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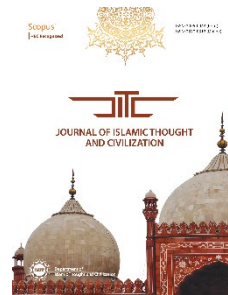
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- Author (s):** Rahmi Hidayati Al Idrusiah¹, Edi Kurniawan^{1,2}, Dody Sulistio^{1,3}, and Mohammad Syafiq¹
- Affiliation (s):** ¹UIN Sulthan Thaha Saifuddin Jambi, Indonesia
²UIN Syarif Hidayatullah Jakarta, Indonesia
³UIN Sunan Kalijaga, Indonesia
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Department of Islamic Thought and Civilization, School of Social Science and Humanities
University of Management and Technology, Lahore, Pakistan

***Faskh* Law Reformulation in Malaysia:
A Critical Examination of Terengganu Sharia Court Case**

Rahmi Hidayati Al Idrusiah*

Faculty of Syariah
UIN Sulthan Thaha Saifuddin Jambi
Indonesia

Edi Kurniawan

School of Graduate Studies
UIN Syarif Hidayatullah Jakarta
Indonesia

Faculty of Syariah
UIN Sulthan Thaha Saifuddin Jambi
Indonesia

Dody Sulistio

School of Graduate Studies
UIN Sunan Kalijaga
Indonesia

Faculty of Syariah
UIN Sulthan Thaha Saifuddin Jambi
Indonesia

Mohamad Syafiq

Faculty of Syariah
UIN Sulthan Thaha Saifuddin Jambi
Indonesia

Abstract

This research aimed to discuss the impact of drug addiction and domestic violence as prominent reasons for the pronouncement of *faskh* (annulment) in the Terengganu Sharia Court, Malaysia as observed in decisions 11003-014-0372-2010 and 11300-014-0011-2011. The decisions are unprecedented *ijtihad* of the Judges because the reasons are not found in almost all classical schools of fiqh and the most credible relevant literature. The reasons also remain unclear and have not been addressed by contemporary fiqh scholars from the perspective of *maqāṣid al-sharī'a*. Therefore, this research examined how drug addiction and domestic violence became legitimate reasons for *faskh* and explored the implication for the contemporary reformulation of Islamic family law discourse. This study employed a qualitative theoretical framework for *maqāṣid al-sharī'a* analysis that developed based on the contributions of Abū Ḥāmid al-Ghazālī and Abū Ishāq al-Shāṭibī. The results showed that the addiction of the husband to drugs and instances of domestic violence could be the legitimate reasons for *faskh* synthesized within the *maqāṣid* framework to protect (*ḥifẓ*) religion (*al-dīn*), soul (*al-nafs*), mind (*al-'aql*), descendent (*al-nasl*), and wealth (*al-māl*). It was further observed that *maqāṣid* successfully reformed the classical fiqh on *faskh* based on contemporary social behaviours. The two primary contributions of this research included the (1) provision of empirical

*Correspondence concerning this article should be addressed to Rahmi Hidayati Al Idrusiah, Associate Professor at Department of Syariah, UIN Sulthan Thaha Saifuddin Jambi, Indonesia, at rahmihidayati@uinjambi.ac.id

evidence related to the adaptability of Islamic law that leads to contemporary social challenges, and (2) the development of a theoretical framework for further legal reforms in the Islamic family law, which are capable of maintaining fidelity to *maqāṣid al-sharī'a* principles while addressing modern societal changes.

Keywords: contemporary legal reforms, *Faskh*, family law, *Maqāṣid al-Sharī'a*, Terengganu Sharia Court

Introduction

The two cases of *faskh*¹ or divorce initiated by wives through a request made to judges (*qāḍī*) and ruled by the Terengganu Sharia Court provided valuable insights into the reformulation of Islamic family law in Malaysia. The process led to the recognition of two unconventional grounds not typically found in traditional Islamic jurisprudence for *faskh* by the Court, including drug addiction and domestic violence as stated in decisions of 11003-014-0372-2010 and 11300-014-0011-2011 cases. The decisions are significant for the innovative application of *ijtihād* (Islamic legal reasoning) due to the absence of the reasons stated in almost all classical schools of fiqh, including Ḥanafī, Mālikī, Shāfi'ī, Ḥanbalī, and Zāhiri, as well as in the most authoritative relevant literature.

Abū Ishāq al-Shātibī (1320-1388 AD) proposed domestic violence as a reason for *faskh*² but the proposal was considered a *shādh* (strange opinion) in the Mālikī School. Mālik ibn Anas (711-795 AD), the founder of the school, suggested that only six reasons were allowed to enact *faskh*, including insanity (*al-junūn*), leprosy (*al-baraṣ*), leprosy (*al-judhām*), having a vagina clogged up with a horn-like bone (*al-qarn*), a broken penis (*al-jubb*), and impotence (*al-'innah*)³ in line with the opinion of al-Shāfi'ī (767-820). Moreover, Abū Ḥanīfah (699-767 AD) recommended that the petition of *faskh* should be allowed for cases of the broken penis and impotence while Ibn Ḥazm (994-1064) and Dāwud al-Zāhiri (815-883 AD) argued for the deformity of the husband as the only reason for enactment.

Scholars after the generation of the *Imam al-Madhhab* presented other arguments on *faskh* by adding some new reasons, such as sibling marriage (either blood or milk relation) and apostasy,⁴ as well as deformities of the husband in the form of a broken penis, impotence, a dangerous illness, insanity, leprosy, and vitiligo.⁵ In the book, *al-Fiqh 'Alā Madhāhib al-Arba'ah*, al-Jāziri explained that the more explicit examples of deformities included a broken penis (*al-jubb* or *al-khiṣā'*), impotence (*al-'innah*), the vagina clogged up with meat (*al-ratq*) or a horn-like bone (*al-qarn*), the vagina covered by beef flooded with sweat (*al-'alf*), the vagina fused with urinary and bowel tract (*al-ifḍā'*), and an extremely smelly vagina (*al-bakhr*).⁶ Several other reasons have also been included,

¹In Arabic, *faskh* is known as *al-talāq bi al-ḥukm al-qāḍī*, meaning a divorce granted by the decision of authorized judges.

²Al-Shātibī, *Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah [The Harmonization in the Foundations of Sharī'ah]*, ed. 'Abd Allāh al-Darrāz, Vol. IV (Beirut: Dār al-Kutub al-'Ilmiyyah, 2005), 28-30.

³Ibn Qayyim al-Jawziyyah, *Zād Al-Ma'ād [Sustenance for the Journey to the Afterlife]*, Vol. 5 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), 6.

⁴Sayyid Sābiq, *Fiqh Al-Sunnah*, Vol. 4 (Kuala Lumpur: Al-Hidayah Publication, 2009), 433.

⁵Mustafā Sa'īd al-Khin, *al-Fiqh al-Manhajī 'Alā Madhāhib al-Shāfi'ī [Methodological Jurisprudence According to the Shafii School]*, Vol. 4 (Beirut: Dār al-Qalam, 1992), 111.

⁶'Abd al-Rahmān al-Jāziri, *al-Fiqh 'Alā Madhāhib al-Arba'ah [The Islamic Jurisprudence According to the Four Schools]*, Vol. 4 edition (Beirut: Dār al-Kutub al-'Ilmiyyah, 1971), 164.

such as the failure of the husband to provide living support to the wife,⁷ disappearance (*ghayb*),⁸ and constant discord between the couple (*shiqāq*).⁹

Contemporary discourse on the identification of drug addiction as a reason for *faskh* remains fragmented into three distinct theoretical positions as explained by Sa'd al-Dīn Mus'ad Hilālī from the University of al-Azhar. (a) Some scholars argued that drug addiction, including cigarettes, either before or after marriage could become a reason, (b) others suggested the consideration only when a husband became an addict after marriage, and (c) a section believed addiction should not be a reason for *faskh* at all.¹⁰ However, the information on the individuals related to the three groups and the methodologies for formulating the position are not presented in the explanation made by Hilālī.

The consideration of domestic violence as a reason for *faskh* is another issue of contemporary discourse. Mustafā al-Sibā'ī (1915-1964 M) and Wahbah al-Zuhaylī¹¹ did not analyze the concept from the perspective of *al-maqāṣid al-sharī'a*. Roh Saham also examined some decisions of the Egyptian Court from 1920 to 1955 and observed some differences from stipulations in the classical *fiqh* to some intriguing aspects. This was specifically in the discourse of *khul'* (divorce ransom), which was the result of *ijtihād* using the principle of *uṣūl al-fiqh*.¹² Moreover, Muhammad Zubair Abbasi analyzed the Islamic Family Laws of Pakistan concerning *khul'* and considered the legislation to be deviating from stipulations in the classical *fiqh*.¹³ The last two names did not investigate *faskh* cases through the *maqāṣid al-sharī'a* reasoning. In the context of Malaysia, Raihanah Abdullah affirmed the use of al-Shāṭibī's opinion that accepted domestic violence of the husband as a base of *faskh* to support the renewal of Islamic family laws. Meanwhile, Raihanah did not apply *maqāṣid al-sharī'a* in the analysis and ignored the aspect of drug addiction.¹⁴

The reasons for filing *faskh* were expanded in article 50 (1) of the 2017 Terengganu State Islamic Family Law Enactment. The article clarifies provisions covering injustice, unfairness, and forced marriage but it is necessary to consider the principles of *maqāṣid al-sharī'a* in submitting *faskh*. This is necessary to ensure more relevance to contemporary social realities, which have not received attention in recent times. Contemporary research has also not applied the method despite its ability

⁷Taqī al-Dīn Abī Bakr, *Kifāyat al-Akhyār fī Ḥall Ghāyat al-Ikhtisār [Sufficiency for the Virtuous: A Commentary on "The Ultimate Summary"]* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2001), 584.

⁸Sulayman ibn 'Umar, *Hāshiyat al-Jamal 'Alā Sharḥ al-Manḥāj [The Marginalia of Al-Jamal on the Explanation of Al-Manḥāj]*, Vol. 7 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1971), 327.

⁹Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu [The Islamic Jurisprudence and Its Sources of Proof]*, Vol. 7 edition (Damascus: Dār al-Fikr, 1984), 527.

¹⁰Sa'd al-Dīn Mus'ad Hilālī, *Al-Thalāthūnāt Fī Al-Qaḍāyā Al-Fiqhiyyah Al-Mu'āṣirah [Thirty Contemporary Issues in Islamic Jurisprudence]* (Cairo: Dār al-Kutub al-Miṣriyyah, 2010), 308-311.

¹¹Mustafā al-Sibā'ī, *Al-Mar'ah Bayn Al-Fiqh Wa Al-Qānūn [The Status of Women in Fiqh and Legal Systems]* (Damascus: al-Maktabah al-Islāmiyyah, 1962), 59; Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu [The Islamic Jurisprudence and Its Sources of Proof]*, Vol. 7 (Damascus: Dār al-Fikr, 1997), 527.

¹²Roh Shaham, "Judicial Divorce at the Wife's Initiative: The Sharī'a Courts of Egypt, 1920-1955," *Islamic Law and Society* 1, no. 2 (1994): 217-57.

¹³Muhammad Zubair Abbasi, "Judicial Ijtihād as a Tool for Legal Reform: Extending Women's Right to Divorce under Islamic Law in Pakistan," *Islamic Law and Society*, vol. 24, no. 4 (2017): 384-411.

¹⁴Raihanah Abdullah, "Reasons to Dissolve a Marriage through Fasakh," *Syariah Journal* 1, no. 5 (1997).

to guarantee the reactive and proactive capacities of *faskh* law in achieving benefits and preventing harm, specifically for women.

Article 50(1) of the Terengganu Islamic Family Law has expanded several important reasons for *faskh*, such as the disappearance and incapability of the husband to maintain and protect the wife. However, there is a need for the exploration of the limited cases of drug addiction and domestic violence in the processing of conducting deeper reformulation of *faskh* law. In this case, *maqāṣid al-sharī'a* is an important basis related to protection (*hifẓ al-'aql*), life (*hifẓ al-nafs*), and wealth (*hifẓ al-māl*). The concept is necessary for the reformulation of law to ensure stronger protection for victims experiencing violence in different forms. Therefore, this research examines the dynamics of *faskh* petitions in the Terengganu Sharia Court with a focus on drug addiction and domestic violence as reasons.

The first reason for this research is that *faskh* law reform, specifically in the Terengganu Sharia Court, has not been previously analyzed. The second is that the decisions regarding drug addiction and domestic violence as grounds for *faskh* are unusual and peculiar when examined through the classical schools of *fiqh* (Ḥanafī, Mālikī, Shāfi'ī, Ḥanbalī, and Ṣaḥīḥī), the most authoritative relevant literature, and contemporary discourse. Therefore, this research aims to offer valuable insights into the reformulation of Islamic family law by incorporating the issue of *maqāṣid al-sharī'a*, which has garnered significant attention among scholars. The process focuses on answering two fundamental research questions. The first is to examine the rationalization of *faskh* in the Sharia Court of Terengganu, specifically the consideration of drug addiction and domestic violence as reasons in decisions 11003-014-0372-2010 and 11300-014-0011-2011, through the theoretical framework of *maqāṣid al-sharī'a*. The second is to investigate the broader implications of these judicial decisions for the contemporary Islamic legal discourse by exploring the contribution to the reformation of Islamic family law in the modern context.

This research argues that drug addiction and domestic violence of the husband can be legitimate reasons for *faskh* when the activities make the wife unhappy. The position was strengthened using the sophisticated theoretical constructs developed by Abū Ḥāmid al-Ghazālī (450-505 H) and the theory of *maqāṣid al-sharī'a* by Abū Ishāq al-Shāṭibī. Moreover, the research is divided into three parts and the first focuses on the verdicts of the Terengganu Sharia Court on drug addiction and domestic violence as reasons for *faskh*. The second deals with the reasons explained by classical *fiqh* literature to understand the status as *ẓannī* (mutable) or *qaṭ'ī* (absolute, immutable). The last part examines the feasibility of drug addiction and domestic violence as reasons for *faskh* through the *maqāṣid* method and synthesizes classical *fiqh* stipulations and *ijtihād* of the judges in the mentioned cases to reformulate laws in line with the current contexts.

2. Research Methodology

The current research employed an integrated method that combined case research analysis and normative legal research to examine two landmark decisions from the Terengganu Sharia Court, Malaysia. The decisions established novel grounds for marriage dissolution, representing a significant development in Islamic family law jurisprudence. A hierarchical data collection method was also used with a prime emphasis on primary sources while incorporating secondary materials. The primary data was obtained from Court decisions number 014-0372-2010 and 11300-014-0011-2011 as well as direct interviews conducted with presiding judges. These were supplemented by an extensive examination of cross-*madhhab fiqh* literature, scholarly articles, and relevant legal provisions from the Islamic Family (Terengganu) Act 1985.

The theoretical framework was *maqāṣid al-sharī'a* principles, specifically the sophisticated constructs developed by Abū Ḥāmid al-Ghazālī (450-505 H) and Abū Ishāq al-Shāṭibī (720-790 H). This was due to the ability of the theories to provide important analytical tools to understand the

adaptation of Islamic jurisprudence to contemporary challenges while preserving the essential principles.

Additionally, case research analysis was used to examine how the Court handled the two unprecedented grounds for *faskh*, including drug addiction and domestic violence. Meanwhile, the normative legal analysis explored the integration of existing legal frameworks with *maqāsid al-sharī'a* principles to address modern social realities by the Court. The integrated method enabled a comprehensive understanding of the dynamic relationship between Islamic legal reform, social context, and judicial interpretation in contemporary Muslim societies. It also transcends descriptive analysis to provide substantive insights into the evolution of Islamic law in addressing contemporary social challenges while maintaining doctrinal integrity. Moreover, the framework facilitates a nuanced examination of how modern courts reconcile traditional Islamic jurisprudence with recent social issues, contributing valuable perspectives to the ongoing development of Islamic family law.

3. The Verdicts of the Court: Between the Stipulations of *Fiqh* and the *Ijtihād* of the Judges

The Terengganu Shari'a Court decided several cases between 2000-2023 stipulating drug consumption as part of the reasons for *faskh*. However, due to the complexities related to several complicating factors, the focus is only on decisions 11003-014-0372-2010 and 11300-014-0011-2011. First, the reasons are not found in classical *fiqh* jurisprudence, secondly, the integration of modern issues requires a balance between following the rules of *faskh* in classical jurisprudence and overcoming contemporary challenges. Moreover, each case has unique legal and social dynamics, leading to the focus of the analysis on the method used by the court in handling legal issues related to the decisions taken during this period.

3.1. Case Number 11003-014-0372-2010

A woman registered a divorce petition assigned as case number 11003-014-0372-2010 to the Terengganu Sharia Court, Malaysia on 14 November 2010.¹⁵ The litigant and the defendant got married on 26 August, 1999 in Wakaf Mempelam village, Kuala Terengganu, and had three children. The reasons proposed by the litigant and later proven before court were, *first*, the defendant (the husband) had not given the litigant (the wife) living support for more than three consecutive months. *Second*, the husband had committed domestic violence against her, *third*, the couple had been separated for one year, and, *fourth*, the defendant was a drug addict arrested several times by the National Drug Agency of Terengganu.¹⁶

The judge decided on *faskh* concerning the legal pronouncement (*fatwa*) of the National Fatwa Committee of Malaysia in 2006. The *fatwa* stipulates that consuming methamphetamine drugs or other kinds of illegal drugs is forbidden (*harām*), including every other relevant activity, such as planting, processing, owning, selling, spreading, and buying.¹⁷ Moreover, the judge referred to the *fatwa* of Shaikh Muḥammad Ḥasanīn Mahklūf (1890-1990 AD), a former *mufti* of Egypt from the book *Fatāwā Shar'īyyah wa Buḥūth Islāmīyyah*, that consuming, giving, and selling drugs are forbidden (*haram*).¹⁸ Mustafā al-Sibā'ī (1915-1964 AD) wrote that *faskh* could be approved for the existence of harm within the family. This notion of harm applies to five aspects of life, including religion, wealth, life, descendants, and the mind.¹⁹ The judge also referred to the concept of *ḍarar* of

¹⁵Case number 11003-014-0372-2010 in year 2010.

¹⁶Interview with Siti Salwa Binti Mustapa, an employee of *Shari'ah* Judicial Office of Terengganu, Malaysia, April 3, 2023.

¹⁷Interview with Siti Salwa Binti Mustapa, an employee of *Shari'ah* Judicial Office of Terengganu, Malaysia, April 3, 2023.

¹⁸Muḥammad Ḥasanīn Mahklūf, *Fatāwā Shar'īyyah Wa Buḥūth Islāmīyyah [Juridical Fatwas and Islamic Research]* (Cairo: Dār al-Kitāb al-'Arabī bi Miṣr, 1951), 184.

¹⁹Mustafā al-Sibā'ī, *Al-Mar'ah Bayn Al-Fiqh Wa Al-Qānūn*, 59.

Wahbah al-Zuhaylī that explored all the possible situations capable of causing a marriage to fail in achieving its fundamental purposes.²⁰ In line with al-Zuhaylī, ‘Umar ‘Abd Allāh suggested that judges were legally authorized to end a marriage when a husband caused harm to the wife.²¹ Meanwhile, ‘Uthmān ibn Shaṭā al-Bakrī (1849-1892 AD) in a very popular book in Nusantara, *I‘ānat al-Ṭālibīn*, stated that judges were permitted to grant the proposal of a woman for *faskh* based on the condition she was not a rebellious wife (*nushūsh*) and not provided living support.²²

The judge decided to grant *faskh* petition between the litigant and the defendant on 25 May, 2011 referring to the opinions of these scholars as well as the evidence presented in the trial. This was achieved through a verdict of *ṭalāq bā’in sughrā* that required the wife to engage in *‘idda* for three menstrual cycles.²³

3.2. Case Number 11300-014-0011-2011

The Terengganu Sharia Court, Malaysia received *faskh* petition assigned as case number 11300-014-0011-2011 in July 2011. The wife and the husband were teachers and got married on 31 May 1991 in 91-A of Tok Ku village, Chabang Tiga, Kuala Terengganu. The reasons proposed by the litigant and later proven before the Court were that, first, the husband did not provide living support, second, repeatedly sold the belongings of the wife such as jewelry, and third, committed domestic violence.²⁴ Therefore, the judge made a legal decision based on al-Nisā’ 04: 24, which focused on the ways to educate a rebellious wife (*nushūsh*) through separation of bed, hitting based on specific requirements, and some restrictions. Another reference was the reasons explained by Wahbah al-Zuhaylī for *faskh*, such as a disharmonious relationship between the husband and the wife as well as domestic violence through physical or verbal means, such as hitting or destroying the dignity of the wife.²⁵ This is in line with the provision of Articles 52 (1) (h) and 49 (1) (h) of the Islamic Family Laws of 1985 of Terengganu that domestic violence can be in two forms, including physical and verbal, such as hitting or cussing.²⁶

The judge referred to the position of *al-Aḥwāl al-Shakhṣiyyah* written by Aḥmad al-Ḥuṣarī that the maltreatment of the wife as part of the reasons for *faskh* was not limited to physical abuse but included avoidance of communication, turning of back when in bed, preference for another woman, and hitting the wife hard.²⁷ The facts presented in court and the literature stated to address this issue were subsequently used by the judge to do settlement for *ṭalāq bā’in sughrā* towards the litigant and the defendant on 29 July 2012 with the wife also required to engage in *‘idda* for three menstrual cycles.²⁸

²⁰Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, 7: 527.

²¹An interview with an employee of the Sharia Judicial Office of Terengganu, Siti Salwa Binti Mustapa, on April 3, 2023.

²²‘Uthmān ibn Shaṭā al-Bakrī, *I‘ānat Al-Ṭālibīn [The Assistance of Students]*, Vol. 4 (Beirut: Dār al-Fikr, 1993), 71.

²³An interview with an employee of the Sharia Judicial Office of Terengganu, Siti Salwa Binti Mustapa, on April 3, 2023.

²⁴Ibid.

²⁵Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, 7060.

²⁶Article 49 of Enactment of Islamic Family Law of Terengganu year 1985.

²⁷Aḥmad al-Ḥuṣarī, *Al-Aḥwāl Al-Shakhṣiyyah [The Islamic Family Law]* (Cairo: Maktabah al-Kulliyat al-Azhariyyah, 1968), 727.

²⁸Interview with an employee of the Sharia Judicial Office of Terengganu, Siti Salwa Binti Mustapa, on April 3, 2023.

4. The Reformulation of *Faskh* Law: Is It Possible?

The discussion in previous sections showed that the two reasons granted for *faskh* by the court, drug consumption, and domestic violence, were based on the combination of the *ijtihad* of the judges and classical *fiqh* provisions. This leads to the question “Is this kind of reformulation possible?” which needs to be considered because the *qaṭ’ī* (absolute, immutable) reasons required in classical *fiqh* books prohibit *ijtihad*. The further consequence is that the verdicts of the court are invalid from the perspective of Islamic Law. However, *ijtihad* is allowed when there is proof that the activities are *ẓannī* affairs (not absolute, mutable). This section answers the question asked as a step in reformulating the law of *faskh*.

Faskh is linguistically defined as cancellation (*naqada*) or dissolution (*farraqa*).²⁹ In terms of marriage, the concept refers to the cancellation or dissolution of marriage due to a particular reason hampering its eternity.³⁰ There is no clear statement in the Quran that supports *faskh* but certain basic principles related to its permission are mentioned in some verses such as al-Baqarah 01: 23 and al-Nisā’ 04: 35. The term is different from the other types of annulment stated clearly in the Qur’an, such as *ṭalāq* (al-Baqarah 01: 229), *khul’* (al-Baqarah 01: 229), *ẓihār* (al-Mujādalah 58: 1-4), *ilā’* (al-Baqarah 01: 226), and *li’ān* (al-Nūr 24: 6-9). However, jurists agreed that *faskh* is another type of annulment due to its suitability for the basic principle of “it is forbidden to harm either ourselves or others (*lā ẓarar wa lā dirār*).”³¹

The decision to cancel a marriage contract through *faskh* is subject to the rights of judges with a petition proposed by the wife that is obliged to present reasonable and relevant pieces of evidence. According to Abū Zahrah (1898-1974 AD), this type of case is called *al-ṭalāq bi al-ḥukm al-qāḍī* (a divorce based on the provision of judges).³² The husband is also entitled to petition for *faskh* but the right is exclusive and termed *ṭalāq*, which can be pronounced twice as *ṭalāq raj’ī*. However, the process is different from *faskh* petition, which is unlimited and allows the couple to remarry through a new contract and dowry.³³ There are several other cases of *faskh* with the permanent application, such as an annulment due to inbreeding through blood or nursing relationship and apostasy, and the decision does not require the participation of the judge.³⁴

Scholars have different opinions about *faskh* in terms of *fiqh*. For example, the Ḥanafī School allows a wife to petition when the husband has any disease related to impotence, broken testicles, or damaged penis.³⁵ The school does not permit any reasons other than the three but Mālikī and Shāfi’ī do not decide or limit certain diseases and allow dissolution based on the ability to disharmonize the family, such as insanity, leprosy, or others.³⁶ Ibn Qayyim, a scholar from the Ḥanbalī School, broadened the scope of deformity (*ayb*) beyond the widely accepted view probably due to the influence of the Mālikī and Shāfi’ī schools. The scholar suggested that any type of deformity suffered

²⁹Ibn Manzūr, *Lisan Al-‘Arab [The Arabic Lexicon]*, Vol. 3 (Beirut: Dār al-Fikr, 1994), 45.

³⁰Abd al-Wahhab Khallaf, *Ahkām Al-Aḥwāl Al-Shakṣiyyah Fī Al-Sharī‘ah Al-Islāmiyyah [Personal Status Regulations in Islamic Law]* (Kuwait: Dār al-Qalam, 1990), 160.

³¹Mālik ibn Anas, *Al-Muwatta’ [The Well-Trodden Path]*, ed. Muḥammad Fu’ād ‘Abd al-Bāqī (Beirut: Dār Iḥyā’ li al-Turāth al-‘Arabī, 1985), 571, Hadīth no. 31.

³²Abū Zahrah, *Al-Aḥwāl Al-Shakṣiyyah [The Islamic Family Law]* (Cairo: Dār al-Fikr al-‘Arabī, 1957), 347.

³³Abdullah, “Reasons to Dissolve a Marriage through Fasakh,” 3.

³⁴Ibn ‘Ābidīn, *Radd Al-Mukhtār [The Answer to the Baffled]*, Vol. 4 (Dār ‘Ālam al-Kutub, 2003), 426-427; Al-Māwardī, *Al-Hāwī Al-Kabīr [The Comprehensive Collection]*, Vol. 9 (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1994), 347-349.

³⁵‘Abd al-Rahmān al-Jāziri, *al-Fiqh ‘Alā Madhāhib al-Arba‘ah*, 4: 162.

³⁶Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, 7: 517-518.

by either the husband or the wife capable of harming the harmony of familial relationships such as being dumb, lame, and stump are valid reasons for *faskh*.³⁷ Ibn Qayyim further argued that the harmony of the family depended on physical perfection.³⁸ Therefore, new infectious diseases, including HIV and TBC, can be reasonably perceived as additional reasons for *faskh*.

The schools of Mālikī, Shāfi'ī, and Hanbalī include some cases such as the incapability of the husband to provide living support for the wife and being lost or jailed as valid reasons for *faskh*. In a broader scope, Al-Shātibī argued that destruction in the family should serve as a benchmark in determining reasons for *faskh*. The destruction in the context focuses on every trouble related to five aspects of human life, including religion, self, descendants, wealth, and the mind.³⁹ The perception of Al-Shātibī is unusual and considered unreasonable by the majority of scholars but appears to be an advanced opinion at the time of introduction.

The explanation shows a vast diversity of views on the reasons for *faskh*. In this context, recalling the question formulated, is it possible to reformulate the law of *faskh*? The answer is “Yes, it is possible.” The variety of opinions introduced by scholars leads to an understanding that the law of *faskh* is *ẓanni* (changeable), not *qaṭ'ī* (absolute). This is because there is no clear argumentation (*ṣarīh/qaṭ'ī*) confirming the concept, leading to several *ijtihād* (efforts) to determine the most proper reasons for *faskh*. The process has caused different opinions due to the variation in the understanding and methods applied by the scholars. Moreover, opinions derived from a school can be different from those of others without any obligation to agree with each other.

5. Decisions of Court, the Classical Fiqh, and Synthesis: Exploring the Implications

This section explores how the principles of *maqāṣid al-sharī'a* can synthesize the decisions of the Court with the classical fiqh and the subsequent implications for the discussion on the contemporary reformulation of Islamic family law. The *al-maṣlaḥa* theory proposed by Al-Ghazali and *al-istiqrā' al-sharī'a* by al-Shātibī was applied to the decisions of the Terengganu Sharia Court, Malaysia to evaluate the *ijtihād* conducted by the judges that included drug addiction and domestic violence as reasons for *faskh*. The purpose was to rationalize the decisions and understand the implications.

5.1. Drug Addiction as a Reason for *Faskh*

The explanation of the status of drugs in *fiqh* is important before analyzing the decisions through *the sharī'a* perspective to strengthen the argument of this research. In the Qur'ān, al-A'raf 07:157, Allah says that He makes lawful for humans the right things (*ṭayyib*) and prohibits evil (*khabā'ith*). Referring to this verse, several scholars agree with the prohibition of using or consuming any type of dirty and dangerous products. It is also recommended to avoid the products when the proportion of the benefits and the dangers are the same.⁴⁰ The process has led some Muslim countries to introduce regulations on the prohibition of drug consumption and other products similar to drugs.⁴¹ This is reasonable since drugs have the potential to harm the lives of humans and hamper responsibility to

³⁷Abū Khayr Nūr al-Ḥasan, *Faḥ Al-'Allam Li Sharḥ Bulūgh Al-Marām [The Opening of Knowledge for the Explanation of Bulūgh Al-Marām]*, Vol.2 (Beirut: Dār Ṣādir, n.d.), 108.

³⁸Abū Khayr Nūr al-Ḥasan, *Faḥ Al-'Allam Li Sharḥ Bulūgh Al-Marām*, 108.

³⁹Al-Shātibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, 4: 28-30.

⁴⁰Pusat Biro Narkotika, *Kekal Bebas Dari Dadah: Panduan Untuk Ibu Bapa Bagi Pemulihan Anak Dari Penyalahgunaan Dadah [Staying Drug Free: A Parents Guide to Child Recovery From Drug Abuse]* (Singapore: Central Narcotics Bureau, 2015), 72.

⁴¹Basma Al-Ansari et al., "Extent of Alcohol Prohibition in Civil Policy in Muslim Majority Countries: The Impact of Globalization", *Addiction*, vol. 111, no. 10 (Wiley Online Library, 2016), 1703–13.

religion, family, society, and nation.⁴² Therefore, the consumption of drugs is believed to be prohibited in Islam. This argumentation is supported by a Hadith of the Prophet Muhammad that any type of intoxicating drink is regarded as *khamr* and all are prohibited.⁴³ The background information shows that the prohibition of drugs is at the same level as the drinking of alcohol (*khamr*) because both have the same consequence (*'illa*), i.e., intoxication and harm. The application of the analogy leads to the conclusion that both *khamr* and drugs are prohibited (*haram*). However, some scholars allow the usage of the products for medical purposes while the majority supports the prohibition.⁴⁴

The discussion of divorce based on only *fiqh* argumentation is not sufficient because the process is allowed by the Prophet but hated by Allah.⁴⁵ The Hadith is undoubtedly understood by the judges, leading to the consideration of *maqāṣid al-sharī'a* principles with a focus on the four elements, including the protection of the mind (*hiḍẓ al-'aql*), the wealth (*hiḍẓ al-māl*), the life (*hiḍẓ al-naḥs*), and the descendants (*hiḍẓ al-nasl*) in the process of rationalizing the decisions.

The first aspect is focused on the protection of the mind with some research identified to have proved the ability of drugs to severely affect users in form of insanity and stress based on hallucination and delusion. The process can lead to suicide or a minimum of anger, trembling, confusion, and mental disorders.⁴⁶ These situations often threaten the affected individuals and endanger the safety of others, including family members.

The second aspect is the protection of wealth (*hiḍẓ al-māl*) which is explained in the classical discourse of *maqāṣid al-sharī'a* to be focused on looting or destructing the properties of others.⁴⁷ However, the concept can currently be applied to other cases similar to looting or destruction, such as protecting the wealth of a family by avoiding drug consumption. The rationale (*'illa*) behind the concept is that almost all drug addicts, specifically in the lower middle class, use daily income expected to be typically spent on family or children's needs, which they utilize to buy drugs. Moreover, research has proved that drug addicts could use the wealth of their wives⁴⁸ or commit crimes, such as looting and robbing to buy drugs.⁴⁹ The trend was confirmed by the report of the

⁴²See, Christopher Contreras, and John R Hipp, "Drugs, Crime, Space, and Time: A Spatiotemporal Examination of Drug Activity and Crime Rates," *Justice Quarterly* 37, no. 2 (2020): 187–209; Ivelaw Lloyd Griffith, *Challenged Sovereignty: The Impact of Drugs, Crime, Terrorism, and Cyber Threats in the Caribbean* (University of Illinois Press, 2024); Glen R Hanson, Peter J Venturelli, and Peter Platteborze, *Drugs and Society* (Burlington: Jones & Bartlett Learning, 2024); Zahra Farhadi Alashti and Abdolreza Javan Jafari Bojnordi, "Islam and Iran's Post-Revolution War on Drugs: A Durkheimian Analysis," *Indonesian Journal of Islam and Muslim Societies* 11, no. 2 (2021): 327–50.

⁴³Ibn Mājjah, *Sunan Ibn Mājjah [Sunan of Sunan Ibn Mājjah]*, Vol. 2 (Cairo: Dār al-Kutub al-'Arabiyah, 1953), 1124.

⁴⁴Nurdeen Deuraseh, "Is Imbibing al-Khamr (Intoxicating Drink) for Medical Purposes Permissible by Islamic Law?," *Arab Law Quarterly*, vol. 18, no. 3 (2003): 355–64.

⁴⁵Abū Dāwud, *Sunan Abī Dāwud [Sunan of Abī Dāwud]*, Vol. 1 (Cairo: Mustafā al-Bābī al-Ḥalabī, 1952), 50.

⁴⁶Narkotika, *Kekal Bebas Dari Dadah, [Staying Drug Free]*, 72.

⁴⁷See Abū Hāmid Al-Ghazālī, *Al-Mustafā Min 'Ilm Al-Uṣūl [The Essentials of the Science of Uṣūl]* (Cairo: al-Maktabah al-Tawfiqiyyah, 2010), 322.

⁴⁸Ezarina Zakaria, and Fauziah Ibrahim, "Drug Abuse Impact on Early Phases of Marriage (1 to 5 Years): Exploring the Drug Addicted Wives Experiences," *International Journal of Academic Research in Business and Social Sciences* 12, no. 10 (2022): 1651–61.

⁴⁹Scott Menard, Sharon Mihalic, and David Huizinga, "Drugs and Crime Revisited," *Justice Quarterly*, vol. 18, no. 2 (2001): 269–99; Toby Seddon, "Drugs, Crime, and Social Exclusion: Social

Singapore Department of Statistics that most drug addictive men contributed to some criminal acts such as looting and robbing while their women counterparts tended to engage mainly in prostitution in 2015.⁵⁰

The third aspect is the protection of life (*hifz al-nafs*) which is limited to murder and the enactment of *qisas* in the classical discourse of *maqāshid al-sharī'a*.⁵¹ However, the discourse could be contextualized to any case capable of leading to the death of others at the time. This is in line with the rule that any addition to a proposed law is regarded as same as the purpose intended.⁵² Therefore, in the *maqāshid* discourse, the consumption of drugs contradicts the *maṣlaḥa* due to the possibility of leading to death or the minimum of endangering lives. Some examples of the adverse impacts are dry mouth, excessive sweating, swollen eyes, headache, insomnia, paleness, and low body endurance capable of causing paralysis, heart disease, increased blood pressure, blood vessel rupture, and death. This is in line with the provision of the verse, "God has taught us not to throw (ourselves) with our (own) hands into destruction."⁵³

The fourth aspect is focused on the protection of the descendants. The research conducted through *My Health* of the Health Ministry of Malaysia showed that drug consumption could inhibit human reproduction. This is related to the ability of drugs to cause some sexually transmitted diseases such as impotence, unexpected productivity of sperm, penis destruction, and HIV.⁵⁴ Addiction also can severely impact pregnant women, specifically babies, by causing premature birth and miscarriage as well as the production of a tiny-size, overactive, and easily agitated baby with the possibility of mental disorders depending on the types of drugs used.⁵⁵

The explanation leads to the deduction that the decisions related to *faskh* enacted by the judges of the Terengganu Sharia Court are in line with fiqh due to the consistency with the principles of *maqāshid al-sharī'a*. The main reason is that anything capable of destroying the five pillars of religion is called *mafsada* while those providing support are known as *maṣlaḥa*.⁵⁶ Therefore, it was concluded that the decisions were made to protect life, the mind, descendants, and wealth from any adverse effect of marriage.

Context and Social Theory in British Drugs–Crime Research," *British Journal of Criminology* 46, no. 4 (2006): 680–703; Richard Clutterbuck, *Terrorism, Drugs and Crime in Europe after 1992* (New York: Routledge, 2013).

⁵⁰Narkotika, *Kekal Bebas Dari Dadah, [Staying Drug Free]*, 74.

⁵¹Al-Juwaynī, *Al-Burhān Fī Uṣūl Al-Fiqh [The Decisive Argument Foundations of Islamic Legal Theory]*, Vol. 2 (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1997), 79-80; Abū Ḥāmid Al-Ghazālī, *Shifā’ al-Ghalīl Fī Bayān Al-Shabah Wa Al-Mukhīl Wa Masālik Al-Ta’līl [The Quenching of Thirst: An Exposition on Ambiguities, Analogies, and Methods of Legal Reasoning]* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1999), 80-83; Abū Ḥāmid Al-Ghazālī, *Al-Mustaṣfā Min ‘Ilm Al-Uṣūl*, 322-323; Al-Rāzī, *Al-Maḥṣūl Fī ‘Ilm Uṣūl Al-Fiqh [The Collected Essentials of Foundations of Uṣūl Al-Fiqh]*, Vol. 3 (Cairo: Dār al-Salām, 2011), 1247-1248; Al-Āmidī, *Muntahā Al-Sūl Fī ‘Ilm Al-Uṣūl [The Utmost Aspiration in the Science of Uṣūl]*, Vol. 3 (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2003), 343; Aḥmad al-Isfahānī, *Bayān Al-Mukhtaṣar Fī ‘Ilmay Al-Uṣūl Wa Al-Jadal [The Explanation of the Compendium in the Sciences of Uṣūl and Dialectics]*, Vol. 2 (Cairo: Dār al-Ḥadīth, 2006), 3-4.

⁵²The above statement is based on the Islamic legal maxim: *li al-wasā’il ḥukm al-maqāshid*.

⁵³Al-Baqarah 2:195.

⁵⁴Pusat Biro Narkotika, *Kekal Bebas Dari Dadah, [Staying Drug Free]*, 30.

⁵⁵Ibid., 22.

⁵⁶Abū Ḥāmid Al-Ghazālī, *Al-Mustaṣfā Min ‘Ilm Al-Uṣūl*, 322.

5.2. Domestic Violence as a Reason for *Faskh*

The keyword that becomes the main focus of the domestic violence issue is *dirār* (oppression). It is related to the *maqāṣid al-sharī'a* through the need to protect the mind (*hiḍḍ al- 'aql*) and life (*hiḍḍ al-naḥs*). In terms of protecting the mind, violent activities such as hitting can have severe effects on the body and mental health of the wife and are also capable of leading to death. This is the reason the religion prohibits the husband from causing difficulties for the wife (al-Nisā' 04: 19) murdering or looting one another (إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ حَرَامٌ عَلَيْكُمْ),⁵⁷ and threatening each other (لا ضرر ولا ضرار).⁵⁸

The discussion related to the protection of life in the classical *maqāṣid al-sharī'a* is centered on the case of murder but also includes every action capable of leading to the death of an individual. The actions can be in the form of hitting or injury with the ability to cause harm or death. The trend is in line with the information presented in *My Health* provided by the Ministry of Health of Malaysia that the health risks from domestic violence can lead to deformity and death.⁵⁹ Therefore, the government of Malaysia enacted the Domestic Violence Act of 1994 (Act 521) to save the life of wives.⁶⁰ Similar regulation has also been implemented in other countries through the adoption of models and characteristics tailored to the needs of each society.⁶¹ The *maqāṣid al-sharī'a* perspective shows that it is reasonable to regard domestic violence as a reason for *faskh* due to the focus on saving the life of the wife. In conclusion, the reasons proposed by the Court are in line with *maqāṣid al-sharī'a* principles.

5.3. Synthesis and Implication

The discourse of laws related to *faskh* in the *fiqh* literature is subject to disagreement as previously explained. This is due to the possibility of some schools neglecting the opinions of others. For example, the Ḥanafī School agreed there were only three reasons for *faskh*, including impotence, a broken penis, or damaged testicles.⁶² Meanwhile, scholars from the al-Mālikī and al-Shāfi'ī schools disagreed by introducing other reasons related to diseases such as insanity and leprosy capable of disrupting the harmony in a family.⁶³ Ibn Qayyim al-Jawziyah, an adherent of the Ḥanbalī School, broadened the meaning of deformities to include dumbness, lameness, stumps, or other diseases capable of disrupting the harmony in a family (*mawadda wa raḥma*).⁶⁴

⁵⁷Ḥadīth narrated by al-Bukhārī and Muslim from Abī Bakrah, see Abū Muḥammad al-Fayūmī Al-Qāhīrī, *Fath Al-Qarīb Al-Mujīb 'alā Al-Targhib Wa Al-Tarhib Li Al-Imām Al-Mundhirī [The Accessible Explanation of "Encouragement and Warning" by Imam Al-Mundhirī]*, ed. Muḥammad Ishāq Muḥammad Āli Ibrāhīm, Vol. XI (Riyād: Maktabah Dār al-Salām, 2018), 89.

⁵⁸This ḥadīth narrated by Aḥmad, Ibn Mājah, al-Ṭabrānī from Ibn 'Abbās. This ḥadīth is strong support for the Islamic legal maxim: al-ḍarar yuzāl, meaning harm must be eliminated. See, Jalāl al-Dīn Al-Suyūfī, *Al-Ashbāh Wa Al-Nazā'ir [Similarities and Analogies]* (Riyād: Maktabah al-Mukarramah, 1998), 11.

⁵⁹Kementerian Pembangunan Wanita Keluarga dan Masyarakat, *Garis Panduan Pengendalian Kes Keganasan Rumah Tangga [Domestic Violence Case Handling Guidelines]* (Selangor: Putrajaya, 2017), 3.

⁶⁰Kementerian Pembangunan Wanita Keluarga dan Masyarakat, *Garis Panduan Pengendalian...*, 3.

⁶¹See, Amir Ashur, "Protecting the Wife's Rights in Marriage as Reflected in Pre-Nuptials and Marriage Contracts from the Cairo Genizah and Parallel Arabic Sources," *Religion Compass* 6, no. 8 (2012): 381–89; Susan Blackburn, *Women and the State in Modern Indonesia* (Cambridge: Cambridge University Press, 2004).

⁶²Abd al-Raḥmān al-Jāzīrī, *Al-Fiqh 'Alā Madhāhib Al-Arba'ah*, 4:162.

⁶³Wahbah al-Zuhaylī, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, 7: 517-518.

⁶⁴Abū Khayr Nūr al-Ḥasan, *Fath Al-'Allam Li Sharḥ Bulūgh Al-Marām*, 2:108.

Abū Ishāq al-Shātibī, an adherent of the Mālikī School, introduced a more sophisticated opinion by stating that only one reason should be added. This was focused on every action that could endanger the sustainability of the family based on five matters, including religion, life, descendants, wealth, and the mind.⁶⁵ The perspective was based on the expertise of al-Shātibī in *maqāsid* and has inspired several other modern scholars to propose similar ideas with some contextualization and developments.⁶⁶ Therefore, domestic violence is a strong view from the perspective of *usul al-fiqh* even though the inclusion as a reason for *faskh* tends to be a weak opinion among most *fiqh* scholars.

'Illa (reasons), *maṣlaḥa* (benefit), and *mafsada* (harm) are integral to the provision of strong opinion for the inclusion of domestic violence as a reason for *faskh*. For example, the *'illa* proposed in case number 11003-014-0372-2010 was the negative impacts of drug addiction on the lives (*al-nafs*), mind (*al-aql*), descendants (*al-nasl*), and wealth (*al-māl*) of the married couple. This showed that the decision to include drug addiction as a reason for *faskh* was right based on the principles of *maṣlaḥa* and *mafsada* as observed in the correlation with *'illa*. These principles were able to provide a strong foundation in terms of *uṣūl al-fiqh* discourse. Moreover, al-Ghazālī stated that the suitability of the decision was based on the ability of drugs to harm the five pillars, including religion, life, mind, descendants, and wealth. These pillars are known as *mafsada* and every action that saves the pillars is called *maṣlaḥa*.⁶⁷

The argumentation was further strengthened by the theory of *al-istiqrā' al-sharī'a* introduced by al-Shātibī to present inductive reasoning towards *sharī'a* debates. Moreover, the definition of the *maqāsid al-sharī'a* value was suggested to require a close reading of *dalīls* that consisted of different meanings and purposes holistically, instead of separately. This could be either the *dalīls* in the form of *ẓāhir*, *muṭlaq*, *muqayyad*, *kuliyya*, or *juz'iyya* found in *naṣṣ* and *fiqh* laws. The context identification (*qarā'in aḥwāl*) as written (*manqūlah*) or unwritten (*ghayr manqūlah*) also needs to be considered. The result of this procedure is a definite (*al-al-qat'*) and convincing (*al-yaqīn*) decision according to al-Shātibī.⁶⁸

The process of deciding the cases based on only one reason, drug addiction or domestic violence, is considered significant in this context from *maqāsid al-sharī'a* perspective. However, the decision could be stronger with the addition of other reasons such as the lack of willingness to support the living conditions of the wife and the separation for a long time. Al-Shātibī shows there is often a definite (*al-qat'*) and convincing (*al-yaqīn*) decision. The trend is observed in decision number 11300-014-0011-2011 where domestic violence was combined with the unwillingness of the husband to provide living support, thereby providing more strength to the reasons based on both *fiqh* and *uṣūl al-fiqh* perspectives.

In terms of the *maqāsid al-sharī'a* principle, there are two irrefutable arguments to justify the confirmation of drug addiction and domestic violence as reasons for *faskh*. Firstly, it is clear that one school (*madhhab*) is not obligated to follow the opinion or decision of another. This shows the reasons determined for *faskh* by several scholars in the classical *fiqh* discourse are debatable (*ẓannī*). The trend is different from other cases such as *ṭalāq* (al-Baqarah 01: 229), *khul'* (al-Baqarah 01: 229), *ẓihār* (al-Mujādalah 58: 1-4), *ilā'* (al-Baqarah 01: 226) and *li'ān* (al-Nūr 24: 6-9) where the position of the Qur'an is clearly stated. There is no explicit statement in the Quran explaining the law of *faskh*, thereby subjecting the concept to debate. Secondly, the absence of a clear argument for *faskh* law in the Quran allows several scholars to attempt to identify the basic principles existing in some

⁶⁵Al-Shātibī, *Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah*, 4: 28-30.

⁶⁶For example, see Mustafā al-Sibā'ī, *Al-Mar'ah Bayn Al-Fiqh Wa Al-Qānūn*, 59; Wahbah al-Zuhaylī, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, 7:527.

⁶⁷Abū Ḥāmid Al-Ghazālī, *Al-Mustasfā Min 'Ilm Al-Uṣūl*, 322.

⁶⁸Al-Shātibī, *Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah*, 3: 39.

verses. The provision of al-Baqarah 01: 231 and al-Nisā' 04: 35 as well as a hadith from the Prophet that harm to self or others (*lā ḍarar wa lā ḍirār*)⁶⁹ is forbidden is argued to be the basic principle of *faskh*. Meanwhile, the position is generic and the decision of law needs to be based on surrounding reasons (*'illa*). This shows that the methods to determine reasons (*'illa*) for *faskh* (*taḥqīq al-manāṭ*) are different across scholars and schools depending on the understanding of the *'illa* connected to the *maṣlahah* and *mafsadah* produced.

The two reasons show the possibility of reformulating *faskh* laws regarding the reasons through the contemporary *fiqh*, decisions of judges, or legislation. The trend was explained by Wahbah al-Zuhaylī, a modern scholar, as the enlargement of the meaning of *ḍirār* to cover everything that could cause disaster to the wife.⁷⁰ Moreover, Article 2 of the Enactment of Islamic Family Law of 1985 in Terengganu, Malaysia proposes a broader scope for *ḍirār* to cover everything capable of threatening the soul, body, mind, and wealth of the wife.⁷¹ Article 50 (1) of Enactment of Islamic Family Law in Terengganu of 2017 which is the revised version of the Enactment of Islamic Family Law of 1985 also widens the reasons for *faskh* by adding the case of disappearance (*ghayb*) of the husband for more than one year, lack of willingness to provide living support to the wife for over four months, imprisonment for more than one year, exiled to a foreign country based on legislation rules, or impotence. Furthermore, *faskh* can be accepted when a wife is married off by her *wali mujbir* before reaching a marriageable age (*balīgh*) and rejects the marriage before copulation. The other reasons stated in the legislation include abuses, having a relationship with another evil woman, forcing immoral living, despoiling her belongings, hampering the wife from getting her rights, forbidding the process of conducting religious obligations, not serving fairly in polygamy marriage, and intentionally not copulating for four months after marriage. *Faskh* is also permissible for women married off by force, mistake, or to an idiot.⁷²

The debates of the scholars and the enactments of Islamic Family Laws in Terengganu, Malaysia were observed not to have discussed the addition of drug addiction and domestic violence to the reasons for *faskh*. Therefore, the judges attempted to conduct *ijtihād* to determine the most appropriate law on *ḍirār* based on the principle that two rewards should be provided when correct and one when incorrect.⁷³

The *ijtihād* of the judges provides new pathways to reform *faskh* law even though the decision is limited to the Terengganu Shari Court. This research convincingly argues that the addition of the husband to drugs and instances of domestic violence can be accepted as reasons for *faskh* when the activities lead to sadness for the wife and present the grievances to Sharia Court. The importance of the decision is based on the successful integration of *maqāṣid al-sharī'a* that protects the religion, soul, mind, descendent, and wealth. This thoughtful application of Islamic principles serves as a precedence for modernizing *faskh* while maintaining the principles of *maqāṣid al-sharī'a*. Beyond the immediate impact on law, the decisions serve as a model for broader Islamic legal reform by showing how Islamic jurisprudence can evolve to meet interpretations capable of guiding future reform in Islamic family law and other areas.

6. Conclusion

This study highlighted that, the issue of divorce in Malaysia had fundamentally changed with a specific focus on the grounds or reasons for *faskh* (annulment) as observed in the two cases decided at the Terengganu Sharia Court. Significantly, some individuals have argued that Malaysian Islamic

⁶⁹Mālik ibn Anas, *Al-Muwatta*, 571, Hadith no. 31.

⁷⁰Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, 9:7040.

⁷¹Article 2 of Enactment of Islamic Family Law of Terengganu year 1985.

⁷²Article 50 (1) Enactment of Islamic Family Law of Terengganu year 2017.

⁷³Interview with a Judge of Terengganu Sharia Court, Tuan Ahnaf Bin Ahmad, on April 3, 2023

family laws were rigid; however, this research precisely showed the existence of certain rapid renewals. The trend was identified in the cases related to the acceptance of drug addiction and domestic violence as grounds for *faskh* in the decisions of the court. This was despite the lack of clarity for both conditions in classical *fiqh* and even the discussions of contemporary *fiqh* experts; thereby, showing the significance of Islamic legal law reformulation. The confirmation of drug addiction as a reason was justified through the threat presented to the soul (*al-nafs*), mind (*al-'aql*), descendent (*al-nasl*), and wealth (*al-māl*) of the wife. Similarly, domestic violence was identified as a legitimate reason due to the harm caused to the mind (*al-'aql*) and soul (*al-nafs*) of the wife. The decisions were further supported through the theory of *maṣlaḥa* proposed by Al-Ghazālī and al-Shāṭibī that prioritized preserving (*hiẓf*) the five fundamental values, including religion, soul, mind, descendent, and wealth.

The application of al-Shāṭibī's *al-istiqrā' al-sharī'a* theory showed the need to holistically examine both cases, which presented the ground reasons for divorce cases. It was observed that decision number 11003-014-0372-2010 related to drug addiction was read together with other reasons, such as the lack of willingness of the husband to provide living support for more than three consecutive months and separation by not living in the same house for a long time. Moreover, decision number 11300-014-0011-2011 related to hitting and humiliation of the wife was read together with the lack of willingness of the husband to provide living support. The combination of the methods was able to synthesize classical *fiqh* and contemporary judicial decisions with the principle of *taṣarruf al-imām manūṭ bi al-maṣlaḥa*, showing the decisions made by the judges were in line with the public welfare.

Additionally, this research argued that drug addiction and domestic violence were valid reasons for *faskh* in the contemporary Islamic legal discourse when the wife was unhappy and presented her grievances in Sharia Court. The results showed the flexibility of Islamic law and offered a framework for further legal reform in other cases of Islamic family law. Therefore, the integration of *maqāṣid al-sharī'a* into judicial decision-making was supported with an emphasis on the protection of religion, soul, mind, descendent, and wealth. This research helps in improving the understanding of how Islamic family law could be reformulated to accommodate societal needs while maintaining the *maqāṣid al-sharī'a* principles.

Conflict of Interest

The authors of the manuscript have no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

Data Availability Statement

The data associated with this study will be provided by the corresponding author upon request.

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Bibliography

- Abbasi, Muhammad Zubair. "Judicial Ijtihād as a Tool for Legal Reform: Extending Women's Right to Divorce under Islamic Law in Pakistan." *Islamic Law and Society* 24, no. 4 (2017): 384–411, <https://doi.org/10.1163/15685195-00244P04>
- Abdullah, Raihanah. "Reasons to Dissolve a Marriage through Fasakh." *Syariah Journal* 1, no. 5 (1997).

- ‘Ābidīn, Ibn. *Radd Al-Mukhtār [The Answer to the Baffled]*. Vol. 4. Dār ‘Ālam al-Kutub, 2003.
- Al-Āmidī. *Muntahā Al-Sūl Fī ‘Ilm Al-Uṣūl [The Utmost Aspiration in the Science of Uṣūl]*. Beirut: Dār al-Kutub al-‘Ilmiyyah, 2003.
- Al-Ansari, Basma., Anne-Marie Thow, Carolyn A Day, and Katherine M Conigrave. “Extent of Alcohol Prohibition in Civil Policy in Muslim Majority Countries: The Impact of Globalization.” *Addiction* 111, no. 10 (2016): 1703–13, <https://doi.org/10.1111/add.13159>
- Alashti, Zahra Farhadi., and Abdolreza Javan Jafari Bojnordi. “Islam and Iran’s Post-Revolution War on Drugs: A Durkheimian Analysis.” *Indonesian Journal of Islam and Muslim Societies* 11, no. 2 (2021): 327–50, <https://doi.org/10.18326/ijims.v11i2.327-350>
- Anas, Mālik Ibn. *Al-Muwatta’ [The Well-Trodden Path]*. Edited by Muḥammad Fu’ād ‘Abd al-Bāqī. Beirut: Dār Iḥyā’ li al-Turāth al-‘Arabī, 1985.
- Ashur, Amir. “Protecting the Wife’s Rights in Marriage as Reflected in Pre-Nuptials and Marriage Contracts from the Cairo Genizah and Parallel Arabic Sources.” *Religion Compass* 6, no. 8 (2012): 381–89, <https://doi.org/10.1111/j.1749-8171.2012.00359.x>
- Bakr, Taqī al-Dīn Abī. *Kifāyat Al-Akhyār Fī Hall Ghāyat Al-Ikhtisār [Sufficiency for the Virtuous: A Commentary on “The Ultimate Summary”]*. Beirut: Dār al-Kutub al-‘Ilmiyyah, 2001.
- Al-Bakrī, ‘Uthmān ibn Shaṭā. *I‘ānat Al-Ṭālibīn [The Assistance of Students]*. Vol. 4. Beirut: Dār al-Fikr, 1993.
- Blackburn, Susan. *Women and the State in Modern Indonesia*. Cambridge: Cambridge University Press, 2004.
- Clutterbuck, Richard. *Terrorism, Drugs & Crime in Europe after 1992*. New York: Routledge, 2013.
- Contreras, Christopher., and John R Hipp. “Drugs, Crime, Space, and Time: A Spatiotemporal Examination of Drug Activity and Crime Rates.” *Justice Quarterly* 37, no. 2 (2020): 187–209. <https://doi.org/10.1080/07418825.2018.1515318>
- Dāwud, Abū. *Sunan Abī Dāwud [Sunan of Abī Dāwud]*. Vol. 1. Cairo: Mustafā al-Bābī al-Ḥalabī, 1952.
- Deuraseh, Nurdeen. “Is Imbibing Al-Khamr (Intoxicating Drink) for Medical Purposes Permissible by Islamic Law?” *Arab Law Quarterly* 18, no. 3 (2003): 355–64. <https://doi.org/10.1163/0268055032342749>
- Al-Ghazālī, Abū Ḥāmid. *Al-Mustaṣfā Min ‘Ilm Al-Uṣūl [The Essentials of the Science of Uṣūl]*. Cairo: al-Maktabah al-Tawfīqiyyah, 2010.
- . *Shifā’ al-Ghalīl Fī Bayān Al-Shabah Wa Al-Mukhīl Wa Masālik Al-Ta’līl [The Quenching of Thirst: An Exposition on Ambiguities, Analogies, and Methods of Legal Reasoning]*. Beirut: Dār al-Kutub al-‘Ilmiyyah, 1999.
- Griffith, Ivelaw Lloyd. *Challenged Sovereignty: The Impact of Drugs, Crime, Terrorism, and Cyber Threats in the Caribbean*. University of Illinois Press, 2024.
- Hanson, Glen R., Peter J Venturrelli, and Peter Platteborze. *Drugs and Society*. Burlington: Jones and Bartlett Learning, 2024.
- Al-Ḥasan, Abū Khayr Nūr. *Fath Al-‘Allam Li Sharḥ Bulūgh Al-Marām [The Opening of Knowledge for the Explanation of Bulūgh Al-Marām]*. Vol.2. Beirut: Dār Sādir, n.d.
- Hilālī, Sa’d al-Dīn Mus’ad. *Al-Thalāthūnāt Fī Al-Qaḍāyā Al-Fiqhiyyah Al-Mu’āshirah [Thirty*

- Contemporary Issues in Islamic Jurisprudence*. Cairo: Dār al-Kutub al-Miṣriyyah, 2010.
- Al-Ḥuṣārī, Aḥmad. *Al-Aḥwāl Al-Shakṣiyyah [The Islamic Family Law]*. Cairo: Maktabah al-Kulliyat al-Azhariyyah, 1968.
- Al-Isfahānī, Aḥmad. *Bayān Al-Mukhtaṣar Fī 'Ilmay Al-Uṣūl Wa Al-Jadal [The Explanation of the Compendium in the Sciences of Uṣūl and Dialectics]*. Vol. 2. Cairo: Dār al-Ḥadīth, 2006.
- Al-Jawziyyah, Ibn Qayyim. *Zād Al-Ma'ād [Sustenance for the Journey to the Afterlife]*. Vol. 5. Beirut: Dār al-Kutub al-'Ilmiyyah, 1998.
- Al-Jāziri, 'Abd al-Rahmān. *Al-Fiqh 'Alā Madhāhib Al-Arba'ah [The Islamic Jurisprudence According to the Four Schools]*. Vol. 4. Beirut: Dār al-Kutub al-'Ilmiyyah, 1971.
- Al-Juwaynī. *Al-Burhān Fī Uṣūl Al-Fiqh [The Decisive Argument Foundations of Islamic Legal Theory]* Vol. 2. Beirut: Dār al-Kutub al-'Ilmiyyah, 1997.
- Khallaf, 'Abd al-Wahhab. *Aḥkām Al-Aḥwāl Al-Shakṣiyyah Fī Al-Sharī'ah Al-Islāmiyyah [Personal Status Regulations in Islamic Law]*. Kuwait: Dār al-Qalam, 1990.
- Al-Khin, Mustafā Sa'īd. *Al-Fiqh Al-Manhajī 'Alā Madhhab Al-Shāfi'ī [Methodological Jurisprudence According to the Shāfi'ī School]*. Vol. 4. Beirut: Dār al-Qalam, 1992.
- Mahklūf, Muḥammad Hasanīn. *Fatāwā Al-Sharī'yyah Wa al-Buḥūth Al-'Ilmiyya [Juridical Fatwas and Scientific Research]*. Cairo: Dār al-Kitāb al-'Arabī bi Miṣr, 1951.
- Manzūr, Ibn. *Lisan Al-'Arab [The Arabic Lexicon]*. Vol. 3. Beirut: Dār al-Fikr, 1994.
- Masyarakat, Kementerian Pembangunan Wanita Keluarga dan. *Garis Panduan Pengendalian Kes Keganasan Rumah Tangga [Domestic Violence Case Handling Guidelines]*. Selangor: Putrajaya, 2017.
- Al-Māwardī. *Al-Hāwī Al-Kabīr [The Comprehensive Collection]*. Vol. 9. Beirut: Dār al-Kutub al-'Ilmiyyah, 1994.
- Menard, Scott., Sharon Mihalic, and David Huizinga. "Drugs and Crime Revisited." *Justice Quarterly* 18, no. 2 (2001): 269–99, <https://doi.org/10.1080/07418820100094901>
- Narkotika, Pusat Biro. *Kekal Bebas Dari Dadah: Panduan Untuk Ibu Bapa Bagi Pemulihan Anak Dari Penyalahgunaan Dadah [Staying Drug Free: A Parents Guide to Child Recovery From Drug Abuse]*. Singapura: Central Narcotics Bureau, 2015.
- Al-Qāhīrī, Abū Muḥammad al-Fayūmī. *Fath Al-Qarīb Al-Mujīb 'Alā Al-Targhib Wa Al-Tarhib Li Al-Imām Al-Mundhirī [The Accessible Explanation of "Encouragement and Warning" by Imam Al-Mundhirī]*. Edited by Muḥammad Ishāq Muḥammad Āli Ibrāhīm. Riyāḍ: Maktabah Dār al-Salām, 2018.
- Al-Rāzī. *Al-Maḥṣūl Fī 'Ilm Uṣūl Al-Fiqh [The Collected Essentials of Foundations of Uṣūl Al-Fiqh]*. Vol. 3. Cairo: Dār al-Salām, 2011.
- Sābiq, Sayyid. *Fiqh Al-Sunnah*. Vol. 4. Kuala Lumpur: Al-Hidayah Publication, 2009.
- Seddon, Toby. "Drugs, Crime and Social Exclusion: Social Context and Social Theory in British Drugs–Crime Research." *British Journal of Criminology* 46, no. 4 (2006): 680–703. <https://doi.org/10.1093/bjc/azi079>
- Shaham, Roh. "Judicial Divorce at the Wife's Initiative: The Sharī'a Courts of Egypt, 1920-1955." *Islamic Law and Society* 1, no. 2 (1994): 217–57. <https://doi.org/10.1163/156851994X00048>

- Al-Shātibī. *Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah [The Harmonization in the Foundations of Sharī'ah]*. Edited by Vol. IV 'Abd Allāh al-Darrāz. Beirut: Dār al-Kutub al-'Ilmiyyah, 2005.
- Al-Sibā'ī, Mustafā. *Al-Mar'ah Bayn Al-Fiqh wa Al-Qānūn [The Status of Women in Fiqh and Legal Systems]* Damascus: al-Maktabah al-Islāmiyyah, 1962.
- Al-Suyūfī, Jalāl al-Dīn. *Al-Ashbāh Wa Al-Nazā'ir [Similarities and Analogies]*. Riyāḍ: Maktabah al-Mukarramah, 1998.
- 'Umar, Sulayman Ibn. *Hāshiyat Al-Jamal 'Alā Sharḥ Al-Manhāj [The Marginalia of Al-Jamal on the Explanation of Al-Manhaj]*. Vol. 7. Beirut: Dār al-Kutub al-'Ilmiyyah, 1971.
- Zahrah, Abū. *Al-Aḥwāl Al-Shakhṣiyyah [The Islamic Family Law]*. Cairo: Dār al-Fikr al-'Arabī, 1957.
- Zakaria, Ezarina., and Fauziah Ibrahim. "Drug Abuse Impact on Early Phases of Marriage (1 to 5 Years): Exploring the Drug Addicted Wives Experiences." *International Journal of Academic Research in Business and Social Sciences* 12, no. 10 (2022): 1651–61, 10.6007/IJARBS/v12-i10/15381
- Al-Zuḥaylī, Wahbah. *Al-Fiqh Al-Islāmī Wa Adillatuhu [The Islamic Jurisprudence and Its Sources of Proof]*. Damascus: Dār al-Fikr, 1984.