

# **Marriage Problems Because of Disgrace (Study of Book *Fiqh Islâm wa Adillâtuh* and *Kitâb al-Nikâh*)**

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## **Abstract:**

This study discusses the problems of marriage due to the disgrace suffered by one married couple. The purpose of this study was to find out the basis of jurisprudence for those who married because of disgrace, because they had sexually transmitted diseases. The method for this research is library research with descriptive analytic comparative approach, the book of *Fiqh al-Islâm wa Adillâtuh* by Wahbah al-Zuhaylî and the book of Banjar locality, South Kalimantan *Kitab al-Nikâh* by Sheikh Muhammad Arsyad al-Banjari. The findings of this study indicate that according to Wahbah al-Zuhaylî, the marriage of a person who has a sexual disease is unlawful even though the desire has required marriage. Meanwhile, according to Muhammad Arsyad al-Banjari only affirmed it, because according to him there is still a gap in masalah in marriage and family. The academic position of the researcher is more in agreement with al-Banjari's opinion in formulating marriage rules. Comparison of this meeting gives the assumption that policy makers require each bride to check her health to a psychologically and health related hospital to achieve the purpose of marriage.

## **Keywords:**

*Law Problems, Marriage, Sexual Diseases, South Kalimantan*

## **Abstrak:**

Penelitian ini membahas tentang problem-problem pernikahan dikarenakan aib yang diderita salah satu pasangan. Tujuan penelitian ini adalah untuk mengetahui dasar fikih bagi mereka yang menikah karena aib pada diri, yaitu mengidap penyakit menular seksual.

Metode yang digunakan adalah *library research* dengan pendekatan *descriptive analytic comparative* dalam tatanan telaah naskah kitab *Fiqh al-Islâm wa Adillâtuh* karya Wahbah al-Zuhayli dan kitab lokal Banjar, Kalimantan Selatan *Kitab al-Nikâh* karya Syeikh Muhammad Arsyad al-Banjari. Temuan dari penelitian ini menunjukkan bahwa menurut Wahbah al-Zuhayli, menikahnya seorang yang memiliki penyakit seksual adalah haram hukumnya meskipun hasrat sudah mewajibkan menikah. Sementara menurut Muhammad Arsyad al-Banjari hanya memakruhkannya, dikarenakan melihat masih ada celah *masalah* dalam membina rumah tangga. Posisi akademik peneliti lebih menyetujui pendapat al-Banjari dalam merumuskan aturan perkawinan. Perbandingan dari temuaan ini memberikan asumsi bahwa pemangku kebijakan mengharuskan pada setiap mempelai untuk memeriksakan dirinya ke instansi kesehatan terkait psikis dan kesehatannya agar tercapai tujuan dari pernikahan.

#### Kata Kunci:

*Problem Hukum, Menikah, Penyakit Seksual, Kalimantan Selatan*

#### Introduction

Every human being certainly wants a happy life by building a family.<sup>1</sup> The marriages carried out aim to form a happy and prosperous family. But in achieving the goal of marriage it is not easy because in building a household it is of course inseparable from various problems that often arise.<sup>2</sup>

Basically marriage law is a *sunnah* (commended) to be carried out as stated by the Prophet SAW below.

فَمَنْ رَغِبَ عَن سُنَّتِي فَلَيْسَ مِنِّي

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<sup>1</sup> Hayyu Citra Herdana, "Problema Nikah Fasakh Dalam Perspektif Hukum Materil Dan Hukum Islam" (2009), accessed June 2, 2017, <http://repository.uinjkt.ac.id/dspace/bitstream/123456789/8672/1/HAYYU%20CI%20TRA%20HERDANA-FSH.pdf>.

<sup>2</sup>Research shows the many problems in marriage with ending divorce can not be separated from the role of the environment that is the cause of divorce. Look at Yossi Febrina, "Perkawinan Satu Suku Di Nagari Jawi-Jawi Sumatera Barat Ditinjau Dari Hukum Islam" (2011), accessed June 2, 2017, <http://repository.uinjkt.ac.id/dspace/bitstream/123456789/5135/1/YOSSI%20FEBRINA-FSH.pdf>.

*Anyone among my Ummah who is not happy with my sunnah, then he is not in my fellowship. (HR. Al-Bukhari)*<sup>3</sup>

The law of marriage which is sunnah can change according to the circumstances, both with regard to physical, emotional and economic.<sup>4</sup> Problems arise when people who want to get married have a disgrace that is having a sexually transmitted disease. The disease they suffer can spread to members of their household. If the disease is contagious, of course this can give harm to his wife and children.

Seeing some of these facts, in this study the author will describe how the views of Wahbah al-Zuhaylî and Arsyad al-Banjari concerning the law of marriage for people who have disgrace (disease) in themselves.

### Research Methods

The method used in this study is library research with primary sources of *Fiqh al-Islâm wa Adillâtuh* by Wahbah al-Zuhaylî and *Kitab al-Nikâh* by Muhammad Arsyad al-Banjari. The approach of the study of this paper is qualitative with descriptive analytic comparative analysis technique based on the study of normative law and the concept of *maslahah mursalah* to find out the basis and study of the comparison of the two books.<sup>5</sup>

While to examine the text of the text of the book, the author uses a hermeneutical approach by making the text as it is and determining the relevant correlation of the text that has been written by the author of the book with the local situation in South Kalimantan.<sup>6</sup>

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<sup>3</sup>Zainudin Ahmad bin Abd al-Lathif al-Zabidi, *Mukhtasar Shahih Al-Bukhari (Ringkasan Hadis Shahih Bukhari)* (Jakarta: Pustaka Amani, 2002), 904.

<sup>4</sup>According to Nasaruddin, to achieve a marriage based on Islamic law, the bride and groom must know and consult correctly how to foster a good and right household. Compare to Nasaruddin Umar, "Refleksi Penerapan Hukum Keluarga Di Indonesia," *Makalah yang disampaikan pada Konsultasi Nasional Mencapai Hukum Keluarga yang Adil dan Setara Jender diselenggarakan oleh Komnas Perempuan, Jakarta (2009): 3-4.*

<sup>5</sup> Subhi Hussein Alwan al-Azzawi, *A Descriptive, Analytical and Comparative Study of Traditional Courtyard Houses and Modern Non-Courtyard Houses in Baghdad: (In the Context of Urban Design in the Hot-Dry Climates of the Sub-Tropics)*, 1984.

<sup>6</sup> Scott Davidson and Marc-Antoine Vallée, *Hermeneutics and Phenomenology in Paul Ricoeur: Between Text and Phenomenon* (Springer, 2016).

## **Biography of Wahbah al-Zuhaylî and Muhammad Arsyad al-Banjari**

### **Wahbah Al-Zuhaylî**

Wahbah al-Zuhaylî is a contemporary ulama in the field of fiqh with his greatest work *Fiqh al-Islâm wa Adillâtuh*. Wahbah al-Zuhaylî was born in 1932 AD at Dir `Athiah, Syria. He was born as a child of Mustafa and Fatimah bint Mustafa Sa'dah.<sup>7</sup> He studied at al-Azhar and obtained a diploma takhassus teaching Arabic at al-Azhar in 1956. He also obtained a diploma in law at `Ain Syams University in 1957 AD, master of sharia from the Faculty of Law of Cairo University in 1959 AD and doctorate in 1963 AD.<sup>8</sup>

Al-Zuhaylî was a productive scholar.<sup>9</sup> The majority of his works are books concerning fiqh problems and ushul fiqh. He also wrote a book of commentaries to sixteen volumes that led al-Zuhaylî worthy of being called an interpreter.<sup>10</sup> He also wrote about aqeedah, history, renewal of Islamic thought, economics, the environment, and other fields. So, al-Zuhaylî was not only a fiqh scholar, but also a world-level Muslim scholar and thinker.<sup>11</sup>

### **Muhammad Arsyad al-Banjari**

Sheikh Muhammad Arsyad ibn 'Abdullah al-Banjari was a scholar who spread Islam in the Banjar area. Thursday, the 15th of Shafar 1122 H (1710 AD) in Lok Gobang village, near the village of Kalampayan, Martapura, South Kalimantan. He was born of the couple 'Abdullah and Aminah. The married couple has five children,

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<sup>7</sup> A. Faroqi, "Analisis Ayat-Ayat Mutasyabihat Tafsir Al Munir Karya Wahbah Az-Zuhaili" (UIN Walisongo, 2016), 28, accessed April 10, 2017, <http://eprints.walisongo.ac.id/5817/>.

<sup>8</sup> *Ibid.*

<sup>9</sup> According to Badi 'al-Sayyid al-Lahham, Wahbah al-Zuhayli productivity appears from 199 papers other than journals. Badi also compared al-Zuhaylî with al-Suythi (d. 1505 AD) who wrote 300 titles in the past. *Ibid.*, 29.

<sup>10</sup> Look at the research of Avif Alfiyah, "Adil Dalam Al-Qur'an: Kajian Tafsir Al-Munir Karya Wahbah Al-Zuhayli" (UIN Sunan Ampel Surabaya, 2015), accessed June 2, 2017, <http://digilib.uinsby.ac.id/3086/>.

<sup>11</sup> *Ibid.*, 30.

namely: Arsyad, `Abidin, Zainal` Abidin, Nurmein and Nurul Amin.<sup>12</sup>

For 32 years studying in Mecca, along with Malay students known as the Jawiyyin group. He studied various kinds of knowledge: sharia, jurisprudence, monotheism, Sufism, hadith, interpretation, education, Arabic, and celestial sphere. After returning from Mecca, al-Banjari delivered various knowledge and produced many works.<sup>13</sup> The famous Arsyad Al-Banjari work is the *Sabil al-Muhtadîn* which is a book of fiqh with the Syafi'iyah school and spread throughout the Malay world.<sup>14</sup> Since then he has been known as the Syaf'iyah School of Islamic jurisprudence.<sup>15</sup>

As for some of the works by Arsyad al-Banjari: (ushûl al-dîn book) *Luqthah al-Ajlan*, (faraidl book) *Tughfah al-Rāghibîn and al-Qawl al-Mukhtasar fî 'Alamah al-Mahd al-Muntadzar*, (book of falaq) *Kitâb al-Nikâh*, *Kanzul Ma'rifah and Fatawa Sulaiman al-Kurdi*.<sup>16</sup> Arsyad al-Banjari pass away on the 6th of Shawwal 1227 AH / October 13, 1812 AD). He was buried in the village of Kelampaian South Kalimantan.<sup>17</sup>

### **Correlation View of Kitab al-Zuhaylî and al-Banjari Analysis of the Book of Fiqh Islâm wa Adilâtuh**

According to al-Zuhaylî, the study of marriage is inseparable from the desire of someone to run the Sunnah of the Prophet and avoid abusive acts. The law in marriage is different, depending on the condition of the prospective bride and groom. According to him:

واما نوع او صفة الزواج شرعا بحسب طلب الشرع او تركه فيعرف عند الفقهاء بحسب  
احوال الناس:

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<sup>12</sup> Muslich Shabir, *Pemikiran Syekh Muhammad Arsyad Al-Banjari Tentang Zakat: Suntingan Teks Dan Analisis Intertekstual* (Nuansa Aulia, 2005), 5.

<sup>13</sup> Andi Eka Putra, "Tasawuf Dalam Pandangan Muhammad Arsyad Al-Banjari," *Al-Adyan* 8, No. 2 (2013): 94.

<sup>14</sup> Muhammad Arsyad al-Banjari, *Kitab Sabilal Muhtadin* (Surabaya: Bina Ilmu, 2003), xii.

<sup>15</sup> Putra, "Tasawuf Dalam Pandangan Muhammad Arsyad Al-Banjari," 95.

<sup>16</sup> Tim Pustaka Basma, *3 Permata Ulama Dari Tanah Banjar: Biografi Ulama Kharismatik Yang Telah Menanamkan Nilai-Nilai Keislaman Pada Umat Islam Di Pulau Borneo* (Malang: Pustaka Basma, 2012), 21-23.

<sup>17</sup> Putra, "Tasawuf Dalam Pandangan Muhammad Arsyad Al-Banjari," 95.

١- الفرضية : يكون الزواج عند عامة الفقهاء فرضا اذا تيقن الانسان الوقوع في الزنا لو لم يتزوج, وكان قادرا على نفقات الزواج من مهر ونفقة الزوجة, وحقوق الزواج الشرعية, ولا يستطيع الاحتراز عن الوقوع في الفاحشة بالصوم ونحوه؛ لانه يلزمه اعفاف نفسه وصونها عن

الحرام, وما لا يتم الواجب الا به فهو واجب, وطريقه الزواج.

٢- التحريم : يحرم الزواج اذا تيقن الشخص ظلم المرأة الاضرار بها اذا تزوج, بان كان عاجزا عن تكليف الزواج, او لا يعدل ان تزوج بزوجة اخرى؛ لان ما أدى الى الحرام فهو حرام. واذ تعارض ما يجعل الزواج فرضا وما يجعله حراما بان تيقن انه سيقع في الزنا ان لم يتزوج, وتيقن ايضا انه سيظلم زوجته, كان الزواج حراما.

٣- الكراهة: يكره الزواج اذ خاف الشخص الوقوع في الجور والضرر خوفا لا يصل الى مرتبة اليقين ان يتزوج, لعجزه عن الانفاق, او اساءة العشرة, او فتور الرغبة في النساء.

٤- الاستحباب او النطب في حالة الاعتدال: يستحب عند الجمهور غير الشفعي الزواج اذ كان الشخص معتدل المزاج, بحيث لا يخشى الوقوع في الزنا ان لم يتزوج, ولا يخشى ان يظلم زوجته ان يتزوج. وحالى الاعتدال هذه هي الغالبة عند اكثر الناس.<sup>18</sup>

Based on the study of al-Zuhaylî shows that marriage has several legal positions, namely:

- 1) *Fardlu*: according to most fiqh scholars, marriage law is mandatory if someone is sure to fall into adultery if not married, while he is able to give dowry, income, and other marital rights. In this position marriage is punished must be carried out immediately.
- 2) *Haram*: marriage will be prohibited if he is believed to be endangering his wife if she marries her, as if she is unable to fulfill her marriage needs, or cannot do justice between his wives. Because everything that causes evil, the law is also forbidden ...

<sup>18</sup> Wahbah al-Zuhaylî, *Fiqh Islam Wa Adillatuhu* (Damaskus: Dar al-Fikr, 1985), 31-33.

- 3) If there is a clash between things that require someone to get married and who forbids to do so, then the marriage is haram.
- 4) *Makruh*: if someone is worried about falling into sin and distress. This concern has not reached the level of trust if he is married. He was worried that he could not make a living for his family, or lose his desire for women. So, this category was punished makruh in marriage.
- 5) It is commended: if a person is in a stable condition, there is no worry of falling into adultery if he is not married. There is also no concern about making mistakes with his wife if she is married. This stable situation is a common phenomenon among humans. Become a sunnah if the purpose is to carry out the Shari'ah of the Prophet.<sup>19</sup>

Al-Zuhaylî divides married law into four laws, namely *fardl*, *haram*, *makrûh*, and is recommended in stable conditions. First, *fardl* when someone has the ability to get married and is sure to be afraid of falling prey to adultery. Second, it is unlawful to marry when someone who believes that he will abuse his wife later when they are married. Third, marriage becomes its legal *makrûh* if someone is worried that he cannot do well to his wife and is unable to provide for his wife. Fourth, getting married is recommended in a stable condition, namely he is not worried about falling into adultery and not worrying about committing harsh actions to his wife.

#### The Book of *Kitab al-Nikâh*

As for the Sheikh Muhammad Arsyad al-Banjari in the *Kitab al-Nikâh*, which he wrote in Banjar Malay, he mentioned the terms and laws of the marriage which included:

برمول نکاح ایت سنه باگی بارغسیاف یغ ایغین کفد نکاح اتوفون دغن شرط جک  
دفر اولهئ بلنج نکاح؛ سفرتی مهر دان فکاین دان نفقه. دان جک تیاد دفر اولهئ جک  
دفر اولهئ بلنج نکاح مک تراوتام باکیئ منغلکن نکاح، مک هندقله دفچکنش اکن  
اغئن دغن ملازمی فواس.  
ادفون اورغ یغ تیاد اغین ای کفد نکاح مک مکروه باکیئ نکاح اینفون دغن شرط  
جک تیاد دفر اولهئ بلنج نکاح اتو دفر اولهئ اکندی تتافی ادا فدان فیاکبیت سفرتی لمه

<sup>19</sup> Wahbah az-Zuhaili, *Fiqh Islam 9* (Jakarta: Gema Insani, 2011), 41-42.





contact or physical contact. If he is not married then the law is not returned to the commended marriage, but keeping the problem of not marrying is allowed.

### Correlation of Health in the Law of Marriage

Marriage will be said to be legal in the eyes of the state if it is fulfilled in harmony and the conditions of marriage which have been regulated in Law no.1 of 1974.<sup>22</sup> Fulfilling accord and conditions are things that must be fulfilled, because if there is no harmony and unfulfilled conditions can affect the validity of a marriage. But in certain circumstances there is a bride who has a deficiency (disgrace) on him, such as having a sexually transmitted disease, of course this can be a problem because the disease can be contagious and endanger their partners.

Even so, humans are still God's most perfect creatures. As the word of God is in QS. Al-Isra/17 verse 70:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِّنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ  
مِّمَّنْ خَلَقْنَا تَفْضِيلًا

And surely We have honored the children of Adam, and We carry them in the land and the sea, and We have given them of the good things, and We have made them to excel by an appropriate excellence over most of those whom We have created.

In fact there are no perfect humans in this world, all of them have deficiencies, both psychologically and physically. The shortcomings in terms of psychology such as experiencing psychiatric disorders and so forth. While physical deficiencies such as lack of limbs or disease.

Sexually transmitted diseases are diseases that infect a person's genitals, and most are transmitted through sex. Sexually

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<sup>22</sup> Anwar Hafidzi, "Prasyarat Poligami Dalam Kitab Fiqih Islam Dan Kompilasi Hukum Islam Perspektif Masalah Mursalah," *al-Daulah: Jurnal Hukum dan Perundangan Islam*, Vol. 7, No. 2 (2018): 366-392.

transmitted diseases will be more risky if sexual intercourse is carried out by changing partners either through the vagina, oral or anal.<sup>23</sup>

Sexually transmitted diseases are infections that are mostly transmitted through sexual intercourse (oral, anal or vaginal). Sexually transmitted diseases attack around the genitals but the symptoms attack the eyes, mouth, digestive tract, liver, brain and other organs.<sup>24</sup> Like HIV/AIDS and hepatitis B can be transmitted through sex even though it does not attack the genitals.<sup>25</sup>

The effects of this sexually transmitted disease are pelvic inflammatory disease (PRP), ectopic pregnancy (pregnancy outside the womb) and infertility/infertilies, causing low birth weight babies (LBW), neonatal infections, anogenital malignancies and even death.<sup>26</sup>

Based on the interim analysis shows that there is an active correlation with the rules of religion in maintaining sharia objectives (*maqasid syariah*) in marriage.<sup>27</sup> The rule is in line with maintaining oneself so as not to get danger and harm as a result of marriage. This is in line with Q.S. al-Imran 3: 38, Q.S. al-Furqan: 74, who views the importance of protecting themselves and their descendants and getting noble descendants later.

### Status of Disease in Marriage: Health Relations in Islamic Law

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<sup>23</sup> Siti Fathonah and Elly Irawan, *Modul Pelatihan Konseling Kesehatan Reproduksi Remaja BAGi Calon Konselor Sebaya* (Jakarta: Direktorat Remaja dan Perlindungan Hak-Hak Reproduksi, BKKBN, 2008), 68.

<sup>24</sup> Sari Priyanti, "Pengaruh Pengetahuan Terhadap Sikap Remaja Terhadap Penyakit Yang Menular Akibat Hubungan Seksual Di Man Mojokerto," *Hospital Majapahit* 3, No. 2 (2015): 58, Accessed April 13, 2017, [Http://Ejurnalp2m.Poltekkesmajapahit.Ac.Id/Index.Php/Hm/Article/View/8](http://ejournalp2m.poltekkesmajapahit.ac.id/index.php/Hm/Article/View/8).

<sup>25</sup> There are several sexually transmitted diseases, namely trichomoniasis, gonorrhoea, chlamydia, syphilis, mole ulcer, HIV / AIDS, condyloma akuminata, genital herpes, and others. Until now there are 30 types that can be classified as sexually transmitted diseases that are often found in Indonesia look at Sururin dan Ulfah Masrufah, *Pendidikan Kesehatan Reproduksi Bagi Calon Pengantin* (Jakarta: PP Ftayat NU, 2010), 136-137.

<sup>26</sup> *Ibid.*, 137.

<sup>27</sup> Nurhadi, "Maqasid Syariah Hukum Perkawinan Dalam Kompilasi Hukum Islam (Khi)," *Al-Fikra: Jurnal Ilmiah Keislaman* 16 (2017); also look at M. Usman., "Tinjauan Maqasid Asy-Syari'ah Terhadap Perlindungan Jiwa Dalam Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas" (Phd Thesis, Iain Surakarta, 2017).

The most common venereal disease is sexually transmitted diseases, such as gonorrhea, herpes vaginalis, chlamydia trachomatis, and HIV / AIDS. Sexually transmitted diseases cause infections in the reproductive tract that must be taken seriously. If not treated properly, infection can spread and cause suffering, prolonged illness, infertility and death.<sup>28</sup> In general, this sexually transmitted disease can be transmitted through contact with the genitals and the impact is very dangerous for the opposite sex.<sup>29</sup>

This will be a problem when people who have sexually transmitted diseases have the desire to get married and fostering households as per people in general. The fact that will happen is that if he marries and builds a household, this will endanger other family members.<sup>30</sup> This happens because in a family it is unavoidable that there is a lot of physical contact, especially for married couples who have intercourse which is one way of transmitting sexually transmitted diseases.

Responding to the problem above Wahbah al-Zuhayli in the *Islamic Fiqh wa Adilatuh* book, that a person who wants to get married but turns out that when they get married it can endanger his partner then the law of marriage for that person is haram, because everything that causes falls into prohibition unclean. Al-Zuhayl's opinion is more focused on the impact it has on other people namely wife and children. Marrying someone with a person who has a sexually transmitted disease can cause harm and the harm should be eliminated.

Then it was emphasized again by al-Zuhayli that clashing between the obligation of someone wanting to get married and the circumstances that forbid him to marry then what was chosen was the

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<sup>28</sup> Pipit Reviliana, Artathi Eka Suryandari, dan Warni Fridayanti, "Beberapa Faktor Yang Mempengaruhi Tingginya Kejadian Pms Di Lokalisasi Gang Sadar Baturaden kabupaten Banyumas Tahun 2011," *Jurnal Bidan Prada* 3, No. 01 (2012): 11, <http://www.ojs.akbidylpp.ac.id/index.php/Prada/article/view/35> (accessed 20 Mei 2017).

<sup>29</sup> *Ibid.*,10.

<sup>30</sup> Anwar Hafidzi And Safruddin Safruddin, "Konsep Hukum Tentang Radha'ah Dalam Penentuan Nasab," *Khazanah: Jurnal Studi Islam Dan Humaniora* 13, No. 2 (2017): 283-317.

prohibition of marriage. This is similar to the rules of fiqh which recite:

اذ اجتمع الحلال والحرام غلب الحرام<sup>31</sup>

When gathering between lawful matters and illicit matters, the prohibited ones are won.

The above rules are derived from sharif traditions which recite:

ما اجتمع الحلال و الحرام الا غلب الحرام الحلال<sup>32</sup>

*There is no gathering between halal and haram unless it is won by the prohibited from the permitted.*

This hadith is the basis of the fiqhiyah rules above. The hadith explicitly states that if illicit and halal matters come together in one problem, then the illicit aspects must be more dominant.<sup>33</sup>

According to al-Syathibi, the benefits that must be realized in life are divided into three levels, namely the needs of *dlaruriyat* (principal), the need for *hâjjiyât* (supporters) and the need for *tahsînât* (complementary). The needs of *dlaruriyat* are divided into five things, namely maintaining religion, nurturing the soul, nurturing the mind, maintaining honor and offspring, and preserving property.<sup>34</sup>

If viewed in terms of its benefits (*maslahah*), the law of marriage for someone who has a sexual illness is not justified. This will endanger the partner who will be infected and eventually endanger the partner's life. This situation is certainly not desirable and the purpose of marriage to form a happy family prosperous cannot be realized.

So, even though the desire of someone is very eager to get married because they are afraid of falling into adultery, they are defeated by the fact that they will endanger their spouse and children. Therefore, it is forbidden to marry for people who have sexually

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<sup>31</sup> Muhammad Mustafa al-Zuhayli, *Al-Qawaid Al-Fiqhiyah wa Tathbiqatilha Fi Madzâhib al-Arbaah* (Damaskus: Dar al-Fikr, 2006), 695.

<sup>32</sup> *Ibid.*, 695.

<sup>33</sup> *Ibid.*

<sup>34</sup> Nurhadi, "Maqasid Syariah Hukum Perkawinan dalam Kompilasi Hukum Islam (KHI)," *Al-Fikra: Jurnal Ilmiah Keislaman* 16 (2017), 207.

transmitted diseases because they can give harm to their families well ahead.

While Sheikh Arsyad al-Banjari explained that someone who has had a marriage expenditure that has the ability to pay dowry and income, but it turns out he has a disease then the law of marriage for that person is *makruh*. The diseases mentioned by Arsyad al-Banjari are weak *zakar*. Weak *zakar* in health terms is called impotence, a disease that causes a man who bears it unable to carry out his sexual duties.<sup>35</sup> Regarding this matter, it is implied that when a man cannot provide an inner income in the form of a bodily relationship, then he will not be able to marry even though he has material abilities. So, if it relates to the law of marriage for someone who has a sexually transmitted disease is *makruh*, because of the inability of people who have sexually transmitted diseases to have intercourse because of fear or concern transmit the disease he suffered to his partner then it is troubled for him to marry.

The two opinions above, between al-Zuhaylî and Arsyad al-Banjari turned out to have differences of opinion. Al-Zuhaylî condemns unlawful marriage for people who have sexually transmitted diseases. Whereas Arsyad al-Banjari afflicts people who have sexual diseases.

Based on these two opinions, the law of marriage for sufferers of sexually transmitted diseases is dependent on self-confidence. When a person suffering from a sexually transmitted disease has self-assurance if he is married it will endanger his spouse and children, in such circumstances the law of marriage becomes forbidden to him. It is different when the sufferer of sexual illness is only worried about transmitting his illness so that it endangers his wife and children so in this condition the law of marriage for him is *makrûh*.

The author argues that Arsyad al-Banjari's opinion is more appropriate than al-Zuhayl's opinion to be used and applied. Because if it is forbidden to marry for sufferers of sexually transmitted diseases, the consequences are totally prohibited to be carried out, of

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<sup>35</sup>Bagus Maulana, "Apa arti Impotensi", <http://www.impotensi.org/2011/04/apa-arti-impotensi-impotensi-adalah.html>, accessed pada 17 April 2015 dalam Muhammadiyah, "Perkawinan Bagi Penderita Penyakit Impotensi Dalam Perspektif Hukum Islam", 26.

course this can violate human nature as a human being created in pairs. Another case when the law of marriage for sufferers of sexually transmitted diseases is makruh as the opinion of Sheikh Arsyad al-Banjari, with this affirmation, there is still an opportunity for someone who suffers from sexually transmitted diseases to get married even though it should not be implemented. Things that need to be considered are ways to reduce the possibility of contracting the sexually transmitted disease so that it is not contagious by understanding various knowledge about how to transmit the disease and prevention of transmission en route for the disease.

At present the progress of health technology is very rapid. Many health technologies with various drugs can be used to cure or reduce the possibility of transmission of sexually transmitted diseases. The most important step to do is to cure the disease by taking medication. So, if the sexually transmitted disease can be cured then the law of marrying will change according to his circumstances.<sup>36</sup>

In addition, the steps that can be taken are preventing the transmission of the disease by using the most practical and quite effective contraceptive method to prevent the transmission of sexually transmitted diseases is condoms. Condoms are contraceptives that are placed on the male genitals during intercourse. The way a condom works is to prevent the meeting of sperm and egg cells. Thus, condoms can prevent transmission of microorganisms that cause transmission of sexually transmitted diseases such as HBV and HIV / AIDS) to their partners.<sup>37</sup> Condoms are very effective to use as contraceptives that can prevent transmission of venereal disease when used correctly and correctly.<sup>38</sup>

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<sup>36</sup> Several studies have proven that the importance of health in the household, including reproductive care. Compare to the research of Daniel Jordan Smith, "Modern Marriage, Men's Extramarital Sex, and HIV Risk in Southeastern Nigeria," *American journal of public health* 97, no. 6 (2007): 997-1005; Jenny X. Liu and Kyung Choi, "Experiences of Social Discrimination among Men Who Have Sex with Men in Shanghai, China," *AIDS and Behavior* 10, no. 1 (2006): 25-33; Susanne Louis B. Mikhail, "Child Marriage and Child Prostitution: Two Forms of Sexual Exploitation," *Gender & Development* 10, no. 1 (2002): 43-49.

<sup>37</sup> Tim Penulis Buku Panduan KIE Tentang Kesehatan Reproduksi Bagi Penyuluh Agama Islam, *Membangun Keluarga Sehat Dan Sakinah* (Jakarta: BKKBN, 2010), 31.

<sup>38</sup> Maria Ratna Pertiwi, M. Arie Wuryanto, and Lisa Dwi Astuti, "Hubungan Antara Penggunaan Kondom Dengan Kejadian Penyakit Menular Seksual Pada Wanita

If it turns out that his wife is pregnant then the precautionary step that needs to be taken is to carry out routine checks for pregnant women so that their fetus is kept healthy. This is intended to help prevent transmission of sexually transmitted diseases from mother to baby.<sup>39</sup>

### Conclusion

Everyone's laws vary, depending on the conditions and conditions. For people who have sexually transmitted diseases, the marriage law is divided into two, which is haram if he believes that he transmits and harms his wife and children and if he is only worried about transmitting the disease and endangering his family. But with current technologica

l advances it is possible to reduce the possibility of transmission of sexually transmitted diseases by undergoing treatment, using contraception and if pregnancy occurs, efforts to prevent transmission of sexually transmitted diseases are carried out by checking fetal health regularly, safely delivering labor and replacing breast milk with formula milk. This is a finding as well as a recommendation to policy makers to include the rules for early inspection as a pre-marriage obligation.

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<sup>39</sup>Kemertian Negara Pemberdayaan Perempuan RI, "Pemberdayaan Perempuan Dalam Pencegahan Penyebaran HIV-AIDS," *Jakarta: Kementerian Negara Pemberdayaan Perempuan RI* (2008): 22, <http://batukarinfo.com/system/files/Pemberdayaan%20Perempuan%20Dalam%20Pencegahan%20Penularan%20HIV%20dan%20AIDS.pdf> (accessed April 13, 2017).

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