namely the perpetrators and users of its services, but also has an impact on the wider community, prostitution or prostitution even endangers the life of the household that is established to the point of causing criminal acts and so on. Religion as one of the guidelines in life is completely ignored by those involved in this prostitution practice and is truly an act that is prohibited by religion. Prostitution is not only an individual symptom but has become a social symptom of normal sexual deviation and also religion.²

Prostitution in general is the practice of momentary sexual relations, which are more or less done with anyone, for money in return.³ Prostitution through internet sites (online prostitution) is a transaction or sale of sexual services via the internet or social media to get money, and this model is very easy to do because you only need to transact through cyberspace. Prostitution is also a social symptom where women sell themselves by doing sexual acts as a livelihood.⁴

The Islamic legal view on adultery is far different from the concept of conventional law or positive law, because in Islamic law every sexual relationship without marriage ties (which is forbidden) such as prostitution falls into the category of adultery which must be given legal sanctions, whether for

¹Abu Ahmadi, *Dosa Dalam Islam*, (Jakarta: Rineka Cipta, 1996), hal. 70.

²Endang Sulistianingsih, dkk, *Pelacuran di Indonesia*, Jakarta: Pustaka Sinar Harapan, 1997), hal. 3.

³Bagong Suyanto, *Masalah Sosial Anak*, (Jakarta: Kencana Prenada Media Group, 2013), hal. 159.

⁴ Kartini Kartono, *Patologi Sosial*, Jilid 1, (Jakarta: Rajawali Pers, 2009), hal. 214.

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commercial purposes or not, whether carried out by those who are married or not. Prostitutes whose routines are identical to adultery are another form of sexual deviation where sexual relations occur between men and women not based on the bonds of marriage.⁵

The development of the era has made the problems of society increasingly diverse, becoming *rahmatan lil alamin* Islam, always has a solution *maqashid sharia*, one of which is, providing color and contribution that can be a measure for Islamic legal legislation in accordance with the purpose of establishing law in Islam, namely realizing welfare and rejecting harm. *Maqashid sharia* is formulated as the goal of *sharia* and is a science that was born from the study of *Usul Fiqh* to carry out legal *istibath*.⁶ There are five forms of *maqashi sharia* into general principles called *kulliyat al-khamsah*.⁷ Therefore, according to the researcher, it is believed that the incidents that occurred are appropriate and worthy to be made into research problems in order to see the review of *maqashid sharia* regarding the prevention and legal action for perpetrators of prostitution in the review of Islamic criminal law.

METHOD

The type of research used is library research with a juridical-normative approach. The juridical approach is used to examine the provisions of the implementation of the crime of adultery which contain provisions of Islamic review. The normative approach is used to examine the provisions of the implementation of the crime of adultery according to Islamic law, then analyze it using the *maqasid sharia* analysis knife.

⁵ Heni Hendrawati, *Asas-Asas Dan Upaya Mencegah Kemungkaran dalam Hukum Pidana Islam dalam Perspektif Pembaharuan Hukum Pidana Nasional*, hal. 29.

⁶ Zulhamdi Zulhamdi, 'Periodisasi Perkembangan Ushul Fiqh', *At-Tafkir*, 11.2 (2018), pp. 62–77, doi:10.32505/at.v11i2.735.

⁷ Zulhamdi Zulhamdi, 'Tinjauan Hukum Islam Terhadap Perempuan Melahirkan Pada Dokter Kandungan Laki-Laki', *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan*, 4.2 (2017), pp. 74–97, doi:https://doi.org/10.32505/qadha.v4i2.314.

UNDERSTANDING PROSTITUTION

Prostitution comes from the English word "prostitution" which means prostitution. In Arabic, prostitution or prostitution is interpreted as adultery. The word adultery in Arabic is "bai'ul irdhi" which means selling honor. So, prostitution can also be called the sale of honor and people who prostitute can be called sellers of honor. From a legal perspective, it is clear that prostitution or prostitution according to Islamic teachings is forbidden. Haram means it should not be done. If it is still done, then it will receive legal sanctions, both in this world and in the hereafter.⁸

Prostitution is a form of insult to human dignity, especially women. The Qur'an and the Hadith of the Prophet Muhammad SAW, which are the main sources of Islamic law, both have forbidden the act of adultery or prostitution. Prostitution uses one's own body as a means of sexual satisfaction for others by achieving profit, while adultery is sexual intercourse that is carried out on the basis of mutual consent.⁹

The connotation that arises when talking about prostitution is a sexual transaction between women and men, where women act as sex workers and men are the buyers. The above facts are an alibi that women are a substance that is difficult to separate from the practice of prostitution throughout the world.

According to Bonger's opinion as quoted by Kartini Kartono, prostitution is a social phenomenon in which women sell themselves to perform sexual acts as a livelihood. Meanwhile, according to Scholar De Bruine Van Amstel, prostitution is the surrender of women to many men for payment.¹⁰

⁸Dian Andriasari, *Studi Komparatif Tentang Zina Dalam Hukum Indonesia Dan Hukum Turki*, Jurnal Syiar Hukum, (Vol. XIII. No. 3. 2011), hal. 12.

⁹Marzuki Wahid, *Fiqh Indonesia: Kompilasi Hukum Islam dan Counter Legal Draft Kompilasi Hukum Islam dalam Bingkai Politik Hukum Indonesia*, (Bandung: Marja, 2014), hal. 38.

¹⁰Kartini Kartono, *Patologi Sosial*, Jilid 1, (Jakarta: Rajawali Pers, 1997), hal. 183.

The Indonesian Ministry of Social Affairs defines prostitution as any sexual intercourse outside of a legal marriage between a man and a woman which is carried out by one party with the intention of gaining an advantage for themselves or others. Prostitution is a system of livelihood that is not halal, contrary to the 1945 Constitution, religion and the personality of the Indonesian nation.¹¹

Prostitution is a form of sexual deviation by means of venting lust without control with many people (promiscuity) accompanied by exploitation and commercialization of sex. Prostitution is an event of selling oneself by trading one's body, honor, personality to many people to satisfy sexual desire in exchange for payment or getting wages.¹²

Thus, a prostitute is a woman whose job is to sell herself to anyone or many men who need sexual satisfaction with many men outside of marriage, and the woman receives compensation in the form of money from the man who has sex with her with a nominal amount according to the agreement of both parties. While prostitution is selling oneself as a profession or daily livelihood by means of sexual relations.

PROSTITUTION IN ISLAMIC LAW

Islam recognizes the term zina as the most essential substance of prostitution. Indeed, there is no literal explanation regarding prostitution in the types of uqubah (punishment) as an integral part of fiqh jinayah. However, in fact, prostitution is automatically included in the zina crime.

Prostitution or prostitution (zina) is included in the group of jarimah al-maksudah, namely a crime that is deliberate, intended, and planned.¹³ The crime of zina is a form of action that deviates from truth, justice, and the straight path (religion). It is an act prohibited by sharia which is threatened with had or ta'zir punishment. According to the Maliki school of thought, Zina is any sexual intercourse that occurs not in a valid marriage, not in a doubtful

¹¹Sahetapy, JE, *Kapita Selektia Kriminologi*, (Bandung: Alumni, 1997), hal. 165.

¹²Kartini Kartono, *Patologi Sosial...*, hal. 185.

¹³Rahmat Hakim, *Hukum Pidana Islam (Fiqh Jinayah)*, Bandung: Pustaka Setia, 2000), hal. 24.

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marriage, and not in the property of yamin. This opinion was added by Ibn Rushd who stated that zina is inserting a man's genitals into a woman's genitals which is forbidden because of its essence, there is no doubt, and according to its nature it causes lust. Meanwhile, according to the Hanafi school of thought, zina is sexual intercourse between a man and a woman in their qubul, and the woman is not his property and there is no doubt in her ownership. The Hanbali school of thought states that zina is a heinous act both in the qubul and the anus.¹⁴

Regarding the opinions of the imams of the above schools of thought, it can be understood that zina according to sharia is sexual intercourse between a man and a woman outside of marriage intentionally, without doubt either in status or actions, and the perpetrator is a person who has been burdened with criminal responsibility (mukhallaf).

Regarding adultery, the Qur'an firmly explains that this act is forbidden even if it is only approaching it, as stated in the Qur'an, Surah Al-Isra (17) verse 32. Islamic law determines strict punishment for sexual relations that are carried out illegally (haram). Therefore, in Islam, the crime of prostitution or prostitution must be suppressed as much as possible.

Abdul Kadir Audah as quoted by Nurul Irfan concluded that all schools of thought agree that adultery is sexual intercourse that is deliberate by the perpetrator and is forbidden. Regarding the cruelty of this adultery crime,¹⁵ Muhammad al-Khatib asy-Syarbini stated that adultery is included in the most heinous major sins, and according to Husain adz-Dzahabi, adultery is a major sin and there is not even a single religion that allows prostitution.¹⁶ Therefore, the legal sanctions are also very harsh because adultery as a crime threatens honor and lineage, and the act is contrary to the concept of the main objective

¹⁴ Ahmad Wardi Muslich, *Pengantar dan Asas Hukum Pidana Islam: Fikih Jinayah*, (Jakarta: Sinar Grafika, 2006), hal. 211-212.

¹⁵Nurul Irfan, *Gratifikasi & Kriminalitas Seksual dalam Hukum Pidana Islam*, (Jakarta: Amzah, 2014), hal. 59.

¹⁶Syamsuddin adz-Dzahabi, *Kitab al-Kaba'ir*, Jakarta: Syirkah Dina Mutiara Berkah Utama, tt), hal. 42.

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of Islamic law which must be maintained by Muslims or often referred to as Maqashid Syariah.

Abdul Kadir Audah as quoted by Ahmad Wardi Muslich also stated that the general view of adultery expressed in many Islamic literatures is different from the positive legal view that applies in various parts of the world. According to the positive legal view, adultery is a personal matter (individual) not a public matter. Therefore, if adultery is committed on the basis of mutual consent, then it is not considered a criminal act and is not threatened with punishment. All positive laws have almost the same opinion that adultery is only extramarital sex committed by a man and a woman, both or one of whom are married or have a husband. This view is not surprising, because almost all positive laws in the criminal field that apply in various countries generally originate from Western countries such as the Netherlands, England, and France which adhere to free sex and a life of permissiveness.

In Islamic criminal law (jinayah), adultery is divided into two types, namely muhsan adultery and ghairu muhsan adultery. Muhsan adultery is adultery in which the perpetrator is a husband, wife, widower, or widow. This means that the perpetrator is a person who is still married or has been legally married. Meanwhile, ghairu muhsan adultery is an adultery crime in which the perpetrator is still a bachelor or girl. This means that the perpetrator has never been legally married and is not currently in a marriage bond.¹⁷

In line with the opinion above, in other sources it is explained that the punishment for adultery is divided based on a person's status, namely (1) adulterer muhsan, (2) adulterer ghairu muhsan, and (3) adulterer from a person who has the status of slave. A person is said to be a muhsan adulterer if he commits adultery after having halal sexual relations (already married or previously married). According to the majority of scholars, the punishment for committing adultery with Muhsan is stoning. Ghairu muhsan adulterers are people who commit adultery but have never had halal sexual relations before. This adulterer was punished with 100 lashes and exiled from the village for one

¹⁷ Nurul Irfan dan Masyrofah, *Fiqh Jinayah*, (Jakarta: Amzah, 2013), hal. 20.

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year. Meanwhile, the punishment for committing adultery with a slave, if the slave is a woman and has been married (muhsan), the hadd punishment is 50 lashes (Ziba Mir-Hosseini, 2018).

For the two types of adultery crimes above, the provisions of Islamic law impose two different types of uqubah or sanctions. The penalty for the perpetrator of muhsan adultery is stoning, namely the perpetrator is stoned to death. As for the perpetrator of ghairu muhsan adultery, the penalty is 100 (one hundred) lashes. The Hanafi school of thought allows ta'zir sanctions with the death penalty on the basis of the condition that the act is committed repeatedly and will bring benefits to society.¹⁸

In Islamic criminal law, the term prostitution has not been explicitly mentioned. However, in general, the term sexual intercourse or intercourse that occurs in prostitution is equated with the crime of zina.¹⁹ Zina in Islamic criminal law is defined as an intimate relationship or sexual intercourse carried out by two people without any marriage bond. Where in carrying out the act, both of them do it consciously and without any element of doubt. The word zina comes from the Arabic vocabulary, namely zina-yazni-zinan which means committing adultery, prostitution, and forbidden acts, and literally called fahisyah.

There are two types of adultery in Islamic criminal law, from both types of adultery will determine the punishment for the perpetrator. The crime of adultery itself or adultery in Islamic criminal law is categorized as a hudud crime. Where in this case, the form and punishment for this act are already stated in the Qur'an and Hadith. The division of adultery and its punishment can at least be detailed as follows:

Zina ghairu muhsan is an act of adultery committed by a person who is not yet married to another person or has never had intimate relations with a person who is lawful for him. The punishment for this adultery is to be

¹⁸Nurul Irfan, *Gratifikasi & Kriminalitas Seksual...*, hal. 96.

¹⁹Aden Rosadi dan Nashrulloh, "Kritik Hukum Islam Atas Sanksi Pidana Pelaku Prostitusi dalam Peraturan Daerah," *Al-'Adalah*, (Vol. 14. No. 1. 2018), hal. 2.

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whipped 100 (one hundred) times and exiled for one year. Zina muhsan is an act of adultery committed by a person who already married to someone else or have had intimate relations with someone who is lawful for him. The punishment for the perpetrator of muhsan adultery is stoning to death.

Islam views prostitution seriously as a transaction for adultery which has been expressly prohibited and forbidden in Islamic criminal law. When it comes to punishment for PSK or WTS as the main perpetrators of prostitution, Islamic criminal law views that the most appropriate punishment for them is ta'zir punishment. The Hanafi school of thought is of the opinion that it is very possible that there will be a ta'zir sanction in the form of the death penalty for committing an act, on the condition that the act is committed repeatedly and that the imposition of the punishment will bring benefits to society. There is no hudud punishment that is more appropriate to be imposed on a person who commits adultery or sexual activity as a livelihood, except for the death penalty as viewed by the Hanafi, Hambali, Maliki, and Syafi'i schools.²⁰

Meanwhile, according to Nurul Irfan, in addition to stoning, the punishment of flogging can be imposed in order to provide a deterrent effect for perpetrators of ghairu muhsan adultery. However, the ruler or judge is given the authority to determine the number of lashes exceeding the punishment of 100 (one hundred) times according to the effects that arise in society.²¹

These punishments have a legal basis, namely the Qur'an and Hadith. In relation to the legal issue of prostitution or adultery, Allah SWT provides The explanation in the Koran is as follows:

وَلَا تَقْرَبُوا الزَّوْجَ إِنَّهُ كَانَ فَحِشَةً وَسَاءَ سَبِيلًا ﴿٣٢﴾

Meaning: *And do not come near to adultery; surely it is an abomination. And an evil way. (QS Al-Isra' 17: 32)*

²⁰John Kenedi, "Wanita dan Prostitusi Dalam Perspektif Al-Qur'an dan Hadis," *El-Afkar*, Vol. 6.No. 1. 2017), hal. 50.

²¹Juhaya S Praja, *Filsafat Hukum Antar Madzhab-Madzhab Barat dan Islam*, (Bandung: Yayasan Juhaya Setyapradja, 2014), hal. 108.

Furthermore, Allah SWT says in the Qur'an, Surah An-Nur/24 verses 2-3, namely:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُم بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ ﴿٢﴾ الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ ﴿٣﴾

Meaning: "A woman who commits adultery and a man who commits adultery, then beat each of them a hundred times, and let no mercy on either of them prevent you from (practicing) the religion of Allah, if you believe in Allah, and the Hereafter, and let (the execution of) their punishment be witnessed by a group of those who believe. A man who commits adultery does not marry a woman who commits adultery, or a woman who is an idolater; and a woman who commits adultery is not married except to a man who commits adultery or a man who is an idolater, and this is prohibited for believers." (QS. An-Nur: 2-3)

In addition to the provisions of the Qur'an, the Hadith also explains several things regarding the punishment of adulterers, including as narrated from Abu Hurairah and Zaid bin Khald al-Juhani, that there was a man from Bedouin Arabia who met the Messenger of Allah SAW, saying, "O Messenger of Allah, I ask for nothing except that you give me a decision based on the Book of Allah". His friend said "and he understood better than before, Yes, decide the punishment between us with the Book of Allah and allow me to tell the story". The Messenger of Allah said, "Tell me!" He said, "My son became a laborer for this man, then he committed adultery with his wife. Someone told me that he should be stoned so I paid a ransom for him with a hundred sheep and a slave girl. Then I asked the learned people, they told me that my son should be lashed a hundred times and exiled for one year, while this man's wife

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should be stoned". Then the Messenger of Allah said, "By the One in Whose hand is my soul, I will surely give you a decision based on the Book of Allah. Return the slave woman and the sheep to you and your son be lashed a hundred times and exiled for one year. Go, O Anas, meet this man's wife. If she admits it, then stone her" (Narrated by Bukhari and Muslim, and the wording according to Muslim).

It was narrated from Umar bin Khattab, that he gave a sermon, he said: "Indeed Allah sent the Prophet Muhammad SAW, bringing the truth and Allah revealed the Qur'an to him. Among the verses that were revealed was the verse about the law of stoning. We have read it, realized and understood that the Messenger of Allah carried out the law of stoning, as will we after him. I am afraid that if time has passed and the era has changed, people will say that, we do not find the law of stoning in the Book of Allah. So they go astray because they have abandoned the obligations that Allah has revealed. Indeed, the law of stoning is truly in the Book of Allah, which is imposed on those who commit adultery even though they are married, male or female, if there is evidence, or pregnant, or with a confession" (HR. Bukhari Muslim).

The two hadiths above explain the information in the Qur'an regarding the punishment imposed on perpetrators of adultery. Scholars have agreed that even though the Qur'an does not mention stoning, this punishment is still recognized as existing. The sanctions against perpetrators of adultery are so severe, considering the negative impacts caused by the act of adultery, both on oneself, family and society.

Based on the opinions that have been put forward above, it is clear that Islam considers prostitution to be adultery, namely sexual intercourse that is forbidden and there is intention or intention to break the law. Adultery that is carried out periodically and expecting wages from its actions is a form of bad treatment and is prohibited by religion and norms adopted by society, and has a major negative impact on human life.²²

²²Juhaya S Praja, *Filsafat Hukum Antar Madzhab-Madzhab Barat dan Islam*, (Bandung: Yayasan Juhaya Setyapradja, 2014), hal. 108.

Meanwhile, among the negative impacts of prostitution or adultery are: 1) Causing sexually transmitted diseases such as gonorrhea or syphilis, including the transmission of the HIV virus (AIDS); 2) The act of adultery or prostitution makes someone reluctant to get married so that the negative impacts due to someone's reluctance to get married are quite complex, both on a person's mental and physical condition; 3) Harmony in family relationships as husband and wife, one of which is the factor of fulfilling sexual needs through prostitution, the intimacy of the relationship is reduced because one party, namely the husband, has had a relationship with the opposite sex who is not his legal partner; and 4) In any country, especially countries that respect moral values, the community will criticize a woman who becomes a commercial sex worker. Thus, there is no reason whatsoever that can be used as an excuse to legalize adultery as the substance of prostitution in Muslim countries. Whether it is creating special localizations for prostitutes with various medical and sanitation facilities, or making regional regulations that provide loopholes for the implementation of prostitution.

PROSTITUTION CRIME IN THE CONCEPT OF MAQASHID SYARIAH

Islamic law was formed to create welfare for its people. Regarding this, Al-Syatibi stated that the purpose of the existence of a sharia is to realize the welfare of all mankind, both in the world and in the hereafter. The purpose of the formation of Islamic law is then referred to as maqashid sharia which is an answer to questions related to why something is regulated in sharia and what are the benefits and wisdom of the determination.²³

When viewed in terms of terminology, maqashid sharia has the meaning and wisdom desired by Allah in every sharia, both general and specific, to ensure the welfare of his people. Maqashid sharia according to Al-Syatibi's view is divided into two things, namely, qashdu al-Syar'i (God's goal)

²³Faiz Fikril Abror, "Praktik Keberagaman Perempuan Pekerja Seks di Sosrowijayan Kulon Yogyakarta; Tinjauan Maqashid Syari'ah", *FIKRI, Jurnal Kajian Agama, Sosial dan Budaya*, No. 3. 2018, hal. 319.

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and qashdu al-mukallaf (mukallaf's goal). Qashdu al-Syar'i is again divided into four parts, one of which is Qashdu al-Syar'i fi wadl'i al-Syariah which has the meaning of Allah's purpose in establishing a law for the benefit of His servants both in the world and the hereafter. This maqashid consists of three levels, namely dharuriyat, hajiyat and tahsiniyat.²⁴

The focus of this discussion is on the level of dharuriyat, which is something that must exist in order to maintain the benefit of the world and the hereafter. If this is lost, it will cause damage both in the world and the hereafter. Where the level of damage caused is proportional to the level of dharuriyat that is lost. There are five things included in the dharuriyat level, namely: 1) Hifz al-Din (protecting religion), 2) Hifz al-Nafs (protecting the soul), 3) Hifz al-Aql (protecting reason), 4) Hifz al-Nasl (protecting descendants), and 5) Hifz al-Mal (protecting property).²⁵

Hifz al-Nasl as one of the things that Allah aimed at in creating the law on it in the form of the welfare of the continuation of one generation of humans to prevent extinction with efforts that are guided by the goodness of the world and the hereafter.²⁶ Based on the welfare in the form of protecting descendants, many laws were created, which in general can be categorized into two parts, as follows:

First; protecting the existence of Nasl by trying things that can maximize the presence of good and ideal descendants. This then gives rise to the following sharia laws: a) There is a recommendation to marry, choose a good partner, marry a woman who has the potential to give birth to many children, polygamy is permitted with certain conditions, and so on, b) Parents are required to educate their children regarding the main principles of Islam, and c) Recommendation to maintain reproductive health.

²⁴ Nanda Himmatul Ulya, "Perlindungan Hukum terhadap Anak Korban Kekerasan Seksual Perspektif Negara dan Maqashid Syariah," *Jurnal of Islamic Law and Family Studies*, Vol. 4. No.1. 2021), hal. 14–15.

²⁵ Moh Toriquddin, "Teori Maqashid Syariah Perspektif Al-Syatibi", *Journal De Jure*, (Vol. 6. No. 1. 2014), hal. 35.

²⁶ Zulhamdi, 'Tinjauan Hukum Islam Terhadap Perempuan Melahirkan Pada Dokter Kandungan Laki-Laki'.

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Second; Protecting Nasl from damage that will come to it by avoiding things that make offspring bad, exhausted and damaged. Seeing this then gives rise to laws such as: a) There is a prohibition on living without marriage either on the grounds of focusing on worship or others, b) The prohibition of sexual relations or abuse other than those permitted in Islam, such as adultery, sodomy, and so on, c) The prohibition of consuming things that can damage the reproductive organs, and d) The prohibition of abortion of the fetus.²⁷

Prostitution which in Islamic criminal law is equated with adultery is one of the things related to Hifz al-Nasl or protection of offspring, because adultery is something that can have a bad influence on offspring. In addition, the concept of protecting descendants in Hifz Nasl is carried out through a legal marriage in the eyes of religion and law adopted in a country.

The existence of a husband and wife relationship or intercourse without a marriage bond certainly causes damage to the descendants of the child in the relationship, and will have doubts regarding their lineage, because in reality children from relationships outside of marriage do not follow the lineage of their father but their mother. This then has an impact on the status of the child itself in the eyes of the law.

Through a legal marriage both in the eyes of religion and law, it will later make the husband and wife have legal certainty and protection if unwanted cases occur in the future. In addition, children from marriage will also have clarity about the status of their father and mother before the law.²⁸

Based on the punishment or sanctions imposed on perpetrators of adultery in the analysis of Islamic law, that the benefit through the analysis of Maqashid Syariah is not only seen in a technical sense, but in the efforts of dynamics and development of law is seen as something that contains philosophical values from the laws prescribed by Allah SWT to humans. Adultery is an act that can damage the basic aspects of human life and will

²⁷Restu Ashari Putra, dkk, "Konsep Perlindungan Nasab dalam Perspektif Hukum Islam," *Mutawasith: Jurnal Hukum Islam*, (Vol. 4. No. 1. 2021), hal. 34–35.

²⁸Suriati Andayani, *Kekerasan Seksual Terhadap Istri dalam Perspektif Hifdz Al-Nasl (Keturunan)*, (Makasar, Universitas Islam Negeri Alauddin, 2016), hal. 14–15.

damage the objectives of dharuriyyat. This is because the act of adultery can disrupt the maintenance of human survival.

CONCLUSION

Prostitution in the perspective of Islamic legal nomenclature is not mentioned implicitly. Prostitution is the provision of sexual services carried out by men or women to obtain money or satisfaction. Prostitution or prostitution is interpreted as the sale of honor. The regulation and sanctions against perpetrators of prostitution or prostitution in Islamic law have been regulated in the Qur'an, Al-Isra' verse 32, An-Nisa verse 33, and in An-Nur verse 2. The punishment for perpetrators of adultery muhsan according to the majority of scholars is stoning. While ghairu muhsan is punished with 100 lashes and exile for one year.

The punishment for perpetrators of prostitution is a way to prevent acts that can damage the sustainability of human life, especially in the dharuriyyat aspect, namely the maintenance of offspring (hifz al-nasl). The punishment given is expected to be able to create the objectives of sharia, as well as the objectives of criminalization in Islamic law specifically which include prevention and guidance can be achieved and can have a deterrent effect on the perpetrators, so that they do not repeat the act.

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