

## The Deconstruction of Milk al-yamīn Muhammad Shahrūr and Abdul Aziz's Interpretation: Analysis of *Maqāṣid al-Sharīah* from the Perspective of *Maslahat* and *Mafsadat*

Muhammad Miqdad Al Ghifari Syatta<sup>1\*</sup>, Ahmad Baehaki<sup>2</sup>, Ida Fitri Anggarini<sup>3</sup>

<sup>12</sup>UIN Sunan Kalijaga Yogyakarta; Indonesia

<sup>3</sup>MAS Al-Ittihad Malang; Indonesia

\*Correspondence e-mail: [miqdadghifar9@gmail.com](mailto:miqdadghifar9@gmail.com)

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### Abstract

The interpretations of *milk al-yamīn* proposed by Muhammad Shahrūr and Abdul Aziz have been characterized as liberal by various Muslim scholarly communities. This characterization stems from their apparent neglect of established interpretative methodologies and the disregard for the prevailing moral frameworks that have historically governed such exegeses. Consequently, their readings are perceived to align with the objectives of secular feminist discourse. In response, Abdul Mustaqim offers a critical evaluation of their work, identifying several key deficiencies, including ontological, methodological, ideological, and epistemological shortcomings. In light of these critiques, a more rigorous reassessment of Shahrūr and Abdul Aziz's interpretations is warranted, particularly through the lens of *maqāṣid al-sharī'ah* (the objectives of Islamic law). Such an analysis aims to delineate the theoretical boundaries that these scholars may have transgressed. Employing a qualitative research design, this study examines Shahrūr's *Al-Kitāb wa Al-Qur'an* alongside Abdul Aziz's dissertation, utilizing theoretical and critical analytical techniques. The qualitative critical analysis facilitates a comprehensive understanding of the appropriate interpretative framework for *milk al-yamīn*.

### Keywords

Muhammad Shahrūr, Abdul Aziz, *Milk al-Yamīn*, *Maqāṣid al-Sharī'ah*

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## Introduction

The permissibility of non-marital sexual relations proposed by Muhammad Shahrūr has sparked significant controversy. The emergence of this law is due to Shahrūr's epistemology, which considers the *ushul fiqh* method to be no longer relevant in modern life.<sup>1</sup> In addition, his theories on hudud and antonymy in the Qur'an have also given rise to new ideas in Islamic law.<sup>2</sup> Shahrūr's ideas have not only led to a massive reform of Islamic

<sup>1</sup> Khairuddin Hasballah, "The Milk Al-Yamin Concept as a Validity of Sexual Relationship in a Modern Context: An Analysis of Muhammad Syahrur's Thoughts," *Samarah* 4, no. 2 (2020): 337–59, <https://doi.org/10.22373/sjhk.v4i2.7068>.

<sup>2</sup> Muhammad Syahrur, *Al-Kitāb Wa Al-Qur'an* (Damascus: Al-Ahali, n.d.), 459.

laws that have long been compiled by scholars, but also changed the moral order that has long been in place.

Non-marital sexual relations permitted by Shaḥrūr refer to the word *milk al-yamin* found in the Qur'an. The basis for this argument is QS 4: 3, 24-25, and 36, Surah 16:71, Surah 23:6, Surah 24:31, 33, and 58, Surah 30:28, Surah 33:50, 52, and 55, and Surah 70:30.<sup>3</sup> In general, as explained by the mufasssir, these verses imply that it is permissible for a master to have sexual relations with his slave. However, this seems to be no longer relevant in today's world, given that slavery has been abolished on the basis of human rights, as stated in *the Universal Declaration of Human Rights*.<sup>4</sup> Furthermore, the incompatibility of the law contained in verse with the current context is based on one of *the maqāṣid of the Qur'an*, which aims to abolish slavery on earth. As written in QS 90:11-13.<sup>5</sup>

Shaḥrūr's idea of exploring other meanings of *milk al-yamin* besides those conveyed by the mufasssir needs to be reviewed using the *Maqāṣid al-Shariah* method. *Maqāṣid as-Shariah* is a phrase composed of two words, *al-maqāṣid* and *al-shari'ah*. Etymologically, *maqāṣid* is the plural form of *maqṣid*, which means purpose.<sup>6</sup> *Shari'ah* means path, method, or everything that is decreed by Allah SWT for His servants in the form of laws and Aqidah.<sup>7</sup> Terminologically, no scholar had defined it before Ibn 'Āshūr. He said that *maqāṣid shariah* are the meanings and wisdom behind the enactment of a law. This opinion is based on the verse of the Qur'an, Surah Al-Anbiya', verse 16.<sup>8</sup> Examining the meaning of *milk al-yamin* using the *maqāṣid al-shariah* method will help researchers in finding interpretations by Muhammad Shaḥrūr and Abdul Aziz that are suspected of being out of bounds.

The discourse on the interpretation of the verse *milk al-yamin* and Muhammad Shaḥrūr's thoughts has been widely discussed in recent years. As written by Havis Aravik et al., Shaḥrūr reconstructs the thoughts of the scholars with his hudud theory. He tries to combine his textual reading with the concept of hudud that he carries. Shaḥrūr's interpretation of legal verses also does not consider asbāb al-nuzūl, historical context, or the consensus of scholars.<sup>9</sup> Syamsul Wathani et al. consider that Shaḥrūr's style of interpretation has complex gender and moral implications. This is because it opens up space for the legitimization of non-marital sexual relationships that do not provide legal protection for women.<sup>10</sup> In addition, Jumni Nelli et al. explain that Shaḥrūr's concept of *qiwamah* is considered by to support the secular feminist agenda that prioritizes women's agency outside the structure of Islamic law.<sup>11</sup> This is demonstrated by Shaḥrūr's concept of *milk al-yamin*, which was later developed by Abdul Aziz. He said that the permissibility of non-marital sexual relations was proposed in order to respond to the challenges of sexual relations in

<sup>3</sup> Ar-Raghib Al-Ashfahani, *Mu'jam Mufradat Al-Alfadh Al-Qur'an* (Beirut: Dar al Fikr, n.d.).

<sup>4</sup> Indonesia United Nations Information Centre, "Pernyataan Umum Tentang Hak-Hak Asasi Manusia," 2025.

<sup>5</sup> Dinda Aprilia Sari, "Perbudakan Dalam Al-Qur'an Dan Relevansinya Di Era Modern" (UIN Salatiga, 2024), 66.

<sup>6</sup> Almaany, "Ta'rif Wa Ma'na Maqashid," accessed May 20, 2025, <https://www.almaany.com/ar/dict/ar-ar/مقاصد/>.

<sup>7</sup> Almaany, "Ta'rif Wa Ma'na Syariah," n.d.

<sup>8</sup> Hammadi Al-Ubaidi, *As-Syathibi Wa Maqashid As-Syariah* (Beirut: Dar Qutaibah, 1992), 119.

<sup>9</sup> Havis Aravik, Choiriyah, and Saprida, "Critical Study on The Legal Thinking of Muhammad Syahrur," *Abkam* 18, no. 1 (2018): 43–64, <https://doi.org/10.15408/ajis.v18i1.9019>.

<sup>10</sup> Syamsul Wathani, Habib Ismail, and Akhmad Mughzi Abdillah, "Reconstruction of Women's Fiqh: An Analysis of Muhammad Shahrur's Contemporary Reading in a Hermeneutic Perspective," *Journal of Islamic Law* 3, no. 2 (2022): 159–175.

<sup>11</sup> Jumni Nelli et al., "Qiwamah's Reconception of Muhammad Shahrur's Thoughts and Their Implications for the Feminist Movement in the World," *Al-Istinbath* 9, no. 1 (2024): 309–334.

urban communities.<sup>12</sup> These studies generally focus on exploring Shaḥrūr's thoughts and their impact on gender issues, epistemology, and the reactions of Muslim feminists to them. There have not been many studies that systematically examine this thinking through the *maqāṣid al-sharī'ah* approach as a framework for evaluative criticism of the validity of legal interpretations. This study is important not only to correct the weaknesses of the liberal interpretation method, but also to affirm the relevance of *maqāṣid* as an integrative and contextual framework for assessing Islamic law.<sup>13</sup>

Based on the above explanation, the author attempts to review the issue of *milk al-yamīn* from the perspective of *maqāṣid al-sharī'ah* by answering the following questions: What is the interpretation of *milk al-yamīn* understood by contemporary scholars? What is the cause of the controversy surrounding the understanding of *milk al-yamīn*? How does *maqāṣid al-sharī'ah* review the meaning of *milk al-yamīn* as proposed by Shaḥrūr and Abdul Aziz? By answering these questions, this study is expected to have a significant impact on future studies related to contemporary Islamic law, especially in the review of *maqāṣid al-sharī'ah*.

This study uses a qualitative approach with a *library research* design, with the main objects being the interpretive works of Muhammad Shaḥrūr and Abdul Aziz that discuss the concept of *milk al-yamīn* in the Qur'an. The approach used is normative-critical, which assesses the conformity of these interpretations with the principles of sharia through the framework of *maqāṣid al-sharī'ah*. The primary data comes from Shaḥrūr's *al-Kitāb wa al-Qur'ān* and Abdul Aziz's writings, which reproduce and develop these views in the Indonesian context. Secondary sources include classical and contemporary literature on *maqāṣid*, including the works of al-Syātibī, Ibn 'Āsyūr, Kamali, and El-Mesawī, as well as scientific articles relevant to the discourse of legal interpretation and Islamic hermeneutics.

The analytical techniques used are content analysis and critical-theoretical analysis. Content analysis aims to identify patterns of interpretation, legal arguments, and the social impact of the interpretations offered. Furthermore, critical analysis is carried out using the *maqāṣid* framework to test the harmony of these interpretations with the basic principles of sharia, such as *jalb al-maṣlaḥah*, *dar' al-mafṣadah*, *i'tibār al-mālāt*, and the integration between universal principles (*kullīyyāt*) and particular contexts (*juḥūḍiyyāt*). Through this methodology, the study positions *maqāṣid* not merely as a legal norm, but as an evaluative basis for the epistemic and moral validity of contemporary interpretations.

## Result and Discussion

### The Meaning of *Milk al-Yamīn* According to Muslim Scholars

The phrase *milk al-yamīn* consists of two words, *al-milk* (الملك) and *al-yamīn* (اليمين). *Al-milk* means ownership, and *al-yamīn* means right hand. This phrase then produces a meaning that refers to a person's ownership of a slave. This is because the right hand is synonymous with something that is under one's control. A slave is someone who is under the authority of their master.<sup>14</sup> As stated by Ar-Rāghib Al-Ashfahānī in his book, *Mu'jam Mufradāt Alfadz Al-Qur'ān*, the meaning of *milk al-yamīn* written in the Qur'an refers to a slave owned by someone.<sup>15</sup>

Al-Ashfahani's opinion is in line with that of classical and contemporary exegetes

<sup>12</sup> Hasballah, "The Milk Al-Yamin Concept as a Validity of Sexual Relationship in a Modern Context: An Analysis of Muhammad Syahrur's Thoughts."

<sup>13</sup> Mohammad Hashim Kamali, *Actualization (Ta'fil) of the Higher Purposes (Maqasid) of Shariah*, ed. Dr. Anas S. Al-Shaikh-Ali and Shiraz Khan (Washington DC: International Institute of Islamic Thought, 2020).

<sup>14</sup> Almaany Almaany, "Ta'rif Wa Ma'na Milk Yamin."

<sup>15</sup> Ar-Raghib Al-Ashfahani, *Mu'jam Mufradat Al-Alfadz Al-Qur'an* (Beirut: Dar al Fikr, n.d.), 493.

such as At-Thabari, Wahbah Zuhaili, and Quraish Shihab. At-Thabari interprets the word *milk al-yamin* to mean *al-imā'* (slave).<sup>16</sup> According to him, the permissibility of owning *milk al-yamin* is a way out for someone who has married four women and is prohibited from marrying a fifth. At-Thabari also reveals the permissibility of *milk al-yamin* to be owned as *as-sabā'* and *al-tasarri*.<sup>17</sup>

The same opinion was also expressed by Wahbah Az-Zuhaili in his book of interpretation, *Tafsir Al-Munir*. He said that what is meant by *milk al-yamin* written in the Qur'an means *al-imā'* (slave). These slaves are different from the status of wives, because they do not get the rights that wives get.<sup>18</sup> This difference lies in the matters of dowry, inheritance rights, and other rights that should be obtained by a wife.

Slightly different from previous exegetes, Quraish Shihab attempts to interpret the word *milk al-yamin* with the term *'abd* or *amat*, which means slave. Although linguistically they have the same meaning, the consequences of his interpretation are different. Quraish Shihab is more inclined to argue that sexual relations with a slave must be through a valid marriage.<sup>19</sup> This difference certainly arises because of a mufassir's historical review of when the verse was revealed. Quraish Shihab views that the permissibility of sexual relations with slaves is a means to achieve a noble goal, namely the abolition of slavery. Therefore, the path taken must also be a noble one.

Through the opinions of several Muslim scholars on the meaning of *milk al-yamin*, as mentioned above, there is no significant difference in its interpretation. They all interpret *milk al-yamin* as the term slave. The only difference found in this discussion is the difference in the process of making it permissible to have sexual relations with one's slave. Differences in the interpretation of the term *milk al-yamin* have only emerged in recent years.

The interpretation of the meaning of *milk al-yamin*, which is stagnant and shows no development, has begun to raise various questions. This is due to its contradictory meaning. The contradiction in question can be explained as follows:

1. Slavery is prohibited on earth. This is prohibited in Article 4 of the Universal Declaration of Human Rights on the prohibition of slavery and *Undang-Undang Republik Indonesia No 39 Tahun 1999*.
2. The lack of sharpness in the mufassir's analysis in interpreting *milk al-yamin* in the contemporary era with the term slave is very much at odds with the universal nature of the Qur'an.
3. Verses about *milk al-yamin* are widely regarded as permitting sexual relations with female slaves. It is as if women are merely tools to satisfy men's desires. In fact, they also have the same rights in terms of maintaining their dignity.

Therefore, a new interpretation of the meaning of *milk al-yamin* is needed that is appropriate for application in the contemporary era. This interpretation must, of course, use methods that are in accordance with the principles of Islamic theology and can benefit all of humanity without harming any party.

### Controversy and Criticism of the Concept of Milk al-Yamin

Muhammad Shaḥrūr is one of the figures who has successfully brought the interpretation of *milk al-yamin* outside the comfort zone of classical-contemporary exegetes. Unfortunately, Shaḥrūr's interpretation of *milk al-yamin* has sparked significant controversy.

<sup>16</sup> Ibn Jarir At-Thabari, *Tafsir At-Thabari* (Beirut: Dar al Kutub al Ilmiyah, 2009), 321.

<sup>17</sup> Ibid., 312 This expression was written when At-Thabari explained the meaning of *milk al-yamin* in QS 33 : 50.

<sup>18</sup> Wahbah Az-Zuhaili, *Tafsir Al-Munir* (Damascus: Dar al Fikr, 2003), 565.

<sup>19</sup> M. Quraish Shihab, *Tafsir Al-Mishbah*, 4th ed. (Jakarta: Penerbit lentera hati, 2005), 338.

He argues that sexual relations can be conducted in two ways: through marriage and without marriage. Sexual relations without a valid marriage status are referred to as *milk al-yamīn*. Shaḥrūr's classification arose from his understanding that marriage has clear purposes and consequences, whereas sexual relations with *milk al-yamīn* do not have clear purposes and consequences. The purposes and consequences referred to are: physical intimacy, connecting two families, continuing the lineage, and the desire to have children. Although sexual relations without marriage (*milk al-yamīn*) are permitted, there are still conditions that must be fulfilled by the parties involved. These conditions are, and *aqd ihṣ an*. This is a term that replaces the terms akad *ḡawāj misyār* and akad *ḡawāj mut'ah*. According to Shaḥrūr, both of these contracts are permissible in religion.<sup>20</sup>

The rationale that led Shaḥrūr to this interpretation was the absence of the locus in question (slavery) in the contemporary era. Thus, he sought an interpretation that was appropriate for the contemporary era so that the universality of the Qur'an (*shāliḥ li kulli ḡaman wa makān*) would be preserved. This is also based on Shaḥrūr's distrust of the concept of nasikh-mansukh formulated by several scholars. In addition, the concept of antonymy that he carries leads to the rejection of the meaning of *milk al-yamīn*, which has been understood by the majority of mufassir. Shaḥrūr argues that *milk al-yamīn* is different from *al-riqq* (slave). He also says that if *milk al-yamīn* is interpreted as slave, then a number of verses in the Qur'an that discuss *milk al-yamīn* would be meaningless.<sup>21</sup>

In line with this, Shaḥrūr has a different concept of the general meaning of adultery. He says that adultery is a relationship that is carried out openly, involves more than one man, and is a relationship with a married woman. Thus, relationships other than those mentioned above are not adultery<sup>22</sup>. This opinion seems to open up a way out that Shaḥrūr has been looking for in terms of finding the meaning of *milk al-yamīn* in the contemporary era. According to him, sexual relations with *milk al-yamīn* are based on mutual consent. They are carried out in secret. There is no marriage contract involved. Nor are there any obligations for the master as a husband would have. There is only a contract granting the master full power over his slave. As long as it is not done openly, such behavior is not considered adultery, in his opinion. Therefore, Shaḥrūr then analogizes *milk al-yamīn* with an agreement with someone who is willing to have sexual relations with him without any other obligations imposed as befits a husband and wife. The agreement is then named *aqd ihshan*, as a replacement for the terms nikah *misyār* and nikah *mut'ah*<sup>23</sup>.

Shaḥrūr's view was later followed by Abdul Aziz in his dissertation. He also allowed non-marital sexual relations. However, what Abdul Aziz said was slightly different from what Shaḥrūr said. Aziz tried to interpret *milk al-yamīn* sexual relations more broadly. This is because, according to him, the theory presented by Shaḥrūr was very objective. There is a patriarchal gender bias in it.

According to Shaḥrūr, non-marital sexual relations that women can engage in are premarital and monogamous relations. Meanwhile, men can engage in non-marital sexual relations both premarital and extramarital. However, Abdul Aziz says that women also have the right to fulfill their sexual needs. These needs are known only to each individual. They also need freedom for this, based on the hadith of the Prophet which tells the story of a companion named Wabisah<sup>24</sup>. The difference in thinking between Abdul Aziz and

<sup>20</sup> Muhammad Syahrur, *Nahwa Ushul Jadidah Li Al-Fiqh Al-Islami* (Damascus: Al-Ahali, 2000), 309.

<sup>21</sup> Ibid., 308.

<sup>22</sup> Abdul Aziz, "Konsep Milk Al-Yamin Muhammad Syahrur Sebagai Keabsahan Hubungan Seksual Non Marital" (UIN Sunan Kalijaga, 2019), 198.

<sup>23</sup> Syahrur, *Nahwa Ushul Jadidah Li Al-Fiqh Al-Islami*.

<sup>24</sup> Aziz, "Konsep Milk Al-Yamin Muhammad Syahrur Sebagai Keabsahan Hubungan Seksual Non

Muhammad Shahrūr can be seen more easily in the following table:

<b>ASPECT</b>	<b>MUHAMMAD SHAHRŪR</b>	<b>ABDUL AZIZ</b>
<b>BASIC UNDERSTANDING OF MILK AL-YAMĪN</b>	The context of <i>milk al-yamīn</i> in interpretations that refer to slaves is no longer relevant in the contemporary era. Therefore, contextualization of interpretations is necessary. The original interpretation of milk al-yamīn: a slave who can be had sex with, has changed to someone who can be had sex with through a contract.	This makes Shahrūr's thinking a legitimization of non-marital sexual relations.
<b>SCOPE</b>	Only men are allowed to have sexual relations with <i>milk al-yamīn</i> .	Shahrūr's thinking is considered patriarchal. Therefore, Abdul Aziz also allows women to have sexual relations with <i>milk al-yamīn</i> through a contract.
<b>LIMITATIONS IMPOSED</b>	Shahrūr distinguishes the concept of <i>milk al-yamīn</i> from adultery.	Abdul Aziz set several conditions for the concept of non-marital sexual relations to fall within the framework of <i>milk al-yamīn</i> . These include: mutual consent, not being homosexual, and so on.
<b>REASON FOR CRITICISM</b>	Shahrūr has been criticized for allegedly permitting sexual relations that are considered adultery by conventional-traditional thinkers.	Abdul Aziz's idea of legalizing non-marital sexual relations is considered to be damaging to the Eastern morals that have long been practiced in Indonesia.

What Shaḥrūr and Abdul Aziz did seems to have gone too far. Their formulation of a theory of non-marital sexual relations has led to the deconstruction of Islamic laws on marriage that have been firmly established by the scholars. Although Shaḥrūr and Abdul Aziz set limits on who can be invited to have sexual relations, this can still lead to the decline of a person's dignity as a human being, a follower of the Prophet Muhammad, who was created by God as the best people on earth.<sup>25</sup> Ascesses that there are several methodological errors in Shaḥrūr's thinking:

1. Ontological Criticism: Shaḥrūr's mistake was his disbelief in the concept of *nasikh mansukh*. Meanwhile, the majority of scholars agree that the verse about *milk al-yamīn* has been abrogated due to the absence of its locus. If someone asks, "Then why was this verse revealed if it was ultimately to be abrogated?," the answer is that it was to respond to the social problems that existed at that time. This also happened so that Muslims who

Marital.”

<sup>25</sup> Abdul Mustaqim, “Kritik Penafsiran Milk Al-Yamin Ala Muhammad Syahrur,” Islam Santun, 2019.

came after would understand that one of the purposes of the advent of Islam was to abolish slavery.

2. Methodological Criticism: Shaḥrūr's belief in the concept of antonymity in the Qur'an forces him to reject the equivalence of the words *milk al-yamīn* and *ar-riqq*, which means slave. In fact, all exegetes agree that *milk al-yamīn* means *ar-riqq*, which means slave. Therefore, Shaḥrūr's concept violates the rules of Qur'anic interpretation, which must preserve the original meaning of the text.
3. Ideological Criticism: Shaḥrūr's life in Europe influenced his thinking. His theories were the result of his observations of what often happened there. His theories became biased towards patriarchal ideology. This is because he seemed to make women sexual objects and men the subjects.
4. Epistemological-Axiological Criticism: Shaḥrūr's theory, which was later followed by Abdul Aziz, is considered to lack academic accountability. They were not careful enough in considering the subsequent impacts. Academics should be able to provide social solutions, not add to social problems.

### Analysis of Shaḥrūr and Abdul Aziz's Views on *Milk al-yamīn* Through Maqāṣid al-Shari'ah

The theoretical approach used in this study is based on the *Maqāṣ id al-Shari'ah* framework as a critical analysis tool for interpreting the verses of *milk al-yamīn* developed by Muhammad Shahrur and continued by Abdul Aziz. This framework is based on the classical *uṣ ul fiqh* inherited from figures such as Abū Ishāq al-Syāṭibī and Ibn 'Āshūr, and has undergone significant developments in contemporary academic discourse through the thoughts of figures such as Mohammad Hashim Kamali and Mohamed El-Tahir El-Mesawi. This *maqāṣ id* framework is not only used to assess the validity of legal products, but also serves as the epistemological basis for in measuring the validity of methods of interpreting legal verses, especially when such interpretations involve changes in social values and the moral sensibilities of the community.

According to El-Mesawi, *Maqāṣ id* as a method is not merely a legal instrument, but rather an epistemic system that departs from an inductive reading of revelatory texts in order to discover the universal objectives of Sharia law. This approach emphasizes the importance of coherence between the text, context, and divine intent, as well as avoiding manipulation of meaning based solely on the socio-ideological tendencies of modern readers.<sup>26</sup> Meanwhile, according to al-Syāṭibī, *maqāṣ id* reasoning requires thematic unity and balance between *juṣ'īyyah* arguments and *kullīyyah* principles.<sup>27</sup> Thus, in the context of interpreting *milk al-yamīn*, Shaḥrūr's approach, which rejects the principle of *nasakh*, weakens the legal dimension of the verse, and converts it into a consensual sexual relationship, can be read as a deviation from the principle of *maqāṣ id* because it negates the authoritative structure of the text and its purpose.

Furthermore, the *maqāṣ idi* interpretive approach as formulated by Rifqi and Thahir encompasses four important methodological principles: (1) understanding texts and laws through their objectives (*al-nuṣ uṣ wa al-aḥkām bi-maqāṣ idihā*), (2) combining universal principles (*kullīyyāt*) and particular contexts (*juṣ'īyyāt*), (3) efforts to bring benefits and prevent harm (*jalb al-maṣ ālih wa dar' al-mafāsid*), and (4) consideration of the long-term impact of the

<sup>26</sup> Mohamed El-Tahir El-Mesawi, "From Al-Shatibi's Legal Hermeneutics to Thematic Exegesis of the Qur'an," *Intellectual Discourse* 20, no. 2 (2012): 189–214.

<sup>27</sup> Ibrahim bin Musa As-Syathibi, *Al-Muwafaqat* (Cairo: Dar Ibn Affan, 1997).

law (*i'tibār al-mālāt*).<sup>28</sup> These principles indicate that a valid interpretation in terms of *maqāṣ idīyyah* should not only consider contemporary needs that are local or individual in nature, but must also consider values of *maslahat* that are general and sustainable. Interpretations of *milki al-yamīn* that permit sexual relations outside of marriage in the name of social contracts or individual freedom can actually cause widespread *mafsadah* (social harm), even if they are claimed to be a form of gender justice or women's liberation.

Hashim Kamali, an activist in the study of *maqāṣ id al-shariah*, divides the approach to *maqāṣ id* into three main typologies: *tafrīṭ* (reductionism), *ifrāṭ* (expansionism), and *i'tidāl* (moderation). *Tafrīṭ* refers to an overly rigid and textual reading, while *ifrāṭ* describes an overly liberal attempt to free interpretation from the constraints of the text and *uṣul* structure in the name of speculative *maslahat*. As for *i'tidāl*, it is a moderate approach, which combines obedience to the normative text with an alignment with the moral and social values that the Sharia seeks to realize.<sup>29</sup> The interpretations of Muhammad Shahrur and Abdul Aziz of *milki al-yamīn*, when examined within this framework, show a tendency toward expansionism (*ifrāṭ*), because they construct legal arguments based on reinterpretations of meaning without taking into account the established epistemological structure of *maqāṣ id* and the rules of *istinbāṭ*.

The *maqāṣ id* approach in this study is also interpreted as moral and social principles inherent in the structure of revelation. As emphasized by Iffatin Nur et al. in their study, *maqāṣ id* is not only used as a source of formal legality in fatwas or positive law, but also as a moral system that forms the ethical basis for maintaining human dignity and public welfare.<sup>30</sup> Therefore, interpretations that allow sexual practices outside of legal marriage, even if they are claimed to be in accordance with the principles of justice or modern freedom, cannot be justified within the framework of *maqāṣ id* because they contradict the principles of protection of offspring (*ḥifẓ al-nasl*), religion (*ḥifẓ al-dīn*), and reason (*ḥifẓ al-'aql*). Such interpretations not only weaken the moral structure of the Sharia, but also undermine the substance of *maqāṣ id* as the guardian of noble values in Islamic society.

As a complement, the *maqāṣ id* approach is also linked to the socio-legal dimension in the Indonesian context. As studied by Nasruddin Yusuf et al., *maqāṣ id* is an important tool in bridging the gap between normative texts and ever-changing social realities, without losing the integrity of Islamic law.<sup>31</sup> Therefore, interpretations such as those developed by Abdul Aziz, who interprets legal verses within the framework of personal moral freedom that is independent of positive law and sharia structures, have the potential to create legal anomalies in modern Muslim societies, especially in the context of a constitutional state such as Indonesia.

In various countries in America and Europe, non-marital sexual relations are not considered immoral behavior. Sexual relations are often used to measure a person's "performance" in sexual relations. This is also to satisfy a person's sexual desires without any burden of responsibility. They adhere to the term coined by Gardella that sexual relations

<sup>28</sup> M. Ainur Rifqi and A. Halil Thahir, "Tafsir Maqasidi; Building Interpretation Paradigm Based on Maslahah," *Millah : Jurnal Studi Agama* 18, no. 2 (2019): 335–56, <https://doi.org/10.20885/millah.vol18.iss2.art7>.

<sup>29</sup> Kamali, Actualization (Taḥqīq) of the Higher Purposes (Maqasid) of Shariah, 6.

<sup>30</sup> Iffatin Nur, Syahrul Adam, and M. Izzul Muttaqien, "Maqasid Al-Shari'at: The Main Reference and Ethical-Spiritual Foundation for The Dynamization Process of Islamic Law," *Ahkam* 20, no. 2 (2020): 331–360.

<sup>31</sup> Nasruddin Yusuf et al., "Examining the Basis of Maqashid Sharia in Renewal of Islamic Law in Indonesia," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 9, no. 1 (January 2024): 357–75, <https://doi.org/10.22373/petita.v9i1.224>.



are "innocent ecstasy."<sup>32</sup> It is something that can make a person happy and joyful. Unfortunately, this pleasure comes at a high price, through liberation from religious values, work, or anything else related to oneself. Even though this pleasure causes a person to abandon their religion, in fact, divorce rates in America and Europe are increasing. These divorces are thought to be caused by increasingly wild fantasies due to the abundance of "references" to satisfy sexual desires.<sup>33</sup>

In this regard, Murtadha Muthahhari criticizes Western thinkers who say that every person's tendencies and desires must always be preserved and respected. According to him, what should be preserved and respected is the ability to achieve perfection. This is because humans are essentially created in a limited state.<sup>34</sup>

Ultimately, Shahrūr and Abdul Aziz's interpretation not only opposes fiqh law, but also clearly opposes positive law that has been drafted by several countries, such as Indonesia, Tunisia, and Turkey. These countries have drafted their laws by combining the applicable norms and minimizing gender inequality.<sup>35</sup> If *milk al-yamīn* marriages are permitted, it will be difficult for women to exercise their rights when problems arise in the relationship. Thus, rather than supporting feminism, this practice pushes women toward ruin. In addition, Eastern values of mutual respect for all people regardless of status will gradually disappear.

Based on the above, *maqāṣ id al-shari'ah* in this article is used not merely as a normative approach, but as a methodological foundation for assessing the validity of the interpretation of legal verses as a whole. It serves as a tool to test the balance between interpretive freedom and moral accountability, as well as to weigh whether an interpretation truly brings about benefit or instead fosters harm that is contrary to the spirit of the Sharia.

## Conclusion

Scholars have long interpreted *Milk al-yamīn* as *al-riqq* (slave). They interpret the word according to the context in which the revelation was revealed. Then came Shahrūr, who attempted to reconstruct its meaning based on his epistemology without referring to the fundamentals of interpretation. Shahrūr's ideas were then followed by Abdul Aziz, who made new breakthroughs that tended to support liberal feminism. Both were rejected by various Muslim intellectual circles because they were incompatible with the objectives of revelation or *maqāṣid al-shari'ah*.

Their thinking is considered to be inclined towards expansionism, which can destroy the moral order of Muslims in particular and humanity in general. The extent of the destruction of the moral order can be seen from the amount of mafsadah (harm) caused. This certainly refers to the implementation of maslahat (public interest) in a law. The implementation of maslahat is also related to the implementation of *maqāṣ id (objectives)*. In general, the preservation of religion, life, reason, lineage, and the environment will not be realized with the permissibility of *milk al-yamīn*. Ultimately, Shahrūr and Abdul Aziz are trapped in a reinterpretation of meaning that does not lead them to maslahat, but rather to greater mafsadah.

The interpretation of the meaning of *milk al-yamīn* reviewed using the *maqāṣid al-shari'ah* method in terms of mafsadat and masalahat is part of the researcher's *point of view* in looking at a law. This means that there are other *points of view* that can be used to review the

<sup>32</sup> Peter Gardella, *Innocent Ecstasy: How Christianity Gave America an Ethic of Sexual Pleasure* (New York: Oxford University Press, 1985).

<sup>33</sup> Rani Mulyani, "Murtadha Muthahhari's Criticism of Western Sexual Ethics" (IAIN Bengkulu, 2022), 84.

<sup>34</sup> Murtadha Muthahhari, *Sexual Ethics in Islam* (Jakarta: Lentera Basritama, 1982), 44.

<sup>35</sup> Syeh Sarip Hadaiyatullah et al., "Recontextualizing Family Fiqh in the Modern Era: A Comparative Study of Indonesia, Tunisia, and Turkey," *Moderasi* 4, no. 2 (2024): 140–163.

interpretation of *milk al-yamin* that has not been explained here. For example, the explanation of the law of *milk al-yamin* can be reviewed from the perspective of moral ethics in both Eastern and Western countries, from the perspective of women's rights in pursuing their sexual desires, and so on. This can be used by future researchers in the development of Islamic legal science.

#### Author Contribution Statement

Muhammad Miqdad Al Ghifari Syatta contributed as the initiator, data collector, and main drafter of the manuscript. Ahmad Baehaki contributed by providing analytical insight, analysis, and assisting in critical revision of the manuscript. Ida Fitri Anggarini contributed to validating the data and translate the manuscript. Both authors have read and approved the final version and agree to be accountable for all aspects of the work.

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