

CHAPTER II

LITERATURE REVIEW

A. Review of Desacralization Theory

Emile Durkheim gave a definition of religion as a belief system with intact behaviors and always related to the sacred, that is something separate and forbidden.¹⁹ The sacred has wide influence, determining the welfare and interests of all members of society. On the other hand, the profane does not have such a big influence, it only reflects the daily life of each individual, whether it concerns personal activities or habits that always carried out by each individual and society.

Professor Isak Svensson of Uppsala University's *Ending Holy Wars: Religion and Conflict Resolution in Civil Wars* provides an explanation and description of the desacralization theoretical framework. As a result, desacralization is defined in several ways throughout his book, all of which have some additional nuance but are fundamentally similar.

Desacralization, as Prof. Svensson also notes, is a paradigm of solutions as much as of procedures. However, rather than focusing on the answers or results of those procedures, I restrict my research to the procedural component of the desacralization hypothesis.²⁰

¹⁹ Shohwunni Hayati, Desacralization in dressing is a political identity for word peace in the millennial era. *International journal ihya' 'ulum Al-Din*. Vol. 22, No.1 2020, 57. <https://doi.org/10.21580/ihya.22.1.5607>

²⁰ Maduro Lang, O. A. (1988). The Desacralization of Marxism within Latin American Liberation Theology. *Social Compass*, 35(2-3), 371-385. <https://doi.org/10.1177/003776868803500210>

In the explanation of Desacralization, there are certainly some differences between some similar terms such as sacrality, spirituality and also religiosity. Sacral (from Latin *sacrum* – sacred) – all those things which are most concerned with human beings; refers to the cultivation of the Absolute; associated with the worship of especially valuable ideals.²¹ Meaning of sacrality according to are expressed by means of special symbols (a cross, a sign of the cross, the myth about the tree of knowledge of good and evil, and so forth) which senses cannot be interpreted in terms of the natural properties inherent in these things.²²

Religiosity and the practice of religion are not only integral parts of one culture, but in many situations, they define the core of a cultural belief system of the members of the society.²³ James definite religiosity as “The feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine”²⁴

Elkins definite spirituality is a way to become something and undergo and even originate from awareness of transcendence

²¹ Zhukovsky Vladimir I., Pivovarov Daniil V. Concept of sacral and system of sacralization // *Журнал СВУ. Гуманитарные науки*. 2014. №7. <https://cyberleninka.ru/article/n/concept-of-sacral-and-system-of-sacralization>

²² Zhukovsky, V. I., and D. V. Pivovarov. "Sacral and and System of Sacralization." *European Journal of Natural History* 1 (2015): 21-24.

²³ Mathur, Anil. "Measurement and meaning of religiosity: A cross-cultural comparison of religiosity and charitable giving." *Journal of Targeting, Measurement and Analysis for Marketing* 20 (2012): 84-95.

²⁴ Amir, Yulmaida, and Diah Rini Lesmawati. "Religiusitas dan spiritualitas: Konsep yang sama atau berbeda." *Jurnal ilmiah penelitian psikologi: kajian empiris & non-empiris* 2.2 (2016): 67-73.

dimension, which has some characteristic values that can be recognised by an individual life and everything consider is the divine authority. According to Armstrongs Spirituality is a presence of relationship with the mighty power determining the way of how one lives his lives.²⁵

Religiosity is considered formal and institutional because it reflects commitment to beliefs and practices according to a particular (religious) tradition, while spirituality is associated with personal experience and is functional, reflecting individual efforts to obtain purpose and meaning in life.²⁶

Prof Svensson also explains six different procedures through which desacralisation is achieved:

1. Religious matters are increasingly subordinated to other worries.

There isn't a clear change in the religious issues, but the issues become so much more important that the religious issues lose some of their standing or importance in the conflicts.²⁷

2. *Reformulation*: "religious actors redefine the content of the religious message. Just as the religious actors, at the onset of the conflict, appealed to the divine to motivate a particular set of action (take up arms), they can at the other end of the conflict cycle appeal to the divine when they say that religious

²⁵ Warsah, Idi, and Imron Imron. "The discourse of spirituality versus religiosity in Islam." *Al Albab* 8.2 (2019): 225-236.

²⁶ McNamara Barry, Carolyn, et al. "Religiosity and spirituality during the transition to adulthood." *International journal of behavioral development* 34.4 (2010): 311-324.

²⁷ Svensson, Isak. *Ending holy wars: Religion and conflict resolution in civil wars*. University of Queensland Press (Australia), 2012. 160

considerations now demand an end to the conflict (lay down arms)”²⁸

3. *Repoliticisation*: “the religious issue is shift to the political sphere (...) not in the sense that the basis of motivation for the parties or the emotional importance of these issues has necessarily decreased but rather they have shifted forms”²⁹
4. *Delegitimisation*: “this can occur when the atrocities of a conflict decrease the appeal of religious aspirations, or when other dynamics influence the legitimacy of the organisation or the cause that they are fighting for”³⁰
5. *Fractionalisation*: “which means other groups are rising up, challenging existing groups that have raised religious aspirations. The group is then at risk of being religiously outflanked by a more religiously outflanked group, or alternatively by a secular-oriented group or faction”³¹
6. *Reconvergence*: “occurs when the whole society becomes more pious and the gap between the religiously focused actor and the other side narrows or even closes entirely. (...) This opens the possibility to agree to a religious basis for a solution by giving on to religious aspirations”³²

²⁸ Svensson, *Ending holy wars*, 160.

²⁹ Svensson, *Ending holy wars*, 160.

³⁰ Svensson, *Ending holy wars*, 160.

³⁰ Svensson, *Ending holy wars*, 160.

³¹ Svensson, *Ending holy wars*, 160.

³² Svensson, *Ending holy wars*, 160.

These are some a set of examples of desacralization initiated by Prof. Svensson that can be followed to find solutions to similar problems.

B. Review of The Concept of *Iḥdad*

1. Definision of *Iḥdad*

Before discussing *Iḥdad* , the author will provide a few definitions from several circles related to '*iddah*', which was previously mentioned. '*iddah* means calculation or something that is calculated.³³ '*iddah* is a term for the period a woman has to wait and prevent remarriage after the death of her husband or separation from her.³⁴ Ahmad al-Ghundur also mentioned that '*iddah* is a period of time determined to wait for the wife's chastity after divorce or after the death of her husband.³⁵ *Iḥdad* comes from the word *ahadda*, sometimes also referred to as *al-hidad*. Etymologically means *al-man'u* which means prevention and prohibition, this was also conveyed by Abu Yahya Zakariyya and Sayyid Abu Bakar al-Dhimyati. Meanwhile, according to the terminology initiated by Abu Yahya Zakariyya al-Anshari is "abandoning wearing clothes dyed in colors intended for adornment". Judging from the above definition,

³³ Amir Nuruddin, dan Azhari Akmal Tarigan, *Hukum Perdata Islam Di Indonesia Studi Kritis Perkembangan Hukum Islam Dari Fikih, UU No. 1/1974 Sampai KHI*, (Jakarta:kencana, 2004), 240

³⁴ Ali yusuf as-Subakti, *fiqh keluarga pedoman dalam berkeluarga dalam islam*(jakarta: Amzah, 2010),348

³⁵ Nuruddin, *hukum perdata islam di Indonesia*, 240-241

it can be said that *Ihdad* in language is a prohibition, while according to the term is to leave things that can attract the attention of others. especially the opposite sex to propose or to marry her, this applies to women whose husbands die during the '*iddah* period is still there.³⁶

2. relationship between '*iddah* and *Ihdad*

As we understand that '*iddah* is a waiting period for women who are separated from their husbands or whose husbands die. *Ihdad* itself is a prohibition that should not be done by a woman who is in the '*iddah* period. At least there are some rights and obligations of women that need to be done during their '*iddah* period. So the relationship between the two is very strong.

3. Law of *Ihdad*

The majority of scholars have agreed that the law of *Ihdad* is only for wives. Other than wives, mothers, grandmothers and relatives are not obliged to observe *Ihdad* . Even slaves who have given birth to their master's children or who have slept with their masters.³⁷

Ihdad for a wife can be divided into several parts according to the cause of the breakup of marriage.

³⁶ Muhammad Syukri albani Nasution dkk, pelaksanaan *Ihdad* bagi istri yang ditinggal mati menurut mazhab syafi'i (studi kasus di kecamatan percut sei tuan kabupaten deli serdang) *Al-maslahah*, 268-270. <https://jurnal.staialhidayahbogor.ac.id/index.php/am/article/download/968/638>

³⁷ Wahbah az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid 9, Terj. Abdul Hayyie Al Kattani, dkk, (jakarta: Gema Insani, 2011), 564

- 1) Wives whose husbands die. From the Malikiyah, Shafi'iyah, Hanafiyah and Hambali scholars, the ruling on a wife whose husband dies in carrying out *Ihdad* is obligatory, which is an agreed upon scholarly consensus, although there are some scholars who do not make it obligatory.
- 2) Wives who are divorced ba'in the law of carrying out *Ihdad* there are differences, namely from the Hanafiah provides information that the law is mandatory. Whereas from the opinion of the majority of fuqaha *Ihdad* is not mandatory but if implemented it will be better. Because the fuqaha are of the opinion that the husband has wronged his wife by imposing divorce ba'in so it is not customary for the wife to show sadness and regret for the separation that has befallen her.³⁸
- 3) Wives who are divorced raj'I. The ruling for wives who are divorced by this kind in carrying out *Ihdad* has been agreed by the majority of scholars that they are not obliged to carry it out, because this can provide an opportunity for reconciliation for the husband and wife.

4. Period of *Ihdad*

It is recommended for a woman to mourning (al-Hidad) for no more than three days apart from the death of her husband. According to the majority of fuqaha mourning is permissible for all

³⁸ az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, jilid 9, 565

women who are married to a valid marriage. The mourning period is obligatory for wives, but there are some women who are not obliged to mourn, namely when the woman is divorced raj'i because according to the view of the majority of fuqaha they are still in the status of wife. So she still has the right to dress up for her husband.³⁹ They also agreed on the obligation of mourning for a woman whose husband dies, according to the hadiths shahih which states that,

لَا يَجِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ تَحِدُّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى

زَوْجٍ، أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

" It is not permissible for a Muslim woman who believes in Allah and the Last Day to mourn more than three days, except for the death of her husband, which lasts four months and ten days. ”⁴⁰

5. *Ihdad* in the Compilation of Islamic Law (KHI)

Not only in the fiqh books *Ihdad* is explained but in positive law in Indonesia *Ihdad* is also a concern of the government, namely with the compilation of the Compilation of Islamic Law (KHI) which is a further regulation of Law Number 1 of 1974 concerning Marriage. Namely in article 170 CHAPTER XIX of the Compilation of Islamic Law (KHI) *Ihdad* which is called the mourning period is mentioned.

³⁹ az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, jilid 9, 564

⁴⁰ az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, jilid 9, 564-565

In article 170 there are two paragraphs that are below as follows:

- 1) A wife whose husband has died obliged to observe a period of mourning during the *'iddah* period as a sign of condolence and at the same time to prevent slander.⁴¹
- 2) A husband whose wife has died shall observe a period of mourning according to what is appropriate.⁴²

From here it can be illustrated that positive law also provides firmness regarding the obligation to worship for a wife whose husband dies. In paragraph (1) it is clearly stated that the *Iḥdad* period follows the *'iddah* period, namely the *'iddah* period for wives whose husbands die is 4 months and 10 days. The purpose of the implementation of *Iḥdad* is to prevent fitnah. Then the implementation of *Iḥdad* is also applied to husbands whose wives die, which adjusts to the conditions as a form of grief.

C. Review of *Maqāṣid Asy-Syarī'ah At-Ṭāhir Ibn 'Āsyūr*

1. Biography of Muhammad Tahir Ibn 'Āsyūr

Muhammad at Thahir Ibn Muhammad *Ibn* Muhammad at Thahir *Ibn* Muhammad *Ibn* syekh Muhammad as Syadzili *Ibn* Abdul Qadir *Ibn* Muhammad *Ibn* Assyria is a full name of *At-Ṭāhir Ibn 'Āsyūr*. Muhammad At- Thahir Ibn 'Assyur was one of the *sharia*

⁴¹ Pasal 170 ayat (1) Kompilasi Hukum Islam (KHI)

⁴² Pasal 170 ayat (2) Kompilasi Hukum Islam (KHI)

maqashid scholars born in La Marsa north of Tunis, Tunisia. Tunisia is one of the Islamic countries in mainland North Africa where 40% is the desert of the Sahara, and the rest is a fertile land. The Barbarians were the first ethnic people to inhabit Tunisia and are predicted to have lived in the interior of North Africa since the old stone age. The majority of Muslims in Tunisia are Sunnis, with 97% of all Muslims there and the rest are Khawarij Ibadiyah. Muhammad Thahir Ibn Assyria died in 1296 H/1879 AD in Tunisia.⁴³

The great scholars who taught Ibn ‘*Āsyūr* included Sheikh Ahmad Ibn Badr Al Kafy, where Ibn ‘*Āsyūr* studied with him regarding the rules of the Arabic language.⁴⁴

Muhammad at-Ṭāhir ibn ‘*Āsyūr*'s career in the field of law and fatwa institutions began in 1911 AD, when he was appointed as a member of the judge at the Agrarian Court, two years later became Chief Judge. Furthermore, he was appointed Mufti of the Maliki scholars in 1923 and then became Grand Mufti a year after that, on 23 Muharram 1351 H coinciding with May 28, 1932 he was pinned with the title of Sheikh of the Maliki School of Islam for his position as Chairman of the Supreme *Sharia* Council of the Maliki scholars.⁴⁵

⁴³ Bektı Cıkta Setiya Ningsih, “Comparison Of Al-Syatibi And Thahir Ibn Asyria’s Thoughts On *Maqashid Shari’ah*”, *MIZANI*, 04, No.01(2021), 16 <http://dx.doi.org/10.29300/mzn.v8i1.4685>

⁴⁴ M Muawaffaq, Faiqotun Ni’mah, Kholid Irfani, “*Maqashid Syariah* Dalam Perspektif Ibnu Asyur”, *Attujar: Jurnal Ekonomi Syariah*, 6, No.1 (Februari 2021), 46 <https://jurnal.insida.ac.id/index.php/attujar/article/view/81>

⁴⁵ Orien Efendi, “Kontribusi Pemikiran Maqasid *Syariah* Thahir Ibnu Asyur Dalam Hukum Islam”, *Bilancia*, 04, No. 02 (Juli-Desember 2020), 258 <https://doi.org/10.24239/blc.v14i2.549>

Some of his most famous essays in the field of fiqh are "*Maqāshid Asy-Syarī'ah Al-Islamiyah*", this book is divided into two discussions, namely the discussion of *sharia* and several disciplines related to *maqashid Sharia*. While the second discussion, focuses on discussing *maqashid sharia* both in the realm of its theological basis to its application in various aspects such as muamalah, judicial decisions and other.⁴⁶ Others book, there are still many of his writings that are so popular. However, the author only takes some of his books to be used as the main reference, while other books are only supporting and supporting the book.

2. Concept of *Maqāshid Asy-Syarī'ah At-Tāhir Ibn 'Āsyūr*

Ibn 'Āsyūr views *maqashid Sharia* from several aspects, first, he sees the importance of the independence of *maqashid Sharia* as a science that stands alone. Second, Ibn 'Āsyūr views that human traits are in line with the core of *maqashid Sharia*.⁴⁷

As it is generally known that *ibn 'Āsyūr* was not the first person to initiate the concept of *maqashid Sharia*, but there were previous scholars who first compiled the concept. The most popularly known *maqashid* concept is the *maqashid* of Imam Gazali and Imam Ash-Syatibi. So that the composition of the concept of

⁴⁶ Muhammad Choirun Nizar, "Literatur Kajian *Maqashid Syariah*", *Ulul Albab*, no.35, (Agustus 2016), 61-62

⁴⁷ Julian Maharani, Ilfi Nur Diana, Aunur Rofiq, "Pemikiran Ibnu Asyur Tentang *Maqashid Syariah* Dalam Ekonomi Kontemporer", *JIES: Jurnal Ilmiah Ekonomi Islam*, 8, No.03 (2022), 2497 <http://dx.doi.org/10.29040/jiei.v8i3.5708>

maqashid belonging to *At-Ṭāhir* Ibn Assyria is not much different from the arrangement of the theory belonging to Imam Gazali and Imam Ash-Syatibi.⁴⁸ *At-Ṭāhir* Ibn 'Āsyūr is considered successful in developing the concept of *maqashid Sharia* from the previous concept which only focuses on kulliyat studies and juz'iyah studies only. Ibn 'Āsyūr succeeded in expanding the scope of the research in the research of *maqashid Sharia* khassah such as researching the *maqashid Sharia* muamalah, family, use of property, legal documents, testimony and others.⁴⁹

Ludfi mentioned that Ibn 'Āsyūr provides a view related to *maqashid Sharia* that is no longer only normative, namely entering into a more concrete and operational area.⁵⁰ This can be seen from his opinion contained in his book, which states that "*there are many meanings and wisdoms as a consideration for the enactment of a sharia law, either in part or in whole, which are not limited to certain types. So the character of Sharia, the general objectives and the meanings contained therein cannot be ignored in the enactment of sharia law.*"⁵¹ From this opinion, we can know that Ibn 'Āsyūr emphasized that he rejected *mafsadah* (damage) and brought

⁴⁸ Zaidan Anshari, "Konsep Bid'ah Hasanah (Perspektif *Maqashid* Asy-Syatibi Dan Ibnu Asyur)", *Ilmu Ushuluddin*, 17, No. 1 (Januari-Juni 2018), 35. <https://doi.org/10.18592/jiu.v17i1.1989>

⁴⁹ Maharani, "Pemikiran Ibnu Asyur.", 2497

⁵⁰ Ludfi, "Keharusan Ikrar Talak Di Depan Majelis Hakim Pengadilan Agama Perspektif *Maqashid* Syariah Ibnu Asyur", *Maqashid Jurnal Hukum Islam*, 6, no.1 (Mei 2023), 74

⁵¹ Muhammad Thahir Ibnu Asyur, *Maqashid Syariah* Al-Islamiyah, Cet. II ('Amman: Dar al-Nafais, 2001), 180

maslahah as a general rule of the enactment of *sharia* law on this earth.⁵²

There are at least three (3) ways Ibn 'Āsyūr knows the *Sharia* site, including:

- a) The method of *istiqrā'*, which is doing a tribute to the behavior of the *sharia*, this method can be done in two ways, namely observing the rulings that have been known *illatnya* and observing the arguments that have similar *illat*.⁵³
- b) Using evidence from the text that has a clear meaning that can be understood from the *dhohir* of the verse. The certainty of the gossip produced in this way can be based on two considerations, namely the Qur'an which is *qath'i* or *dhalalah* which is *dhoni*.⁵⁴
- c) Using Hadith Mutawatir, this method is limited to two circumstances. First, the *al-mutawatir al-ma'nawi* hadith, where this situation is obtained from the observations of the majority of companions who witnessed the prophet directly. Second, *al-tawattur al-a'maliy*, which is a situation or time, *al-a'mali* which is based on some of the companions' observations of the actions of the apostle of Allah which occurred repeatedly so that it can be concluded to be the *sharia* goals.⁵⁵

⁵² Ludfi, “keharusan ikrar talak..”, 74

⁵³ Husni Fauzan, Dzulfikri Hadi Imawan, “Pemikiran *Maqashid Syariah* al-Tahir Ibnu Asyur”, *Al-Mawarid:JSYH*, 5, No. 1, (Februari 2023), 111 <https://doi.org/10.20885/mawarid.vol5.iss1.art7>

⁵⁴ Siti Muhtamiroh, “Muhammad Tahir Ibnu Asyur Dan Pemikirannya Tentang *Maqashid Syariah*”, *At-Taqaddum*, 5, No. 2, (November 2013), 270. <https://doi.org/10.21580/at.v5i2.698>

⁵⁵ Fauzan, “Pemikiran *Maqashid Syariah* al-Tahir Ibnu Asyur”, 111

In his book, Ibn 'Āsyūr describes 2 types of *maqashid sharia*, as mentioned by Muhtamiroh as follows:

- a) ***Maqashid 'ammah*** about covers the universal public interest.
- b) ***maqashid khassah*** about touches a few people partially and then spreads to many people as a logical consequence.⁵⁶

Then in *maqashid khassah*, Ibn 'Āsyūr provides 4 basic patterns that are used as guidelines as the main principle of understanding *maqashid sharia*, namely:

- 1) *Al-fitrah*, This means that the teachings of Islam or Islamic law revealed by Allah SWT for the benefit of all mankind are actually very in accordance with the basic human character itself.⁵⁷ Ibn 'Āsyūr divides into 2 types, namely is *Fitrah 'Aqliyah* and *Fitrah Nafsiyyah*.⁵⁸
- 2) *Al-Samaha (tolerance)*, AINUOL YAQIN argues that tolerance is an attitude in the middle between narrowness and then ease which leads to the substance of justice and moderation.
- 3) *Al-musawah (equality before the law)*, all human beings are treated equally in front of Islamic Law. Julian views that Ibn 'Āsyūr provides information regarding the importance of *Al-*

⁵⁶ Asyur, "*Maqashid Syariah...*", 280

⁵⁷ AINOL YAQIN, "Revitalisasi *Maqashid* Syariah Dalam Istinbath Hukum Islam: Kajian Atas Pemikiran Muhammad Al-Thahir Ibnu 'Asyur", *ASY-SYIR'AH: Jurnal Syariah Dan Hukum*, 50, No.2 (Desember 2016), 328 <https://doi.org/10.14421/ajish.v50i2.233>

⁵⁸ Maharani, "Pemikiran Ibnu Asyur...", 2497

musawah to the five basic principles (*al-dharuriyah al-khamsah*) which are the objectives of Islamic *Sharia*.⁵⁹

- 4) *Al-Hurriyat (freedom)*, Ibn 'Āsyūr argues that a person can be said to be free when the law is applied egalitarian indiscriminately. Ibn Assyria considers that someone who is applied equally legally from all forms of action then the freedom will arise. In accordance with his opinion that the principle of *Al musawah (equality before the law)* can create freedom even though the freedom in question is not absolute freedom but freedom on the basis of his own choice in carrying out an action based on Islamic law.

In addition, Ibn 'Āsyūr divides *maslahat* which is the purpose of Shara' from several aspects, namely as follows:

- 1) *Maslahat* from the aspect of the existence of human needs to achieve it. *Maslahah* is divided into three parts, namely *maslahah dhoruriyah*, *maslahah hajiyyah*, dan *maslahah tahsiniyah*.⁶⁰
- 2) *Maslahat* seen from its relationship with the generality of the people either collectively or personally, this *maslahat* is divided into two namely *maslahah kulliyat* while the second is *Maslahah juz'iyah*.⁶¹

⁵⁹ Maharani, "Pemikiran Ibnu Asyur...", 2497

⁶⁰ Sutisna,dkk, *panorama maqashid Syariah*, (Bandung: media sains Indonesia,2021), 121

⁶¹ Muhammad Idzzar, "Konsep Maqasid Syariah Perspektif Tahir Ibnu Asyur 17", *Qonun*, 05, No. 2(Desember 2021), 159 <https://doi.org/10.21093/qj.v5i2.4095>

- 3) Maslahat from the aspect of human needs to achieve it. In this aspect the problem is divided into 3 namely *Maslahah Qoth'iyah*, *Maslahah Zhanniyah*, dan *Maslahah Wahmiyyah*.⁶²

⁶² Idzzar, "Konsep Maqasid Syariah..", 159