

Fasakh as an Instrument of Protection and Justice in Marriage: An Analysis of Zainuddin al-Malibari's Thought in *Fathul Mu'in* and Its Relevance in Indonesia

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Abstract

This study is motivated by the importance of mechanisms for the dissolution of marriage that do not merely emphasize formal-legal aspects, but also ensure the protection of rights and justice for the parties involved. In Islamic law, *fasakh* serves as one such instrument; however, in practice, it is often narrowly understood and not optimally implemented in society. Furthermore, social dynamics and the increasing number of injustices within households demand a more comprehensive understanding of the concept of *fasakh* as a just solution. Therefore, this study aims to analyze the thought of Zainuddin al-Malibari in *Fathul Mu'in* regarding the concept of *fasakh* and to examine its relevance within the Indonesian marriage law system. This research employs a qualitative method with a library research approach. The approaches used are normative and historical. The primary source is the classical text *Fathul Mu'in*, while the secondary data include classical and contemporary fiqh books, scholarly journal articles, and Indonesian legal regulations, particularly the Compilation of Islamic Law. Data collection is conducted through documentation studies, and data analysis uses a descriptive-analytical method with deductive and comparative reasoning patterns. The findings of this study indicate that *fasakh*, in the thought of Zainuddin al-Malibari, functions as an instrument of protection for parties harmed within a marriage, such as in cases of physical or psychological defects, inability to provide maintenance, neglect, and other forms of harm. This concept underscores the importance of substantive justice and the protection of individual rights within marital relationships. In the Indonesian context, the principles of *fasakh* have strong relevance to positive law, particularly within the Compilation of Islamic Law, which also accommodates grounds for divorce in order to realize balanced protection and justice for both husband and wife.

Keyword: Fasakh, Legal Protection, Justice, Zainuddin Al-Malibari.

Abstrak

Penelitian ini dilatarbelakangi oleh pentingnya mekanisme pembubaran perkawinan yang tidak hanya menekankan aspek legal-formal, tetapi juga menjamin perlindungan hak serta keadilan bagi para pihak yang terlibat. Dalam hukum Islam, fasakh merupakan salah satu instrumen yang memiliki fungsi tersebut, namun dalam praktiknya sering dipahami secara sempit dan kurang diimplementasikan secara optimal dalam kehidupan masyarakat. Selain itu, dinamika sosial dan meningkatnya kasus ketidakadilan dalam rumah tangga menuntut adanya pemahaman yang lebih komprehensif terhadap konsep fasakh sebagai solusi yang berkeadilan. Oleh karena itu, penelitian ini bertujuan untuk menganalisis pemikiran Zainuddin Al-Malibari dalam *Fathul Mu'in* terkait konsep fasakh serta mengkaji relevansinya dalam sistem hukum perkawinan di Indonesia. Penelitian ini menggunakan metode kualitatif dengan jenis penelitian kepustakaan (library research). Pendekatan yang digunakan adalah pendekatan normatif dan historis. Sumber data primer adalah kitab *Fathul Mu'in*, sedangkan data sekunder meliputi kitab-kitab fikih klasik dan kontemporer, artikel jurnal ilmiah, serta peraturan perundang-undangan di Indonesia, khususnya Kompilasi Hukum Islam. Teknik pengumpulan data dilakukan melalui studi dokumentasi, sementara teknik analisis data menggunakan metode deskriptif-analitis dengan pola berpikir deduktif dan komparatif. Hasil penelitian menunjukkan bahwa fasakh dalam pemikiran Zainuddin Al-Malibari berfungsi sebagai instrumen perlindungan terhadap pihak yang dirugikan dalam perkawinan, seperti adanya cacat fisik atau psikis, ketidakmampuan memberi nafkah, penelantaran, maupun bentuk-bentuk mudarat lainnya. Konsep ini menegaskan pentingnya keadilan substantif dan perlindungan terhadap hak individu dalam hubungan perkawinan. Dalam konteks Indonesia, prinsip-prinsip fasakh memiliki relevansi yang kuat dengan hukum positif, terutama dalam Kompilasi Hukum Islam, yang juga mengakomodasi alasan-alasan perceraian demi mewujudkan perlindungan dan keadilan bagi suami dan istri secara seimbang.

Kata Kunci: Fasakh, Perlindungan Hukum, Zainuddin Al-Malibari.

A. Introduction

Marriage in Islam is fundamentally regarded as a sacred institution aimed at establishing a household characterized by *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion). However, in contemporary social reality, these ideal objectives are often not achieved. Various forms of injustice within the household are still prevalent, such as the failure to provide financial support, family neglect, and domestic violence. This condition indicates a gap between the ideal norms in Islamic teachings and the actual practice of family life in society. Research shows that domestic neglect includes the failure to fulfill basic needs, provide proper care, and ensure protection for family

members. family, which ultimately leads to dependency and suffering for the victim.¹

Moreover, the phenomenon of domestic violence (DV) also serves as a strong indicator of injustice within marriage. Domestic violence is not limited to physical abuse; it also includes psychological, sexual, and economic violence. Various studies indicate that domestic violence remains a serious issue in Indonesia and is even categorized as a human rights violation that frequently occurs within the domestic sphere.² In many cases, victims of domestic violence or neglect tend to be reluctant to report or pursue legal action due to factors such as economic dependence, social pressure, or societal stigma. This situation allows injustice within marriage to persist without a fair resolution. Moreover, several studies indicate that a “culture of silence” is one of the factors that hinders law enforcement in cases of domestic violence.³

Fasakh has a strategic role as a form of protection for the rights of the wife, particularly in cases of injustice such as the failure to provide maintenance, the existence of certain defects or hidden faults, and the occurrence of domestic violence. In the perspective of Islamic law, the existence of fasakh reflects the principles of justice and public welfare (*maṣlaḥah*), where a marriage should not be maintained if it instead causes suffering. Moreover, in the practice of religious courts, various divorce cases triggered by domestic violence, prolonged disputes, and economic factors indicate that the dissolution of marriage often becomes the last resort to protect the aggrieved party.⁴ However, the implementation of these laws is often not optimal, particularly in terms of enforcement and access to justice for victims. Many victims do not proceed with legal processes due to various obstacles, such as lack of family support, economic limitations, and limited understanding of legal procedures.⁵

¹ Fitriani & Ade Yuliany Siahaan, “, ‘Tindak Pidana Penelantaran Rumah Tangga Ditinjau Berdasarkan UU No. 23 Tahun 2004 Dan Hukum Islam,’ Grondwet (2023),” *Journal of Constitutional Law and State Administrative Law* 3 (2024): hlm. 337.

² Junika Indar Sawitri dkk, “, ‘Perlindungan Perempuan Terhadap Kasus KDRT,’ Al-Zayn: Jurnal Ilmu Sosial & Hukum (2024). hlm. 74.

³ Jamaluddin dkk, “, ‘KDRT Dalam Perspektif Tafsir Tematik Dan Hukum Positif Indonesia,’ Al-Zayn,” *Jurnal Ilmu Sosial & Hukum* 4 (2026). hlm. 221.

⁴ Zulhairi, “, ‘Perilaku Seksual Menyimpang Dan KDRT Sebagai Alasan Perceraian,’ Tahkim: Jurnal Peradaban Dan Hukum Islam (2024). hlm. 92.

⁵ Siti Musyafa’ah, “, ‘Akses Keadilan Bagi Korban KDRT Di Indonesia,’ Jurnal Hukum Dan Peradilan (2022),” *Jurnal Hukum Dan Peradilan*, 2025. hlm. 121.

The urgency of *fasakh* has become increasingly relevant in the modern context, where awareness of women's rights continues to grow. *Fasakh* can serve as a legal protection mechanism for women in vulnerable positions, particularly when facing unequal power relations within the household. Several studies indicate that petitions for *fasakh* in religious courts are often It relates to reasons such as the failure to provide maintenance (*nafkah*), domestic violence, and continuous disputes with no possibility of reconciliation.⁶

The thought of Zainuddin al-Malibari on *fasakh* is worth reexamining, as it contains fiqh principles that underpin the practice of marriage annulment in Islamic law. In the Indonesian context, the concept of *fasakh* is also reflected in Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), which regulate the possibility of annulment or divorce based on certain grounds.⁷ Many cases in the religious courts show that divorce is not solely caused by unilateral intent, but also by the emergence of intolerable harm (*madharat*), such as domestic violence, economic neglect, and the prolonged absence of the husband. In such situations, the mechanism of *fasakh* functions as an instrument of justice to provide legal protection for the aggrieved party, particularly women.⁸ Therefore, an analysis of the concept of *fasakh* according to Zainuddin al-Malibari becomes essential in order to understand the principles of justice within classical Islamic jurisprudence, as well as how these principles can be applied in the context of modern Islamic law in Indonesia.

B. Research Method

This research is a qualitative study employing a library research approach, namely a method conducted by examining various literature sources relevant to the object of study. This type of research is chosen because its primary focus is to analyze the thoughts of a classical scholar, Zainuddin al-Malibari, in his monumental work *Fathul Mu'in*, and to examine its relevance within the context of marriage law in Indonesia.⁹ The approach used in this study is a normative and conceptual approach (normative-conceptual approach). The normative approach is employed to examine the concept of

⁶ Nur Hidayati, “, ‘Alasan Perceraian Di Pengadilan Agama Dalam Perspektif Hukum Islam,’ *Jurnal Al-Ahwal* (2021). hlm. 32.

⁷ Republik Indonesia, *Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, n.d.

⁸ Jenderal Badan Peradilan Agama, *Kompilasi Hukum Islam*. Jakarta: Mahkamah Agung RI, 2013. No Title, n.d. hlm. 32.

⁹ Sugiyono, , *Metode Penelitian Kualitatif Untuk Penelitian Yang Bersifat: Eksploratif, Interpretif, Dan Konstruktif* (Bandung: Alfabeta, 2021). hlm. 47.

fasakh based on the sources of Islamic law, including both the Qur'an and Hadith, as well as the opinions of classical and contemporary Islamic jurists. derived from the Qur'an, the Hadith, as well as the scholarly opinions of Islamic jurists (fuqaha).¹⁰ The data sources in this study consist of primary and secondary data. The primary data are obtained directly from the book *Fathul Mu'in* by Zainuddin al-Malibari, particularly the sections discussing *fasakh* in marriage. Meanwhile, the secondary data include other classical fiqh books, Islamic law textbooks, scientific journals, as well as Indonesian legal regulations related to marriage, such as the Compilation of Islamic Law (KHI) and the Marriage Law.¹¹ The data collection technique was conducted through document study, namely by tracing, reading, and critically analyzing various literature relevant to the research topic.¹² The researcher identifies key sections in *Fathul Mu'in* that relate to the concept of *fasakh*, then records and classifies the data according to the research focus. In addition, the researcher collects supporting literature discussing the concept of *fasakh* and principles of justice in Islamic marriage law. The data analysis techniques employed in this study are content analysis and descriptive-analytical methods. Content analysis is used to systematically examine the text of *Fathul Mu'in* in order to identify the main concepts related to *fasakh*.¹³ Subsequently, the collected data were analyzed descriptively to explain the thought of Zainuddin al-Malibari, and then critically examined to assess its relevance in the context of contemporary Indonesian marriage law. In the analytical process, the researcher also employed the maqāṣid al-syarī'ah framework to evaluate the extent to which the concept of *fasakh* functions as an instrument of protection and justice in marriage.

C. Discussion and Research Findings

The Concept of Fasakh in the Book Fathul Mu'in

This concept demonstrates the justice and protection provided by Islamic law toward women, and proves that Islamic law is dynamic and contextual in addressing household issues. One of the Shafi'i school jurists who discussed this issue in depth is Zainuddin al-Malibari. (d. 987 AH), through his monumental work *Fathul Mu'in*, which It continues to be an important reference in Islamic

¹⁰ Irwansyah, , *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020). hlm. 90.

¹¹ Tim Redaksi, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Kencana, 2020). hlm. 39.

¹² Lexy J. Moleong, , *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, Edisi Revisi 2021). hlm. 82.

¹³ Burhan Bungin, , *Metodologi Penelitian Kualitatif: Aktualisasi Metodologis Ke Arah Ragam Varian Kontemporer* (Jakarta: Kencana, 2022). hlm. 182.

boarding schools (pesantren) and Islamic educational institutions in Indonesia to this day.¹⁴

In a hadith of the Prophet narrated by Al-Qamah together with Abdullah bin Mas'ud, the Messenger of Allah (peace be upon him) said:

قال لنا صلى عليه وسلم " يا معثرا الشباب من استطاع منكم الباءة فليتزوج, فانه اغضى للبصر واحصن للفرج ومن لم يستطع فعليه بالصوم فانه له وجا (رواه مسلم)

Meaning: Indeed, the Messenger of Allah (peace and blessings be upon him) once said to us: "O young people, whoever among you is able to marry, then let him marry. For indeed, marriage helps to lower the gaze and guard chastity. And whoever is not able to marry, then let him fast, for it will diminish his desire." (Reported by Muslim).¹⁵

Linguistically, the term *fasakh* (فسخ) comes from the root *fasakha-yafsikhu-faskhan*, which means to annul, to invalidate, or to dissolve a binding agreement that has been established. In classical Arabic usage, this term is not only applied in the context of marriage, but also in various *muamalah* contracts, such as sale and purchase transactions and other agreements, indicating the cancellation of a previously valid legal relationship.

In Islamic jurisprudential terminology, *fasakh* is the annulment of a marriage contract due to certain specific reasons (*asbāb al-fasakh*) recognized by Islamic law, without using the pronouncement of divorce (*ṭalāq*). Thus, *fasakh* is different. In principle, it differs from *ṭalāq*, because *ṭalāq* is a husband's prerogative right expressed through verbal pronouncement, whereas *fasakh* is a legal mechanism based on the presence of a valid excuse ('*udhr*) or specific conditions that obstruct the fundamental objectives of marriage itself.¹⁶

Moreover, Islamic jurists emphasize that *fasakh* can only be carried out when there is a clear and provable cause. This is intended to prevent the misuse of the right of *fasakh* and to maintain the stability of the institution of marriage. Thus, *fasakh* is not meant to be an easy way to separate, but rather a last resort

¹⁴ Zainuddin Al-Malibari, *Fathul Mu'in Bi Syarh Qurrah Al-'Ain Bi Muhimmah Ad-Din* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2009). hlm. 432.

¹⁵ Al-Hafizh Zaki Al-Din 'Abd Al-'Az-Mundziri, *No Ringkasan Shahih Muslim, (Bandung Mizan Pustaka, 2008), Diterjemahkan Dari Mukhtasar Shahih Muslim, Terbitan Al-Maktab Al-Islami, Beirut, 208AD.* hlm. 83.

¹⁶ Zainuddin bin Abdul Aziz al-Malibari, , *Fathul Mu'in Bi Syarh Qurrah Al-'Ain*, n.d.

(ultimum remedium) when the objectives of marriage can no longer be achieved.¹⁷

Furthermore, fasakh can be understood as a manifestation of a universal principle in Islamic jurisprudence (fiqh):

الضَّرَرُ يُزَالُ

Meaning: "Harm must be eliminated."

This principle serves as an important foundation in various branches of Islamic law, including issues related to family law (al-aḥwāl al-shakhṣiyyah). In practice, any form of dharar (harm or injury) experienced by either party in a marriage must be removed, whether through reconciliation and improvement of the relationship or, if no other solution is possible, through the dissolution of the marital bond.¹⁸

Fasakh as an Instrument of Protection and Justice

Fasakh in Islamic law is an important mechanism that functions as an instrument of protection and justice in marital relations. Conceptually, fasakh refers to the annulment of a marriage contract by a judicial authority (qāḍī) due to certain legally recognized (shar'i) reasons, such as defects, deception, inability to provide maintenance, or the presence of intolerable harm (maḍarrah) in marital life.¹⁹

In the perspective of *maqāṣid al-sharī'ah*, the existence of *fasakh* indicates that Islam does not merely emphasize the continuity of marriage, but also ensures the realization of benefit (*maṣlaḥah*) and the prevention of harm and injustice against the parties involved. This is in line with the fundamental principle of Islamic law, namely *jalb al-maṣāliḥ wa dar' al-mafāsid* (bringing benefits and averting harm).²⁰ Fasakh also functions as a form of protection for women's rights. In classical fiqh literature, women are granted the right to petition for fasakh (judicial annulment of marriage)

If the husband is unable to fulfill his obligations—such as failing to provide maintenance (nafaqah), being absent or missing (mafqud), or suffering from a defect that prevents a normal marital life.²¹ In fact, in the Shafi'i school, which is widely followed in Indonesia, a husband's inability to provide maintenance for a

¹⁷ Abdurrahman al-Jaziri, , *Al-Fiqh 'ala Al-Madzahib Al-Arba'Ah*, 2003. hlm. 231.

¹⁸ Jalaluddin as-Suyuthi, , *Al-Asybah Wa an-Nazhair*, 1998.

¹⁹ Wahbah al-Zuhaylī, , *Al-Fiqh Al-Islāmī Wa Adillatuh*, Juz VII, 1985.

²⁰ Jalāl al-Dīn al-Suyūṭī, , *Al-Ashbāh Wa Al-Nazā'ir*, 1998.

²¹ Zayn al-Dīn al-Malībārī, , *Fatḥ Al-Mu'īn (Beirut: Dār Ibn Ḥazm, 2004)*, hlm. 457.

certain period of time can be a valid reason for annulment (*fasakh*).²² This shows that *fasakh* is not merely normative in nature, but also applicative and contextual. Judges are required to consider aspects of justice, public interest (*maṣlaḥah*), and the factual conditions of the parties before deciding on the annulment of a marriage.²³

From the perspective of modern Islamic legal theory, *fasakh* can also be viewed as a form of human rights protection within the family sphere. The principles of justice, equality, and protection from violence are universal values that align with Islamic teachings. Therefore, *fasakh* is not only relevant in the classical context but also within modern legal frameworks that emphasize the protection of individuals.²⁴

An Analysis of *Maqāṣid al-Sharī'ah* in Relation to *Fasakh*

In the study of Islamic law, *fasakh* is not merely understood as a mechanism for annulling a marriage contract, but also as a normative instrument that has strong relevance to the objectives of Islamic law (*maqāṣid al-syarī'ah*). The concept of *maqāṣid al-syarī'ah* serves as a philosophical framework emphasizing that all Islamic legal rulings aim to achieve benefit (*jalb al-maṣāliḥ*) and prevent harm (*dar' al-mafāsid*). In the study of Islamic law, *fasakh* is not merely understood as a mechanism for annulling a marriage contract, but also as a normative instrument that has strong relevance to the objectives of Islamic law (*maqāṣid al-syarī'ah*). The concept of *maqāṣid al-syarī'ah* serves as a philosophical framework emphasizing that all Islamic legal rulings aim to achieve benefit (*jalb al-maṣāliḥ*) and prevent harm (*dar' al-mafāsid*).²⁵ Therefore, the existence of *fasakh* in Islamic marriage law must be analyzed within the context of protecting the five fundamental principles (*al-ḍarūriyyāt al-khams*) *khams*), namely: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).²⁶

²² Muḥammad Abū Zahrah, , *Al-Aḥwāl Al-Syakhsiyyah* (Kairo: Dār Al-Fikr Al-'Arabī, 1957), hlm. 312.

²³ Ahmad Rofiq, , *Hukum Islam Di Indonesia* (Jakarta: RajaGrafindo Persada, 2003), hlm. 268.

²⁴ Jasser Auda, , *Maqasid Al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), hlm. 245.

²⁵ Abū Ishāq al-Syātibī, , *Al-Muwāfaqāt Fī Uṣūl Al-Syarī'ah*, Juz II (Beirut: Dār Al-Ma'rifah, t.t.), hlm. 8.

²⁶ Wahbah al-Zuhaylī, , *Uṣūl Al-Fiqh Al-Islāmī*, Juz II (Damaskus: Dār Al-Fikr, 1986), hlm. 1017.

First, *fasakh* functions as a means of protecting life (*ḥifẓ al-nafs*). In practice, *fasakh* may be sought when there are conditions that endanger one of the parties in a marriage, such as violence, serious contagious diseases, or the inability to fulfill marital obligations. In this context, the Sharī'ah does not compel the continuation of a marriage if it instead causes harm (*ḍarar*).²⁷

Second, *fasakh* is also closely related to the protection of lineage (*ḥifẓ al-nasl*). Marriage in Islam aims to preserve the continuity of legitimate and well-established generations. However, if within a marriage there are defects or conditions that hinder the realization of this objectivesuch as permanent impotence or diseases that may endanger offspring then *fasakh* becomes a solution permitted by the Sharī'ah.²⁸

Third, from the perspective of protecting religion (*ḥifẓ al-dīn*), *fasakh* plays a role in maintaining an individual's spiritual stability. A marriage marked by conflict, neglect, or violations of fundamental rights can disrupt a person's ability to perform acts of worship and live a religious life. Islamic law does not intend for a relationship to distance a person from obedience to Allah.²⁹

Fourth, *fasakh* is also related to the protection of intellect (*ḥifẓ al-'aql*), particularly in cases where one party suffers from a severe mental disorder. Classical fiqh literature mentions that one of the grounds for *fasakh* is the presence of *'uyūb* (defects) that hinder marital life, including psychological or mental disorders.³⁰

Fifth, from the perspective of protecting wealth (*ḥifẓ al-māl*), *fasakh* also has significant relevance. In some cases, one party may engage in financially harmful behavior, such as extreme extravagance, fraud, or the inability to fulfill maintenance obligations. This is in line with *the view that maqāṣid do not merely function as the ultimate objective of the law, but also as a methodology for understanding and developing Islamic law.*³¹

²⁷ Jalāl al-Dīn al-Suyūṭī, , *Al-Ashbāh Wa Al-Nazā'ir* (Beirut: Dār Al-Kutub Al-'Ilmiyyah, 1998), hlm. 87.

²⁸ Abū Zakariyyā al-Anṣārī, , *Fatḥ Al-Wahhāb* (Beirut: Dār Al-Fikr, t.t.), hlm. 123.

²⁹ Ibn 'Āsyū, R, *Maqāṣid Al-Syarī'ah Al-Islāmiyyah* (Tunisia: Dār Al-Salām, 2001), hlm. 145.

³⁰ Al-Nawawī, , *Rawḍat Al-Ṭālibīn*, Juz VII (Beirut: Dār Al-Kutub Al-'Ilmiyyah, 1992), hlm. 45.

³¹ Jasser Auda, , *Maqasid Al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), hlm. 56.

The Relevance of Fasakh in Indonesian Family Law

The concept of *fasakh* in Islamic law holds significant relevance within Indonesia's family law system, particularly in the context of protecting individual rights in marriage. *Fasakh*, as a mechanism for the annulment or dissolution of a marriage by judicial authority, provides a solution for marital relationships that can no longer be sustained due to certain legally recognized causes under Islamic law. In the context of Indonesia's positive law, the principles of *fasakh* can be found in various regulations, such as Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), although they are not always explicitly referred to by the term "fasakh."

In Law Number 1 of 1974, divorce can only be carried out before a court session after the judge has attempted to reconcile both parties. This provision reflects a spirit that is in line with the concept of *fasakh* in Islamic jurisprudence, where the dissolution of marriage is not conducted arbitrarily, but rather through a process that takes into account benefit (*maṣlaḥah*) and justice. In Islamic law, *fasakh* provides an opportunity for the aggrieved party especially the wife to seek the annulment of a marriage in cases of defects, fraud, the husband's incapacity, or other causes that hinder the realization of the objectives of marriage (*maqāṣid al-nikāḥ*).

The relevance of *fasakh* in Indonesian family law can also be viewed from the perspective of protecting women and children. In practice, *fasakh* often serves as an important instrument for women to exit harmful marriages, particularly in cases of domestic violence, neglect, or a husband's inability to fulfill maintenance obligations. This is in line with the principle of justice in Islam, which rejects all forms of injustice within the marital relationship.³² In addition, the relevance of *fasakh* can also be analyzed through the *maqāṣid al-syarī'ah* approach. *Fasakh* serves to safeguard the five fundamental objectives of Islamic law: the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*).³³ In the context of family law, *fasakh* plays an important role in safeguarding life and lineage,

³² Sayyid Sabiq, *Fiqh Al-Sunnah, Jilid 2* (Kairo: Dār Al-Fath, 1990), hlm. 278.

³³ Ahmad Fauzi, " 'Pendekatan Maqāṣid Al-Syarī'Ah Dalam Hukum Keluarga Islam Kontemporer,' Jurnal Al-Ahwal 14, No. 2 (2021): hlm. 155–157.

particularly when an unhealthy marriage has the potential to cause physical and psychological harm.³⁴

One of them is the lack of public understanding regarding their rights in marriage, including the right to seek annulment through legal mechanisms. In addition, the term “*fasakh*” itself is not widely recognized in judicial practice, so people often only know the general concept of “divorce” without understanding the conceptual differences behind it.³⁵ This is reflected in the role of the Religious Courts, which have the authority to adjudicate divorce cases, including those that substantively relate to *fasakh*.³⁶

In the practice of religious courts, cases that substantively reflect *fasakh* often appear in the form of divorce petitions (*cerai gugat*). These claims are generally filed by wives on grounds similar to those recognized as causes of *fasakh* in classical fiqh, such as the husband’s inability to provide maintenance, domestic violence, or the presence of defects that hinder the marital relationship.³⁷

In this school, *fasakh* is recognized as an important mechanism for terminating a marriage when there are ‘*aib* (defects) or certain conditions that prevent the realization of the objectives of marriage.³⁸ In this regard, the principle of *fasakh* can serve as a normative foundation to accommodate various forms of injustice within the household, including those that were not previously explicitly regulated in positive law.³⁹

In the perspective of Islamic law, *fasakh* is not only understood as an instrument for dissolving a marital relationship, but also as a mechanism for protecting the affected parties, including children. *Fasakh* provides space for a judge to terminate a marriage when there are

greater harm if the marital relationship is maintained. Thus, *fasakh* has both preventive and protective dimensions, namely preventing wider damage and safeguarding the fundamental rights of children to grow up in a healthy and

³⁴ Jasser Auda, , *Maqasid Al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), hlm. 45.

³⁵ M. Yahya Harahap, , *Hukum Perkawinan Nasional* (Jakarta: Zahir Trading, 1975), hlm. 156.

³⁶ Abdul Manan, , *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2005), hlm. 312.

³⁷ A. Mukti Arto, , *Praktek Perkara Perdata Pada Pengadilan Agama* (Yogyakarta: Pustaka Pelajar, 2004), hlm. 214.

³⁸ Zainuddin al-Malibari, , *Fath Al-Mu’in* (Beirut: Dār Al-Fikr, Tt.).

³⁹ Nurhayati, “, ‘Rekonstruksi Alasan Perceraian Dalam Hukum Keluarga Islam Di Indonesia,’ *Jurnal Al-Ahwal* 13, No. 2 (2021): hlm. 145–162.

safe environment.⁴⁰ In Indonesian positive law, this principle is reflected in various regulations such as the Child Protection Act, which positions children as subjects whose rights must be protected, including the right to care, education, and welfare.⁴¹ At the international level, this principle is also regulated in the Convention on the Rights of the Child, which emphasizes that the best interests of the child must be a primary consideration in all actions concerning children. The implementation of this principle in the practice of Islamic religious courts shows that judges do not only consider the validity of the grounds for *fasakh*, but also the implications of the decision for the child's future, including custody (*hadhanah*), financial support (maintenance), and emotional stability.⁴²

D. Conclusion

Based on an analysis of the thought of Zainuddin al-Malibari in the book *Fathul Mu'in*, it can be affirmed that *fasakh* is an instrument of Islamic law that plays a strategic role in realizing protection and justice within marriage. The concept of *fasakh* is not merely understood as a mechanism for dissolving the marital relationship, but more than that, as a form of the Shari'ah's response to conditions of injustice, harm, and disharmony that cannot be resolved through ordinary mechanisms such as divorce (*ṭalāq*). The thought of Zainuddin al-Malibari demonstrates that *fasakh* is given considerable scope by taking into account various causes, such as defects, the inability to fulfill obligations, and the presence of harm within the household. This reflects the principles of Maqāṣid al-Shari'ah, particularly in the protection of life (*ḥifẓ al-naḥs*), protection of honor (*ḥifẓ al-'ird*), and protection of lineage (*ḥifẓ al-nasl*). Thus, *fasakh* serves as an instrument oriented toward public benefit (*maṣlaḥah*) and the prevention of harm for the injured party, especially the wife. In the Indonesian context, the concept of *fasakh* has strong relevance, particularly in the practice of religious courts. Although the terminology more commonly used is divorce litigation (*cerai gugat*), the substance of *fasakh* is still reflected in various judicial decisions that consider factors such as harm, violence, neglect, and injustice within the household. This indicates a continuity between classical thought in *Fathul Mu'in* and the national legal system, especially in the Kompilasi Hukum

⁴⁰ Siti Nurhaliza & Ahmad Fauzi, “, ‘Perceraian Dalam Perspektif Maqāṣid Al-Syari'Ah Dan Perlindungan Anak,’ Al-Ahwal: Jurnal Hukum Keluarga Islam, 2023. Hlm. 116.

⁴¹ Rika Saraswati et al, “, ‘Perlindungan Hak Anak Dalam Sengketa Perceraian Di Indonesia,’ Jurnal Hukum & Pembangunan, 2022. hlm. 72.

⁴² Nurul Huda & Lailatul Fitriyah, “, ‘Implementasi Prinsip Best Interest of the Child Dalam Putusan Peradilan Agama,’ Jurnal Al-'Adalah, 2024. hlm. 99.

Islam. Therefore, *fasakh* can be understood as both a normative and applicative instrument that is not only theoretically relevant within the corpus of classical Islamic jurisprudence, but also contextually responsive to the dynamics of marital issues in modern Indonesia.

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