



Tahqīq al-Manāt as An Analytical Method for Contemporary Islamic Family Law Phenomena: A Preliminary Study on Silent Divorce

Article	Abstract
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Introduction

Within the framework of Islamic ideals, marriage is never reduced to a mere civil contract that arranges the outward bond between two people. Rather, it is placed as a firm covenant of sacred value—*mīthāqan ghalīzan*—that is, a bond that unites not only the body, but also the soul, with the ultimate goal of the presence of serenity (*sakīnah*), the seeding of love (*mawaddah*), and the flow of affection (*rahmah*). These three estuaries are what the Qur'an uses as a benchmark for the success of a marital relationship. Consequently, the validity of the contract is essentially

nothing more than a gateway to the realization of these substantive goals, and not the final goal itself.¹

The reality on the ground, as often happens, does not always go hand in hand with that normative ideal. There are times when the marriage contract is still standing tall formally, while the relationship between husband and wife has long since lost its substantial vibration. The two parties remain legally bound and share a common roof, but the psychological and emotional functions of the relationship have long since dimmed: meaningful communication is no longer established, intimacy is thinning, and physical presence is no longer accompanied by inner presence. This phenomenon is known in the family sociology literature as *empty shell marriage*, while in contemporary conversations it is increasingly called *silent divorce* or emotional divorce.²

What makes this phenomenon both interesting and problematic lies in its latent nature: it occurs without any apparent legal event, without a court ruling, and without the slightest administrative trace—but it has substantially negated all the purposes on which marriage is based.

This is where the issues that make this theme worth studying. The jurisprudence of *munakahat*, both as formulated in classical treasures and in positive law, recognizes the end of marriage only when it has been incarnated in an institutionalized form that can be verified outwardly—either through *talaq*, *khulu'*, *fasakh*, or *syiqāq*. All of these categories demand external manifestations, both in the form of speeches, lawsuits, and disputes that can be observed and proven. The problem is, marriages whose contract is still intact but the relationship is dead actually do not leave a trace that can be reached by these categories. As a result, a kind of analytical vacuum arises: the law still considers marriage to be valid and valid, whereas *maqāsid al-nikāh*—the purpose for which marriage is the essence of the sharia—has long ceased to function. To allow this emptiness to linger is to allow the law to judge solely on the basis of form while ignoring substance, an attitude that is contrary to the *orientation of maqāsidī* which is the spirit of the whole family fiqh.³

It should be emphasized that the void is not only related to the substance of the law, but rests on a more fundamental problem, namely a methodological problem. A phenomenon cannot be immediately given a legal verdict before the point of its legal link (*manāt*) has been carefully formulated. Imprecision in recognizing *the manāt* will lead to an erroneous judgment, because the law is ultimately based on the true nature rather than the basis of the law. It is precisely at this moment that the idea of *tahqīq al-manāt* as formulated by Imam al-Syātībī in *al-Muwāfaqāt*

¹ Wahbah az-Zuhaili, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, 2nd ed., vol. IX (Beirut: Dār al-Fikr, 1985), 3.

² Al-Shubaily, Intisar N/A. "Social Aspects of Silent Divorce in Saudi Society: An Empirical Field Study on A Sample of Families in Riyadh." *Journal of Arabic Sciences and Humanities* 2, no. 1 (2023): 419–83. <https://doi.org/10.71422/1658-4058.1107>. Hasby, Muhammad Abdillah, and Rizki Muhammad Haris. "An Analysis of Islamic Law on Emotional Divorce Among Millennials" 10, no. 1 (2026): 240–55. Maulida, Fitri, Lathifah Munawaroh, and Alfian Qodri Azizi. "Criticism of Maqashid Syari'ah on the condition of six months of separation in divorce The low quality of premarital education on the failure of couples to manage" 8, no. 3 (2025): 1292–1311. Mikraj, A L, Maida Hafidz, Muhammad Faisal Hamdani, Muhammad Syahnan, Islamic University, and State of Sumatra. "Silent Treatment and Marriage Well-Being: Psychological Assessment in the Framework of the Principles of Maqashid Syari' Ah" 6, no. 1 (2026): 2011–25. <https://doi.org/10.37680/almikraj.v6i1.9126>. Sons of Ilyasa, Aina Salsabila, Raihan Hamdan Ichrom, and Arief Mukti Radahan. "Love Frozen: A Couple Separated Mentally According to the Law of Marriage Aina Salsabil Putra Ilyasha." *Scientific Journal of Student Research* 3, no. 6 (2025): 534–41.

³ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 12.

finds its relevance. *Tahqīq al-manāt* is an ijtihad procedure that serves to test whether the *manāt* that has been established by the evidence is really realized in the concrete case that is being faced. In fact, al-Shatibī emphasizes that this kind of ijtihad will never be interrupted throughout time, precisely because new cases continue to emerge and demand a re-verification of the validity of his *manāt*.⁴ This affirmation of al-Syātibī is an important one: *silent divorce* is one of the clear examples of the “new case” in question, which demands verifiable work rather than the application of a mere mechanical law.

A search of contemporary literature shows that academic attention to *silent treatment* and emotional divorce in the treasures of Islamic family law has actually begun to grow, although accompanied by quite distinctive and repetitive limitations. At least, there are three streams of study that have been developing. *First*, normative-juridical studies that focus on the legality of this phenomenon within a positive legal framework—for example, whether *silent divorce* can be used as a basis for divorce in court, or how it is positioned within the framework of *nusyūz* and *syiqāq*.⁵ *Second*, a study based on the perspective of family psychology and sociology, which empirically maps the causes and consequences of emotional divorce but does not draw it into the realm of legal reasoning.⁶ *Third*, studies that carry *maqāsid al-syarī’ah* as a framework for assessment, but tend to place it as a frame of value attached to the end of the analysis, rather than as a working method that organizes the process of understanding reality from the beginning.⁷

As a phenomenon, *silent divorce*—which is a state when the inner bond between couples has broken even though the marital status is still valid in the eyes of the law—has actually attracted quite a lot of attention from researchers. Nevertheless, the richness of the study moves in three streams, each of which brings its own methodological tendencies. It is precisely from the reading of the three currents that we can understand why the effort to operationalize *tahqīq al-manāt* on this issue still leaves land that can be said to have not been cultivated.

The first current belongs to empirical-sociological studies. Al-Shubaily⁸ (2023) investigated the social side of *silent divorce* in Saudi society through a survey targeting a *purposive sample* of 188 cases in Riyadh, then sorting it into three axes, namely cause, form, and effect. From the results of the investigation, he found that the most prominent triggers included the participation of relatives, rifts in intimate relationships, and fading emotional warmth. Its form, meanwhile, can be read through the shrinking attention between couples which goes hand in hand with the sharpening of mutual negative attitudes, while the impact spreads to wider family relationships, including children. The excellence of this work for Islamic legal discourse is derived from its database that is rooted in Muslim society, and not simply to borrow the results of Western psychological studies. Therefore, the empirical characteristics that he has successfully mapped

⁴ Asy-syathibi, Ibrahim Al-Gharnathi, *Al Muwafaqat*, Vol V (Dar Ibnu Affan, 1997), 12-30.

⁵ Muhammad Abdillah Hasby and Rizki Muhammad Haris, “An Analysis of Islamic Law on Emotional Divorce Among Millennials” 10, no. 1 (2026): 240–55.

⁶ Aina Salsabila Putra Ilyasa, Raihan Hamdan Ichrom, and Arief Mukti Radahan, “Love Froze: Couples of the Inner Separate House According to the Law of Marriage Aina Salsabil Putra Ilyasha,” *Scientific Journal of Student Research* 3, no. 6 (2025): 534–41.

⁷ A L Mikraj et al., “Silent Treatment and Marriage Well-Being: Psychological Assessment Within the Framework of the Principles of Maqashid Shari’ah Principles” 6, no. 1 (2026): 2011–25, <https://doi.org/10.37680/almikraj.v6i1.9126>.

⁸ Intisar N/A Al-Shubaily, “Social Aspects of Silent Divorce in Saudi Society: An Empirical Field Study on A Sample of Families in Riyadh,” *Journal of Arabic Sciences and Humanities* 2, no. 1 (2023): 419–83, <https://doi.org/10.71422/1658-4058.1107>.

are likely to be the raw material for the determination *of manāt* that is genuinely based on field realities, not merely theoretical constructions. However, his analysis stops in the framework of structural functionalism and does not move further into the realm of legal judgment (*taklīf*).

The second stream is normative-multidisciplinary. Ilyasha, Ichrom, and Ramadhan (2025)⁹ examine the state of “one house but separate inwardly” by uniting three points of view at once, namely religion, law, and psychology. According to them, the disappearance of *sakīnah*, *mawaddah*, and *rahmah* is a symptom of the fragility of household stability, which when viewed from a positive legal perspective can be considered as a form of mental neglect as well as a basis for divorce lawsuits as stipulated in Law No. 1 of 1974. In terms of themes, this work is the closest to the study under development, because it places *silent divorce* exactly within the framework of family law while associating it with the categories *of nushūz* and inner neglect. However, it is at this point that its limitations also arise: the work uses *maqāsid* and the category of fiqh as a framework for assessment, and not as a testing procedure that can be repeated by other researchers. This difference will later become the basis for the novelty of this study.

Meanwhile, the third trend is based on criticism of *maqāsid*-based policies. Maulida, Munawaroh, and Azizi (2025)¹⁰ evaluated SEMA No. 3 of 2023 which requires a minimum of six months of separation of residence as a condition for divorce that departs from a prolonged dispute. They concluded that the rigid application of these provisions has the potential to intersect with *hifz al-nafs*, *hifz al-'aql*, and *hifz al-nasl*, because these rules tend to prolong conflicts in households that are already fractured. Through this work, it can be seen how *al-darūriyyāt al-khams* and the rules *of dar' al-mafāsid* are applied to contemporary family law issues in Indonesia. Not only that, the work also touches on the issue of judges' discretion and proof of psychological pressure, two things that are directly related to the category testing agenda in this study. Nevertheless, *the maqāsid* in the work is still placed as a tool of criticism of policy, and not as a stage *of tahqīq al-manāt* towards concrete cases.

From the three currents above, a red thread can be drawn. All of them are in contact with *silent divorce*, even two of which have moved *the maqāsid* and the category of fiqh, but none of them describe *tahqīq al-manāt* as a series of works that are bright and open to re-examination. In other words, there is a gap between the availability of empirical data (Stream 1), the recognition of the legal status of the phenomenon (Stream 2), and the use of *maqāsid* as an evaluation instrument (Stream 3), without the presence of a single procedure that is able to weave the three methodologically. In fact, the verification *of manāt* actually acts as a node that links empirical reality with the establishment of law within the framework of al-Shatibī's thought, and this is where its absence as a procedure becomes even more conspicuous.

It is at this point that this study places itself. Rather than simply adding sociological descriptions or giving rise to new normative critiques, this study uses empirical findings—especially Al-Shubaily's three-axis mapping—as material for the First Phase. Next, the

⁹ Sons of Ilyasa, Ichrom, and Radahan, “Love Froze: Couples of the Same House Separated Mentally According to the Law of Marriage of Aina Salsabil Son of Ilyasha.”

¹⁰ Fitri Maulida, Lathifah Munawaroh, and Alfian Qodri Azizi, “Criticism of Maqashid Syari 'ah on the Condition of Six Months of Separation in Divorce The Low Quality of Premarital Education on the Failure of Couples to Manage” 8, no. 3 (2025): 1292–1311.

recognition of the legal status and the *nushūz* category of normative currents is used as material for the Third Stage, namely category testing. At the same time, *maqāsid* is no longer treated as a critical lens, but rather is positioned as an internal element of the *tahqīq al-manāt* procedure itself. Thus, the novelty of this study does not lie in its object, which incidentally has been discussed by the three previous currents, but in the way of operationalizing the method, namely by making *tahqīq al-manāt* a tiered procedure that can be replicated in the case of *silent divorce*.¹¹

Based on the mapping, it appears that there is a gap that has not been touched. The three streams of upfront study, however valuable they may be, stop at a similar point: none of them operationalizes *tahqīq al-manāt* as an explicit and replicable working procedure for reading the phenomenon of family law that leaves no physical traces. Normative studies treat *silent divorce* as if its *manāt* has been clarified and simply applied; empirical studies dwell on descriptions without bridging them to law; whereas *maqāsidī* studies use *maqāsid* as a justification at the end of the analysis, rather than as an instrument of verification. In fact, it is precisely in this kind of latent case that the verification of *manāt* becomes the most demanding problem, because the “death” of the relationship cannot be proven through external events, but only through a careful reading of the inner and relational conditions of the partner. This is where the study puts itself: not to add a new legal conclusion to *silent divorce*, but to offer a more orderly way of working in reaching that conclusion.

Starting from this gap, this study intends to operationalize *tahqīq al-manāt* al-Syātībī as a method of analysis of contemporary family law phenomena, by making *silent divorce* a *preliminary case*. The contributions carried out are methodological in two layers. *First*, it shows how the procedure of *ijtihad* al-Syātībī which has been often discussed at the theoretical level can be broken down into concrete stages of work and can be replicated in other cases. *Second*, it shows that empirical aids—especially family psychology—are not optional complements, but rather components that are methodologically needed in the verification of *manāt* in cases that do not leave physical traces.¹² Thus, this study also wants to affirm that the combination of *usūlī* reasoning and empirical findings is not a methodological compromise, but rather an internal demand of *tahqīq al-manāt* itself. As for methodically, this research is qualitative with an analytical-normative approach that combines the study of *usūl al-fiqh* and the reading of the findings of family psychology as an instrument of verification.

Departing from all the descriptions above, the problems in this study are formulated into three main questions: How can *tahqīq al-manāt* al-Syātībī be operationalized as a procedure for analyzing contemporary family law phenomena? What is the construction of the shari’i phenomenon of *silent divorce*, and is it absorbed into the categories of *nusyūz*, *al-hijr*, *syiqāq*, or *iyla*? What is the status of *maqāsidī* of marriage contracts that are maintained without achieving the goals of sharia, and what are the legal and ethical implications?

Through these three questions, the discussion in this study is directed to move from the methodological to the applicative. In the initial stage, the reasoning will be centered on the elaboration of *tahqīq al-manāt* into a series of work steps—starting from the identification of

¹¹ Asy-syathibi, Ibrahim Al-Ghirnathi, *Al Muwafaqaat*, Vol V (Dar Ibnu Affan, 1997), 12-30.

¹² Asy-syathibi, Ibrahim Al-Ghirnathi, *Al Muwafaqaat*, Vol V (Dar Ibnu Affan, 1997), 12-30.

the manāt determined by the postulate, the absorption of empirical data on the reality of the relationship, to the assessment of the realization of the *manāt* in the case of *silent divorce*. The next stage will test whether this phenomenon can be absorbed into the established category of *fiqh*, or whether it demands a new construction that places the death of *maqāsid al-nikāh* as a separate *manāt*. From the whole process, this research is expected to produce two things at once: a procedural model of *tahqīq al-manāt* that can be replicated in other contemporary family law issues, as well as a more honest legal reading of the condition of marriage that is formally legal but has substantially lost its spirit. Thus, this study does not stop at the assessment of *silent divorce* alone, but offers a way of thinking that is able to enrich the methodology of contemporary *ijtihad* more broadly.

Methods

This study is classified as normative legal research that is carried out with a qualitative approach through library *research*. To support his analysis, two approaches are used at once, namely the *conceptual approach* and the philosophical *approach*, with *the theory of maqāsid al-mukallaf* al-Syātībī in *al-Muwāfaqāt* placed as the main framework of analysis.

The object of research here is the legal construction of the phenomenon of *silent divorce*, not the individual perpetrator empirically. Therefore, the empirical characteristics of these phenomena are not explored through the collection of field data, but are traced from the auxiliary science literature—in this case family psychology and sociology. As a consequence, the resulting findings are purely conceptual and in no way claim empirical representation of any population.

The legal materials that are the sources in this study can be sorted into the following three groups:

1. **The primary legal material is in the form of the book *al-Muwāfaqāt*** by Imam al-Syātībī.
2. **Secondary legal materials**, which include classical *munakahat* jurisprudence, contemporary *maqāsid al-syarī'ah* literature, related laws and regulations, as well as a number of scientific articles discussing *silent divorce* and emotional divorce.
3. **Non-legal materials**, namely family psychology literature that reviews *silent treatment*, *ostracism*, and *emotional divorce*, are positioned as auxiliary sciences at the stage of identifying empirical characteristics.

All of these materials are then analyzed descriptive-analytically by operationalizing the *tahqīq al-manāt procedure* through four stages as detailed in Table 1. The direction of the analysis is to examine the extent to which there is a compatibility between the purpose of the sharia (*maqāsid al-syāri'*) and the purpose of the parties to the agreement (*maqāsid al-mukallaf*), in order to ultimately determine the status of *maqāsidī* from the phenomenon of *silent divorce*.

Table 1. Operationalization of the *Tahqīq al-Manāt Procedure*¹³

Stages	Procedure	Operationalization in This Research
1	Identification of empirical characteristics	Compiling descriptions of the phenomenon of <i>silent divorce</i> from the literature of family psychology and sociology: patterns of <i>ostracism</i> , passive aggression, and <i>stages of emotional divorce</i> .
2	Abstraction becomes an indicator of shari'i	Converting empirical characteristics into normative indicators: the cessation of <i>mu'āsarah bi al-ma'rūf</i> , the loss of <i>sakan</i> , and the cessation of the fulfillment of relational rights.
3	Testing the suitability of the fiqh category	Testing the indicators against the categories of <i>nusyūz</i> , <i>al-hijr</i> , <i>syiqāq</i> , and <i>ilya'</i> to assess the degree of absorption.
4	Determination of <i>manāt status</i>	Determining whether the phenomenon is absorbed into the existing category or is it a <i>wāqī'ah mustajidda</i> with its own <i>maqāsidi</i> status.

1. *Maqāsid al-Syarī'ah* in the Perspective of al-Syātībī¹⁴

Basically, *maqāsid al-syarī'ah* refers to the universal goals that the sharia wants to achieve, namely realizing the benefits of human beings both in this world and in the hereafter. Al-Syātībī himself sorts these benefits into three levels, namely *darūriyyāt* (primary), *hājiyyāt* (secondary), and *tahsīniyyāt* (tertiary). At the *darūriyyāt level*, there are five main aspects that must be maintained (*al-darūriyyāt al-khams*), including religion (*dīn*), soul (*nafs*), intellect (*'aql*), heredity (*nasl*), and property (*māl*). When associated with the context of marriage, the protection of the soul (*hifz an-nafs*) conceptually embraces the dimension of the psychic well-being of both couples.

2. The Theory of *Maqāsid al-Mukallaf*: The Dialectic of Intention and the Essence of Akad¹⁵

In *al-Muwāfaqāt*, al-Syātībī asserts that the deeds of a mukallaf are assessed substantively from the extent to which his intention is in harmony with the intention of the Maker of the Shari'ah (*maqāsid al-sharī'*). The estuary of every burden of the law (*taklīf*) is the realization of the benefit of the slave, and for that the mukallaf is required to subdue his desires so that they are in accordance with the will of the Shari'ah.

Conceptually, this theory provides the right lens to read the situation when the marriage contract is maintained only at the formal level, while the relational commitment has long since been abandoned. If the contract is held solely to avoid social stigma or for administrative purposes—without any further effort to revive the functions of *sakan*, *mawaddah*, and *rahmah*—then at that point there is a divergence between the *maqāsid al-mukallaf* and the purpose of marriage itself. This condition, in the framework of al-Syātībī's thinking, reflects an act that has lost the spirit of *tasyrī'*: the form of the contract is still intact, but the substance of the benefit it should have ceased to work.

¹³ Asy-syathibi, Ibrahim Al-Ghirnathi, *Al Muwafaqaat*, Vol V (Dar Ibnu Affan, 1997), 12-30.

¹⁴ Asy-syathibi, Ibrahim Al-Ghirnathi, *Al Muwafaqaat*, Vol II (Dar Ibnu Affan, 1997), 17-20.

¹⁵ Asy-syathibi, Ibrahim Al-Ghirnathi, *Al Muwafaqaat*, Vol III (Dar Ibnu Affan, 1997), 27-31.

3. The Theory of *Maqāsid al-Ussrah* Jamaluddin Athiyah¹⁶

Jamaluddin Athiyah expands the scope of *maqāsid al-syarī'ah* to touch the realm of the family (*maqāsid al-ussrah*) through seven functional aspects, namely:

1. the arrangement of the relationship between men and women
2. preservation of offspring
3. the embodiment of peace and love (*sakan, mawaddah, rahmah*)
4. maintenance of nasab
5. the care of the religious side in the family
6. the regulation of family institutional aspects
7. family financial arrangements.

Through this mapping, Athiyah wants to emphasize that the family is not limited to legal ties, but an institution that carries a number of substantive functions.

4. *Ma'āt al-Af'āl* dan *Ta'thīl al-Maqāsid*¹⁷

The theory of *ma'ālāt al-af'āl* (consideration of deeds) emphasizes that a mujtahid should not stop at legalistic texts alone, but is obliged to weigh the long-term consequences born of a legal stipulation. For al-Syātībī, the law is not attached to the label, but to the fulfillment of *manāt* which brings benefits.

From this premise arises the concept of *ta'thīl al-maqāsid* (abandonment of the purpose of the sharia), which is a state when the form of law is maintained while the purpose that is the reason for its sharia is no longer realized. Theoretically, if maintaining the marriage contract even gives birth to a greater *mafsadah* than separation, then this action clashes with the rules of *dar' al-mafāsīd* which is one of the pillars of *maqāsid al-syarī'ah*.

5. *Ihtiyāl* as a Deviation of the *Maqāsid*¹⁸

Al-Syātībī also discusses *ihtiyāl* (*legal stratagem*) as the use of outwardly valid forms of law to achieve goals that are actually contrary to the intention of the Shari'a. Its relevance for this study is purely conceptual: if the validity of the marriage contract is used as a shield to avoid the relational responsibility that is incidentally the purpose of the contract, then structurally the pattern resembles *ihtiyāl*. Nevertheless, a definitive assessment of this issue requires verification of intentions that are beyond the reach of normative studies.

6. The Phenomenon of *Silent Divorce* in Auxiliary Science Literature¹⁹

In the psychological literature, *silent treatment* is interpreted as a form of passive aggression that manifests through neglect or refusal to communicate, with the function of punishing the partner. This behavior is conceptualized as a form of social exclusion (*ostracism*) that threatens the fundamental human need for a sense of belonging and self-esteem. Not infrequently, this phenomenon becomes the initial stage of *emotional divorce*, which is a situation when the couple

¹⁶ Athiyah, Jamaluddin, *Nahwa Taf'īl Maqasid Asy Shari'ah*, (Dar Al Fikr, Damascus, 2003) 17.

¹⁷ Asy-syathibi, Ibrahim Al-Gharnathi, *Al Muwafaqaat*, Vol V (Dar Ibnu Affan, 1997), 117.

¹⁸ Asy-syathibi, Ibrahim Al-Gharnathi, *Al Muwafaqaat*, Vol II (Dar Ibnu Affan, 1997), 229.

¹⁹ Mikraj et al., "Silent Treatment And Marriage Well-Being: Psychological Assessment Within The Framework Of The Principles Of Maqashid Shari' Ah."

is still legally bound but has lost emotional closeness—a condition that develops gradually, starting from a decrease in the intensity of communication until finally leading to alienation.

Results and Discussion

Identification of Empirical Characteristics

The opening step in *tahqīq al-manāt* requires a careful mapping of reality before a legal judgment is made. Referring to the search of the ancillary science literature, the phenomenon of *silent divorce* can be recognized from several characteristics, including: the decline in the quality of communication that was originally in the form of meaningful dialogue to just a functional exchange; the continuation of physical togetherness without psychological closeness; until—in its most extreme form—silence is carried out deliberately as a means of control and punishment.²⁰

Among these characteristics, the most methodologically decisive is its gradual and bilateral nature.²¹ Unlike open conflicts whose starting point can be traced, *silent divorce* grows slowly without a single obvious triggering event. It is also different from disobedience that comes from only one party, because in practice both sides often withdraw together. It is precisely these two characteristics that will later determine the direction of the results of categorical testing in the third stage.

Abstraction becomes a Syar'i Indicator

The empirical characteristics that have been presented are further abstracted into a number of normative indicators, as shown in Table 2.

Table 2. Abstraction of Empirical Characteristics as Sharia Indicators

Karakteristik Empiris	Shar'i Indicators	Maqāsidī References
Degradation of communication into functional exchange	The cessation of <i>mu'āsyarah bi al-ma'rūf</i> substantively	<i>Maqāsid al-nikāh</i> the relational function of the akad
Physical coexistence without psychological closeness	Lack of realization in the household	<i>Maqāsid al-Usrah</i> : the embodiment of <i>sakan</i> , <i>mawaddah</i> , <i>rahmah</i>
Deliberate Residence as an Instrument of Punishment	The cessation of the fulfillment of relational rights	<i>Hifz an-nafs</i> and <i>hifz al-'aql</i>

It is this stage of abstraction that really distinguishes *tahqīq al-manāt* from simply attaching *maqāsid* as a frame of value. It should be emphasized that auxiliary science here is not used to assess, but merely to describe; The assessment remains the authority of the sharia apparatus. In other words, psychology is positioned as an instrument of *tahqīq al-wāqi'* (verification of reality), and not as a source of norms.

²⁰ Al-Shubaily, "Social Aspects of Silent Divorce in Saudi Society: An Empirical Field Study on A Sample of Families in Riyadh."

²¹ Abdurrahim, Uthman, Aliyat Tahqiq Al Manath wa Wasailuhu wa Maslakul Mujtahid Fiihi, 34.

Testing the Suitability of Fiqh Categories²²

The sharia indicators are then tested against the four available categories of fiqh, as follows:

1. Against *nusyūz* — *nusyūz* is constructed as unilateral disobedience, that is, when one of the parties refuses to fulfill its obligations. The bilateral nature inherent in *silent divorce* makes it difficult to label *nāsyiz* on the one hand, because withdrawal here takes place reciprocity.²³
2. Against *al-hijr* — in the classical framework, *al-hijr* performs an educational function, is limited in duration, and is directed at improvement. On the other hand, the silence in *silent divorce* is chronic, without an orientation to improvement, and acts as a punishment. Similarities in form do exist, but *the 'illat* is different.²⁴
3. Against *syiqāq* — *syiqāq* requires the existence of a definite disagreement. The gradual nature of *silent divorce*, which is characterized by the suppression of communication without open conflict, causes the constitutive elements of *syiqāq* to be not fulfilled.²⁵
4. Against *ilya'* — *ilya'* rests on the oath not to associate with the wife as its constitutive element. In fact, in *silent divorce*, the cessation of the relationship takes place without any formulation of oaths, so that *the manāt ilya'* is not realized.²⁶

Determination of *Manāt Status*

The test results showed a consistent pattern: *silent divorce* partially intersected with each category, but none were able to absorb it completely. The existing slices are phenomenal, i.e. limited to the resemblance of outward forms, while the difference is constitutive, that is, lies in the incompatibility of the elements that become *the manāt* for each category. Forcing it into one of the categories is the same as ignoring the distinguishing element that is decisive.

Based on these findings, the *determination of manāt on silent divorce* is not complete if it only relies on a positive fiqh framework. This phenomenon is more appropriately placed as a *wāqī'ah mustajidda* (new legal condition) that demands a separate *manāt* designation, rather than being assimilated analogically into existing categories.

The Status of *Maqāsidi* and Theoretical Implications

Viewed from the perspective of *maqāsidi*, the continuation of the contract that has lost its relational function raises the problem of *ta'thīl al-maqāsidi*, namely the maintenance of the legal form while the purpose of its sharia is no longer realized. Even so, this assessment cannot be immediately generalized. Al-Syātībī himself demands the consideration of *ma'ālāt*, considering that the consequences of maintaining the contract vary depending on the circumstances.²⁷

Conceptually, two different situations can be sorted out. *First*, when the condition of silence is only temporary and instead opens up a space for reflection that is oriented towards improvement, then it approaches the function of *educative hijr*, so that maintaining the contract still contains the value of benefit. *Second*, if the condition is chronic and causes real harm to one or even both

²² Abdurrahim, Uthman, Aliyat Tahqiq Al Manath wa Wasailuhu wa Maslakul Mujtahid Fiihi, 59.

²³ Wahbah az-Zuhaili, Al-Fiqh Al-Islāmī Wa Adillatuhu, vol. IX (Beirut: Dār al-Fikr, 1985), 6845.

²⁴ Wahbah az-Zuhaili, Al-Fiqh Al-Islāmī Wa Adillatuhu, vol. IX (Beirut: Dār al-Fikr, 1985), 6855.

²⁵ Wahbah az-Zuhaili, Al-Fiqh Al-Islāmī Wa Adillatuhu, vol. IX (Beirut: Dār al-Fikr, 1985), 7060.

²⁶ Wahbah az-Zuhaili, Al-Fiqh Al-Islāmī Wa Adillatuhu, vol. IX (Beirut: Dār al-Fikr, 1985), 7069.

²⁷ Asy-syathibi, Ibrahim Al-Ghirnathi, Al Muwafaqaat, Vol V (Dar Ibnu Affan, 1997), 117.

parties, then maintaining the form of the contract without the effort of *islah* will clash with the rules of *dar' al-mafāsīd*. Defining the boundaries between these two situations requires *tahqīq al-manāt* in every concrete case—and this is where the methodological contribution of this research lies.

The scholarly contributions offered are also methodological: *tahqīq al-manāt* acts as a bridge that keeps contemporary *ijtihad* from falling into hasty analogies. This procedure demands that each new phenomenon be accurately described first—with the help of empirical science—before it is finally pulled into the legal category. Because without passing through this stage, a mere outward resemblance risks being misinterpreted as the similarity of *manāt*.

Conclusion

This research came to the conclusion that *tahqīq al-manāt* can actually be operated as a working method—and not just a frame of value—through four stages that are systematically arranged, namely: identification of empirical characteristics by utilizing auxiliary knowledge, abstraction of these characteristics into *shari'i* indicators, testing the level of compatibility with the available categories of *fiqh*, and finally determining the status of *manāt*. Early applications of *silent divorce* show that this phenomenon partially intersects with *nusyūz*, *al-hijr*, *syiqāq*, or *ilya'*, but none of the categories is able to absorb it fully—the slices are phenomenal, while the differences are constitutive. Therefore, the determination of his *manāt* could not be completed within the framework of positive *fiqh*, so the phenomenon was more appropriately positioned as *wāqī'ah mustajidda*. From the perspective of *maqāsīdī*, maintaining an *akad* that has lost its relational function does raise the problem of *ta'thīl al-maqāsīd*; however, this assessment cannot be generalized and instead requires consideration of *ma'ālāt* in each case. The main contribution of this research rests on the methodological aspect, which shows that empirical auxiliary science is a necessary component—not just an optional complement—in the process of verifying *manāt* on phenomena that do not leave physical traces.

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