

## THE USE OF *SADD AL-DHARĪ'AH* IN CONTEMPORARY ISLAMIC FAMILY LAW IN INDONESIA: CONCEPT AND PRACTICE

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### Article history:

Submission date: 7 Dec 2023

Received in revised form: 27 Feb 2024

Acceptance date: 20 March 2024

Available online: 26 April 2024

### Keywords:

Sadd al-Dharī'ah, Islamic Family Law, *usul fiqh*

### Funding:

The Research and Innovative Institute of Universitas Muhammadiyah Yogyakarta

### Competing interest:

The author(s) have declared that no competing interests exist.

### Cite as:

Rachmadhani, F., Mochammad Sahid, M., & Ichsan, M. (2024). The use of *sadd al-dharī'ah* on contemporary Islamic family law in Indonesia: Concept and practice. *Malaysian Journal of Syariah and Law*, 12(1), 206-215.  
<https://doi.org/10.33102/mjssl.vol12no1.505>



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### ABSTRACT

This study analyzes the application of *sadd al-dharī'ah* in the provisions of Islamic family law in the Indonesian Marriage Law No. 1 of 1974 and Compilation of Islamic Law (KHI). *Sadd al-dharī'ah* is a method to establish the prohibition of certain actions due to their potential of incurring an action with greater harm (*mafsadah*). This qualitative library study employs the descriptive analytical method. The Indonesian Marriage Law and KHI are the primary sources, whereas secondary data come from, among others, texts on *maqāṣid al-sharī'ah*, *uṣūl fiqh*, and *fiqh*. Content analysis is used to make inferences by highlighting themes methodically and objectively. The findings show that both the Marriage Law and KHI, which serve as the main references for Religious Court judges and as positive laws for all Muslim Indonesian citizens, have indirectly adopted *sadd al-dharī'ah*. This can be seen in clauses related to current marriage issues, such as restrictions on age of marriage and consent for polygamy.

## Introduction

In any society, the family institution occupies an important position because of its function as a measure of happiness of society. If this function is not properly realized, the family institution and society itself will be at risk of emerging social problems (Amri & Tulab, 2018). Family problems have been endless throughout the history of mankind. There is, of course, no formal education on how to build a family, and so most people learn how to do so through trial and error (Nafis, 2009). The importance of this institution explains why Islam comprehensively regulates family affairs. Numerous Qur'ānic verses and Prophetic traditions provide a range of instructions regarding family matters, starting from the formation of the family institution and rights and obligations of each member to inheritance and guardianship. In fact, family affairs constitute one-fourth of Islamic law (*rub ' al-munākahāt*).

Islamic family law is a collection of opinions of jurists (*fuqahā'*) contained in *fiqh* books. In general, these opinions are based on their reasoning and *ijtihād* to answer the legal concerns of the Muslim community during a particular period. Although these opinions may have satisfied the needs of Muslims during their own lifetime, it may not necessarily be applicable to Muslims living in other time or space contexts (Setiawan, 2014). Current marriage-related issues, such as the requirement to register marriages, marriage age, polygamy conditions, family planning, interfaith marriage, and extrajudicial divorce may not exist in previous Muslim communities. The universality and flexibility of Islamic law enable it to respond to emergent issues based on the primary sources of Qur'ān and Hadith. Islamic legal theory (*uṣūl al-fiqh*) also recognizes supplemental sources of law, for instance *qiyas*, *istihsān*, *maṣlaḥah al-mursalāh*, and *sadd al-dharī'ah* (Ridwan et al., 2021).

*Sadd al-dharī'ah*, as one of the methods for extracting and inferring a ruling (*istinbāt al-ḥukm*) in Islam, is used to establish a prohibition on a permissible activity to prevent the occurrence of an action with greater harm (*mafsadah*). *Sadd al-dharī'ah* is thus based on the principle of benefit (*maṣlaḥah*). In conventional terms, *sadd al-dharī'ah* can be understood as prevention. This method establishes a ruling to prevent a harmful act. It is an effective method to deal with changes in society, considering that the realization of benefit and prevention of harm are the main objectives of Islamic law (Fentiningrum, 2017; Othman, A. Q., Bakar, M., Yaacob, N. A., & Samsuddin, N. A., 2022).

## Literature Review

There has been much research on *sadd al-dharī'ah* within the context of Islamic family law. However, this study has some differences compared to previous studies. Bakry et al., (2022) discuss spirit dolls from the perspective of Islamic law. They employ a socio-normative methodology to examine how *sadd al-dharī'ah* may be applied to this phenomenon. They found that hedonism, dynamism, animism, and poor religious knowledge explain why some members of society have been engrossed with spirit dolls. Islamic law states that spirit dolls are prohibited and should be renounced. The Indonesian Council of Ulema (MUI) office in South Sulawesi likewise outlaws spirit dolls.

Anshor and Muttaqin (2022) investigated religious moderation-based premarital courses and their usefulness to combat extremism. Because family is the smallest organization in a nation, it is essential to cultivate a balanced mindset among its members. The Ministry of Religious Affairs, through this program, aims to prevent harm in the form of extremism. In Islamic legal theory and *fiqh*, this method is known as *sadd al-dharī'ah*. The authors found that premarital courses that emphasize religious moderation can educate future Muslim families on how to be moderate.

Masyhadi (2020) describes some issues surrounding contemporary Islamic family law in Muslim nations. The choice of method is analytical descriptive. The findings contribute a transformation process that can be referred to when designing Islamic family law.

Amin (2020) analyses the application of *sadd al-dharī'ah* in the government's prohibition of wedding receptions (*walīmah al-'arūs*), which is an emphasized supererogatory (*sunnah mu'akkadah*) act. It was temporarily outlawed through the Ministry of Religious Affairs Circular No. P-004/DJ.III/Hk.007/04/2020 because of the COVID-19 pandemic. The goal of this prohibition was to restrict large gatherings so as to break the chain of infection.

Tarantang (2018) reviews the modern Islamic theories of Abdullah Ahmad An-Na'im, Muhammad Shahrur, and Fazlur Rahman. Modern thoughts on Islamic legal theory, such as Shahrur's boundary theory, Rahman's double motion theory, and Nasakh theory, are used to support the reformation of Islamic law in accordance with its higher objectives within certain time and space contexts.

Maimun and Fauzan (2021) argue that Ibn 'Āshūr's *maqāṣid al-sharī'ah* concept has made it into a new science that is distinguished from the science of Islamic legal theory. Its discussion and substance have touched diverse aspects of human life: social, cultural, economic, legal, and family affairs. His ideas and contributions have become a reference for many scholars, especially those focusing on the reformation and development of Islamic family law.

This study focuses on *sadd al-dharī'ah*. It analyzes and contextualizes this method in the regulations on marriage age and polygamy in Indonesia's Islamic family law, codified in Marriage Law No. 1 of 1974 and Compilation of Islamic Law (KHI).

## Methodology

This qualitative library research employs the descriptive-analytical approach to accomplish its objectives. Research data is collected through document review. The primary sources of information are the Indonesian Marriage Law No. 1 of 1974 and KHI. Secondary information is gathered from texts on *maqāṣid al-sharī'ah*, *uṣūl fiqh*, and *fiqh*. Scholarly literature in the form of books and articles on *sadd al-dharī'ah* is also referred. The collected information is then analyzed using content analysis. This method allows the systematic analysis of relevant themes in the documents.

## Findings

### *Sadd Al-Dharī'ah in Contemporary Juristic Inference*

*Sadd al-dharī'ah* is a compound word (*iḍāfah*): *sadd*, the infinitive form (*maṣdar*) of the verb *sadda* – *yasuddu*, means to close, prevent, or prohibit, and *al-dharī'ah* means a path or means towards something (Ibn Mandzur, 1993). Scholars have variedly defined the concept, emphasizing different aspects of the method. Al-Zarkashī (1994) in *al-Baḥr al-Muḥīṭ* defines *sadd al-dharī'ah* as a permissible matter that has the potential to lead to something prohibited. Al-Shāṭibī (1997) offers a similar definition, defining *sadd al-dharī'ah* as the prohibition of a permissible act so that it does not lead to a prohibited act. On the other hand, Ibn al-Qayyīm (1991) defines *al-dharī'ah* as a means or path towards something else. In some of his works, Ibn al-Qayyīm uses the term *al-dharā'i'*, the plural form of *al-dharī'ah*. He considers *sadd al-dharā'i'* as one of the sources of Islamic law, arguing that every outcome can only be achieved if there is a cause and means. The means, therefore, should have the same legal status as the resulting act. Put differently, a means that leads to a forbidden act should similarly be prohibited, whereas a means to a virtuous deed would likewise be deemed permissible and virtuous. Ibn al-Qayyīm summarizes this concept in a maxim: *al-wasā'il lahā aḥkām al-maqāṣid* (means have the same rulings as their outcomes). Ibn 'Āshūr (2001) explains that jurists use the term *sadd al-dharī'ah* to refer to the annulment, prevention, and prohibition of actions that are strongly suspected of leading to harm, even though these actions themselves do not contain elements of harm. As Wahbah al-Zuhailī (1999) prefers a neutral definition, he supports the definition put forward by Ibn al-Qayyīm. He defines *sadd al-dharī'ah* as an effort to prohibit and reject anything that can be a means to the forbidden so as to prevent harm. In summary, *sadd al-dharī'ah* can be understood as an effort to close a path that is strongly suspected to lead to danger and harm, even though it is originally permissible.

Closing the path to harm is not a new way of determining a ruling, as it has been applied directly by Prophet Muḥammad (PBUH). Of course, the term *sadd al-dharī'ah* was still unknown at that time, but its methods had been largely implemented by the Prophet (PBUH). For example, he forbade a young man from kissing his wife during daytime in Ramadan for concern that it would spoil the validity of his fast. At the same time, he allowed it for the elderly because the same concern does not apply to them. This is not inconsistency on the part the Prophet (PBUH); rather, it was his way of teaching Muslims about *sadd al-dharī'ah* and careful consideration of the potential consequences of an action (Basri, 2021; Mohd Aswadi, M. S., Md Sawari, M. F., Sitoris, M., & Baharuddin, A. S., (2021). There are numerous other instances where *sadd al-dharī'ah* was used by the Prophet (PBUH) and his companions. These will be presented in the next section.

In relation to contemporary *fiqh* issues (*fiqh al-nawāzil*), *sadd al-dharī'ah* can become a useful tool to determine their rulings based on their potential consequences. If an issue is expected to create harmful consequences to religious processes or social life in general, then it must be prohibited despite its potential benefit. Rejecting harm takes precedence over realizing benefits, as emphasized by jurists (Misranetti, 2020).

Social issues are becoming more complex and dynamic, serving as challenges for the inference of rulings (*istinbāt al-ahkām*). Religious texts have been completed along with the passing of Prophet Muhammad (PBUH), as stated by Ibn Rushd in *Bidāyah al-Mujtahid: an-nushūs mutanāhiyah wa al-waqā'i' mustajiddah* (the texts have ended, but issues remain). Not all religious laws are explicitly explained in the Qur'ān and Sunnah; some rulings are derived through hints uncovered by jurists through the various methods of *tafsīr*, *ta'wīl*, and *ta'līl* (*qiyās*), as well as linguistic theories (*dalālah alfādh*).

Religious texts provide universal values that can be explored in depth by a mujtahid/mufti and then contextualized in current problems. Herein lies the importance of *sadd al-dharī'ah* in *istinbāt al-ahkām*. By considering the potential harm and benefit of something, the mujtahid can produce rulings that are more in line with the objectives of Islamic law, i.e., actualizing the most benefit for human life in this world and the next and eliminating all harms (Rachmadhani, 2021).

### ***Theoretical and Legal Bases of Sadd al-Dharī'ah in Islamic Law***

*Sadd al-dharī'ah* is based on the Qur'ān and Hadith, thus it is a recognized (*mu'tabar*) legal instrument. Several verses of the Qur'ān gives legitimacy to *sadd al-dharī'ah*. For example, al-An'ām: 108 states:

Translation: And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge.

(Surah al-An'ām, 6:108)

The verse prohibits insulting gods of other religions or other beliefs for concern that they will retaliate with similar or even worse insults towards Allah. Although insulting gods and beliefs outside of Islam is permissible, it becomes forbidden when it will cause greater harm, in this case their insulting of Allah (Ibn Al-'Arabi, 2007). Another verse that gives legitimacy to *sadd al-dharī'ah* is Al-Nūr: 31:

Translation: Let them not stomp their feet, drawing attention to their hidden adornments.

(Surah An-Nūr, 24:31)

Of course, it is permissible for women to stomp their feet. But if the intention is to expose their hidden jewellery to others, which may lead to other greater harms, it becomes a forbidden act.

Similar conclusions can be gathered from the Hadith of the Prophet (PBUH) regarding the prohibition for an imam to lengthen the recitation of the Qur'ān during prayer:

Translation: Once, a man said to Allah's Apostle, "O Allah's Apostle! I may not attend the (compulsory congregational) prayer because so and so (the Imam) prolongs the prayer when he leads us for it. The narrator added: "I never saw the Prophet more furious in giving advice than he was on that day. The Prophet said, "O people! Some of you make others dislike good deeds (the prayers). So whoever leads the people in prayer should shorten it because among them there are the sick, the weak, and the needy (having some jobs to do)".

(Sahih Muslim, 1991: 870, Hadith 90)

A prayer is an act of worship that can calm the heart and soul of the doer and bring him closer to Allah, thus it is commendable to lengthen it. In fact, this was a habit of the Prophet (PBUH). However, when leading others in a prayer, it is recommended for the imam to shorten his recitation to minimize harm to the physical condition of those behind him, who may be sick, elderly, or in need. Lengthening the prayer would inhibit them from performing the prayer in congregation, hence the Prophet's (PBUH) prohibition. This is a clear application of *sadd al-dharī'ah*, where a permissible act is prohibited because it could

potentially lead to something that would bring harm to the religion (As-Sanusi, 2003; Suleiman, H., 2022). Another example of *sadd al-dharī'ah* in the Hadith is the prohibition for unrelated men and women to be together in private (*ikhhtilāf*):

Translation: No man is alone with a woman but the Shaytan is the third one present.

(Sahih al-Bukhari, 1999: 870, Hadith 2165)

The prohibition of *khalwah* is because it is very likely to lead to obscenity or adultery (*zinā*), which are prohibited. Seclusion itself is permissible; one may be in private when reading the Qur'ān, traveling for Hajj, or visiting parents. However, the seclusion of an unrelated man and woman may lead to the major sin of adultery, hence its prohibition.

The verses and hadiths above, among others, indicate the prohibition of permissible acts that can lead to something prohibited. In this case, scholars explain that every act is composed of two elements: an element that instigates an act and the outcome (*natījah*) of that act. By looking at its consequences, an action is divided into two:

1. Actions that result in benefit, and so they are required and;
2. Actions that result in harm and therefore are prohibited (Syarifudin, 2014).

### ***Applying Sadd al-Dharī'ah to Limit the Age of Marriage in Indonesia***

Article 7(1) of Law No. 1 of 1974 on Marriage specifies that the minimum marriage age for a man is 19 and woman is 16. More than four decades later, the marriage age for both bride and groom has been revised to 19 years old by Law No. 16 of 2019. This amendment is based on the decision of the Constitutional Court No. 22/PUU-XV/2017 following a judicial review of Article 7(1) of the 1974 Act. The rationale for this decision was the high divorce rate due to the physical and mental immaturity of young married couples. The considerations of the Constitutional Court in granting the judicial review are as follows:

1. The difference in marriage age between men and women in Article 7(1) of Law No. 1 of 1974 is a clear form of inequality in law specified in Article 27(1) of the 1945 Constitution.
2. This difference is determined solely based on gender, and so it is a concrete form of discrimination that deprives women from their rights as children.
3. The initial marriage age was determined based on health consideration. However, current medical development shows that women married at 16 years old are considerably vulnerable to health problems, especially reproduction and pregnancy.
4. Every individual has the right to education. Article 7(1) deprives women of the right to education while providing men with more opportunities and rights. Marriages of school-aged girls cause them to lose their right to education as mandated in Article 28 C(1) of the 1945 Constitution (Septarini & Salami, 2019).

In addition to Law No. 16 of 2019, marriage age is also defined in KHI. KHI is a positive law and a main reference in Religious Courts, pursuant to the Instruction of the President No. 1 of 1991. It is used to synchronize administrative order in the development of Islamic law in Indonesia. KHI is the unification of considerations for Religious Court judges in deciding cases and a positive law adhered to by all Muslim Indonesian citizens (Gunawan, 2016). The minimum age of marriage, as specified in Article 15(1) of KHI, is also 19 years old for a prospective husband and 16 years old for a prospective bride, following Article 7(1) of Law No. 1 of 1974. The rationale for this, as stated in the same article, is "for the benefit of the family and household". Accordingly, the revision of marriage age to 19 years old for both men and women in Law No. 16 of 2019 is also reflected in KHI (Salim & Tanjung, 2023).

Islam does not define the marriable age of a man or woman; it only requires marriage readiness in the form of puberty (*bulūgh*) for both men and women. Nonetheless, several Qur'ānic verses and Hadith implicitly indicates the eligibility criteria for marriage. For example, Al-Nūr: 32 states that:

Translation: And give in marriage those who are single among you, and those who are marriageable among your male and female servant.

(Surah Al-Nūr, 24:32)

The expression "marriageable" must be explored in depth to determine the condition in which one is deemed eligible for marriage. Of course, in the current context, eligibility should encompass physical and mental readiness. Biological readiness must also be interpreted more broadly into social readiness (Suwardiyati dkk., 2021). In Al-Nisā': 6, Allah says:

Translation: And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them.

(Surah Al-Nisā', 4:6)

Wahbah al-Zuhailī interprets "until they reach marriageable age" as puberty, determined either by age—around 15 years old—or by having a wet dream (Az-Zuhaili, 1991). In Ibn Katsīr's commentary, the majority of scholars argue that an adolescent reaches the age of puberty when he experiences a wet dream (Ibnu Katsir, 1999). Al-Marāghī interprets "sound judgment" as when one understands well how to use and spend wealth, while "when they reach marriageable age" is when one is of marriageable age. According to Quraish Shihab, *rushdan* literally means accuracy and straightness of a path. In this context, *rushdan* can be understood as the soundness of mind and soul that allow one to behave and act well (Shihab, 2002).

In addition to the two verses above, Prophet Muhammad (PBUH) said:

Translation: "O young men, whoever among you is able to marry, marry. For marriage is more likely to restrain the gaze and preserve the private parts. And whoever is not able to do so, let him fast, for fasting can restrain his desire as a shield."

(Sahih al-Bukhari, 1999: 870, Hadith 5066)

In this Hadith, Prophet Muhammad (PBUH) did not specify a minimum age for marriage. However, it encourages young people to get married only when they are able to take responsibility for the legal consequences of marriage. Another narration explains that the Prophet (PBUH) married Aishah RA when she was six years old and consummated the marriage when she was nine. Some scholars, understanding this Hadith textually, argue that a marriage contract for a child aged six years or older is valid. Others understand the Hadith contextually, solely as a report and not a command. It is possible that, in the Hijaz region during the lifetime of the Prophet (PBUH), children under the age of nine were considered adults. Therefore, the Hadith is not an indication of the minimum marriage age but only a report of the Prophet's (PBUH) life (Hidayat, 2022).

Limiting and changing the marriage age are for the benefit of families and society. It is often unhealthy, personally and socially, for women to marry at a young age. They are usually not ready mentally and intellectually, affecting the quality of their upbringing of their children (Hidayat, 2022). From a health perspective, pregnancy is riskier for young mothers because they may not be physically ready to conceive and give birth (Kamarusdiana & Farohah, 2022).

Nahdiyanti et al., (2021) examined divorce decisions and marriage dispensation applications for prospective husbands or wives under 19 years old. They found that, firstly, the number of child marriages increased 20-fold in 2005–2008, from 632 to 14,081 marriage dispensations applications. Of these, 13,880 were marriage dispensations in Religious Courts and 201 cases in General Courts. Secondly, the average age of children in the marriage dispensation cases was 14.5 years old for girls and 16.5 years old for boys. Thirdly, 24% of the 500,000 analyzed divorce cases were found to be child marriage.

*Sadd al-dharī'ah* is useful preventative tool to remove the harm ensuing from child marriage. It is thus an effective method by which the main goal of Islamic law—realizing benefit and removing harm—can be accomplished. Limiting marriage age is in line with *maqāṣid al-sharī'ah*. If an act is strongly suspected to cause harm, then the means that lead to that act is prohibited (Abadi, 2022).

### ***Sadd al-Dharāh and Permission for Polygamy***

Polygamy in Indonesia is formally regulated in Marriage Law No. 1 of 1974 and KHI. Monogamy is a principle of marriage in the Indonesian legal system. According to Article 3(1) of the Marriage Law, a man is only allowed to have one wife and a woman one husband. In an open monogamy, a husband is allowed to marry multiple wives if both parties consent to it. It differs from absolute monogamy, where a man or woman is restricted to one spouse. Article 3(2) states that polygamy is allowed as exception cases, so long as it meets certain conditions, justifications, and procedures. The Religious Court is granted the competence to permit polygamy. Article 4(2) states that a husband may marry more than one wife by the Court if the wife:

- a. is incapable of carrying out her spousal responsibilities;
- b. has an untreatable illness or disability; or
- c. is unable to become pregnant.

Article 5(1) stipulates that application for polygamy to the Court must meet the following requirements:

- a. consent of the wife/wives;
- b. assurance that the husband is able to provide for the needs of his wives and their children; and
- c. assurance that the husband will be fair to his wives and their children.

Article 5(2) exempts a husband from seeking the consent of his wife/wives if the latter cannot provide consent and is unable to become a party to the agreement; if no news has been heard from the wife for at least two years; or for other reasons that must be deliberated by a judge. The husband must satisfy all cumulative conditions specified in Article 5. If the legal requirements are met, he may submit his application to the Court for deliberation. The permit is issued if all conditions and procedures are satisfied (Marriage Law, 2004).

Meanwhile, rules on polygamy in the KHI is distinguished into those on polygamy and those on its procedures. Articles 55–59 of the KHI regulate polygamy. Article 55 states that a man may only have up to four wives at a time. The primary requirement for polygamy is the ability of the husband to treat his wives and children equitably; otherwise, he may not engage in polygamy. Husbands married to multiple women must request the approval of the Religious Court, without which their polygamous marriage has no long-term legal significance. Article 57 states that the Religious Court may grant the permission for polygamy to the husband if the wife:

- a. is incapable of carrying out her spousal responsibilities;
- b. has an untreatable illness or disability; or
- c. is unable to become pregnant.

Article 58 of the KHI provides additional stipulations for the approval of the Religious Court. The husband is required to:

- a. gain consent from his wife or wives;
- b. be able to meet the needs of his wives and their children;
- c. be fair towards his wives and their children.

According to Article 59, if a wife refuses to give consent and the polygamy request is made for any of the following reasons:

- a. the husband is able to treat his wives and children fairly;
- b. the wife is unable to carry out her spousal responsibilities;
- c. the wife has an untreatable illness or disability; or
- d. the wife is unable to become pregnant.

The Religious Court may decide on whether to grant permission after questioning and hearing the wife's case. The wife or husband may then file an appeal or cassation against this decision. Therefore, as long as a husband complies with both Islamic law and the relevant legal criteria, he is permitted to have multiple wives (Compilation of Islamic Law, 2010).

Legal provisions are formalized into law for the benefit of every legal subject. In a legal structure, rules must be carried out according to their formal provisions so that they are aligned with their substance, thus avoiding acts that may violate the law itself. Therefore, in every legal decision, all parties need to consider formal rules to avoid any violation. The same applies to the law of polygamy. The provisions of polygamy in Law No. 1 of 1974 and the KHI regulate the implementation of polygamy according to Islamic law, not denying its permissibility. This *ijtihād* is to minimize the negative consequences of polygamy. Material factors alone are not sufficient for judges to grant polygamy permits. However, other aspects should also be observed, as mandated in applicable laws in Indonesia. Therefore, permission for polygamy ultimately rests on the professional judgment of Religious Court judges (Efendi, 2018).

To minimize any negative impact on the first household, the law requires the husband to gain the permission of his wife or wives as a preventive condition (*sadd al-dharī'ah*). The court decision itself is an *ijtihād* that must be based on benefit. Marriage itself is a means towards the accomplishment of *maqāṣid al-sharī'ah*. Every judge must make an appropriate decision when considering the wife's consent because, quite unfortunately, some husbands carelessly engage in polygamy, abusing its permissibility. Indeed, no Qur'ānic verses, Hadith, or classical *fiqh* literature explicitly require the consent of the first wife. The judges, then, evaluate whether the husband is fit to engage in polygamy.

The need for the wife's consent is a manifestation of the principle of rights and obligations of both husband and wife and on the principle that polygamy is desired by both parties. Consent, therefore, is necessary to prevent potential abuse and unfairness of a spouse against the other; it is essential for the integrity and happiness of the household. From a *fiqh* perspective, polygamy is not mandatory. The Qur'ān has delineated a strict requirement for polygamy, namely the ability of a husband to be fair, though fairness itself is a relative concept. Therefore, the permission for polygamy must be accompanied by conditions whose spirit is based on the objectives of Islamic law (Wartini, 2013).

In summary, the application of *sadd al-dharī'ah* on polygamy in Indonesia shows the law's respect of a wife as the life partner of a husband. This can be seen from the strict provisions and mechanisms for polygamy, including the consent of the wife. Indonesian law also fully entrusts judges in the Religious Court with granting the permit. Thus, Indonesian law actually prohibits polygamy—except where conditions are met—even though the Qur'ān clearly allows a man to marry more than one woman. This prohibition is based on the strong suspicion that polygamy, in the current context, has larger potential harm than potential benefit. The wife's consent is needed to maintain household harmony, which is part of the *maqāṣid al-sharī'ah* of maintaining the wellbeing of religion, life, mind, offspring, and property (Muhibbuthabry, 2016).

## Conclusion

It can be concluded that Marriage Law No. 1 of 1974 and the KHI, which serve as the main references for Religious Court judges and as positive laws for all Muslim Indonesian citizens, have indirectly adopted *sadd al-dharī'ah* in determining its provisions. This can be seen from several laws and regulations related to marriage, such as limiting the age of marriage and setting strict requirements for polygamy. The goal of these provisions is to prevent greater potential harm.

## Acknowledgments

This study is financially supported by the Research and Innovative Institute of Universitas Muhammadiyah Yogyakarta Indonesia.



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