

Marriage Registration Obligation Policy (From Fiqh Munakahat to Marriage Law)

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Abstract

Getting married is one of the most critical moments in life, and everyone would agree to remember, document, and immortalize it. This article analyzes the legal changes in the registration of marriages, from the origin of the legal status and obligations in Islamic fiqh to the current obligations after the enactment of the Law of the Republic of Indonesia Number 1 of 1974 concerning marriage and the Compilation of Islamic Law (KHI), using maqasid al-sharia as a theoretical framework. This study uses a qualitative research method of literature study; all data collected is then analyzed descriptively. The study results explain that the provisions on the obligation to register marriages are not found in Islamic fiqh because there are no explicit verses in both the Qur'an and Hadith that explain it. However, along with the developments and demands of the times, the increasing complexity of the problems that develop in society as a result of marriage for both the woman, her family, and her offspring, using the maqasid al-shari'ah rule of registering marriages is felt to be very important, namely by documenting it in an official certificate known as a marriage book. Due to the consideration of the nature and similarities of laws and fiqh, which will continue to change with adjustments to situations and conditions. Therefore, this article contributes to adding insight into religion for people in Indonesia.

Keywords: marriage, marriage registration, fiqh munakahat, marriage law

A. Introduction

Islam is a religion that is rahmatan lil'alamin, a religion that brings mercy to the universe and all people without being limited by space and time. Teachings that cover all aspects of life, including in the field of marriage. Allah SWT commands people to be married to live in peace and prosperity. Islam strongly recommends marriage because, with marriage, humans will reproduce so that human life can be preserved. Without marriage, regeneration will stop, human life will be cut off, and the world will be lonely and meaningless. Marriage is one of the sunnatullah that generally applies to all God's creatures, humans, animals, and plants. Therefore, Allah SWT prescribes marriage for humanity.¹

¹ Iemas Masithoh M Noor, "Hubungan Fikih Munakahat Dan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Serta Kompilasi Hukum Islam Di Indonesia," *Wacana Paramarta Jurnal Ilmu Hukum* 21, no. 2 (2022): 1.

Law Number 1 of 1974 article 1 states that marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on Belief in the One Supreme God. The Compilation of Islamic Law (KHI) also states that marriage, a solid contract or *mitsaaqang haliidzan* to obey Allah's commands and carry them out, is worship. Marriage aims to create a *sakinah, mawaddah, and warrahmah* household life.²

Long before Law No. 1 of 1974 concerning Marriage was promulgated, the Dutch Government had classified Indonesian citizens into three groups: the European group, the Indigenous group, and the Foreign Eastern group. This classification allows each group to have its marriage procedure (article 131IS) (Thontowi, 2007, p. 128). During the Dutch colonial period, the applicable marriage law in Indonesia was dualistic and pluralistic. It is said to be dualistic because the law that applies to European or Eastern Foreign groups is western civil law. In contrast, the law that applies to the Bumiputra group is customary law. While it is pluralistic because, in each western civil law, there are various colors of different laws that apply to Europeans, Chinese people, people who are Christians, and to mixed marriages (Hadikusuma, 1990, p. 5). The laws that apply to Bumiputra are also divided into two: (1) For native Indonesian citizens who are Muslim, religious law that has been accepted into customary law applies; (2) For other native Indonesians, customary law is applied which is spread over 19 customary law areas (Soewondo, 1984, p. 41). The impact of this policy is that Indonesian people are accustomed to living under a different legal system. This continues to develop in line with the diversity of cultures and religions that exist in society. Consequently, seeds of conflict and jealousy emerged among people in society.

Not all of the rules in the Compilation of Islamic Law and Marriage Law are the same as those in *fiqh*. For example, in matters of marriage. In articles 5 and 6 of the Compilation of Islamic Law, the state requires that marriages be recorded and held before and under the supervision of marriage registrars.³

Indeed, this provision for marriage registration is not found in the Qur'an and Hadith. However, along with the development and demands of the times, this is felt to be very important for society. In this regard, Syathibi stated that *shari'ah* has looked at the goodness of what law is considered good in social experience. When in social experience, a certain "legal goodness" begins to harm the network of human society or even individuals, it loses its nature as a legal goodness.

Based on the description above, it is essential to carry out studies and research on marriage registration in scientific work or with the title *Obligation of Marriage Registration Obligation*.

² Noor, vi.

³ Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin, "Pencatatan Pernikahan Perspektif Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974," *Asy-Syari'ah : Jurnal Hukum Islam* 8, no. 1 (February 7, 2022): 6, <https://doi.org/10.55210/assyariah.v8i1.765>.

B. Discussion

1. *Fiqh Munakahat*

Fiqh munakahat is the law of Allah. Therefore, the primary source of fiqh munakahat is a divine revelation contained in the Qur'an. Because the Divine revelation regarding marriage was still general and required explanation, Allah authorized the Prophet to explain this Divine revelation. The Prophet's explanation of the meaning of the verses of the Koran is found in the sunnah, also called the Prophet's hadith. Thus, both are referred to as the primary sources for fiqh munakahat.⁴

a. Definition of marriage

UU no. 1 of 1974 article 1 states that "marriage is a physical and spiritual bond, between a man and a woman as husband and wife to form a happy and eternal family (household) based on Belief in One Almighty God." Article 2 of the Compilation of Islamic Law (KHI) states that "marriage according to Islamic law is a marriage, namely a solid contract or *mitsaqan ghalidzan* to obey Allah's commands and carrying it out is worship. Furthermore, article 3 explains, "Marriage aims to create a household life that is *sakinah, mawaddah, and rahmah*."⁵

Etymologically marriage in Arabic means marriage or *zawaj*. Marriage means *al-wath'i, al-dhomm, al-tadakhul, al-jam'u*, or like *'an al-wath wa al aqd*, which means intercourse, intercourse, gathering, intercourse, and contract. Meanwhile, in terms of marriage or marriage is a contract that allows *istimta'* (to do pleasant things) between a man and a woman.

b. Basic Marriage Law

According to *jumhur*, the law of marriage for each person can be different, as follows:

- 1) **Mandatory.** This law applies to those who can carry out marriages, can provide for their wife and other rights and obligations, and are afraid of falling into immoral acts if they do not do so.
- 2) **Sunnah.** This law applies to those who are capable and are not afraid of committing immoral acts if they do not do it.
- 3) **Makruh.** This law applies to those who feel that they will be unjust to their wife if they marry, but are not to the level of certainty, for example, because he does not have strong passions, is worried that he will not be able to provide for himself, does not really like his wife, and so on. In the view of *Shāfi'iyah*, the law of *makruh* applies if the person concerned has disabilities such as senility, chronic illness, and others. The *makruh* law, according to *Shafi'iyah*, also applies to those who marry women who have accepted other people's proposals, *muhallil* marriages that are not stated in the contract.

⁴ Noor, "Hubungan Fikih Munakahat Dan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Serta Kompilasi Hukum Islam Di Indonesia," 4.

⁵ Rusdaya Basri, *Fiqh Munakahat 4 Mazhab Dan Kebijakan Pemerintah* (Sulawesi Selatan: CV. Kaaffah Learning Center, 2019), 4.

- 4) Unlawful applies to those who are mentally and physically unable, and if they are still married, it will cause madarat for his wife for sure⁶

c. Marriage Goal

Marriage is a sunnah of the Prophet that should be carried out because marriage is a human will, a spiritual and physical need. Marriage is prescribed so that human beings have legal offspring and families to lead a happy life in this world and the hereafter under the auspices of God's love and pleasure. Therefore, the rules of marriage in Islam are religious demands that deserve attention because the purpose of getting married is to fulfill religious instructions and human instincts. The importance of marriage rules can be seen from the essential nature of humans themselves, namely to love what they want, such as women, children, and lots of wealth.

According to Imam Al-Ghazali in his *Ihya* about the benefits of getting married, the purpose of marriage is

1. to obtain legitimate offspring and continue offspring,
2. to fulfill human needs to channel their lust and shed love,
3. to fulfill religious calls, protect oneself from crime and damage,
4. cultivating responsibility and seriousness to obtain lawful assets, and
5. building a household to form a prosperous society based on love and compassion.⁷

2. *Marriage Registration Law*

Marriage is an essential thing in human life. With marriage, the household will be upheld following religious norms and society's prevailing order of life. In a household, two people of different sexes are gathered as husband and wife and form a family where the two are interconnected. One of the objectives is to have offspring as the next generation. Provisions regarding marriage registration existed before RI Law No. 1 of 1974 concerning marriage, which can be found in RI Law No. 22 of 1946 concerning the Registration of Marriages, Divorces, and Reconciliation in conjunction with RI Law No. 32 of 1954 concerning the Determination of the Applicability of Law of the Republic of Indonesia No. 22 of 1946 concerning Registration of Marriages, Divorces, and Reconciliation in All Areas Outside Java and Madura. Article 1 paragraph (1) of the Republic of Indonesia Law No. 22 of 1946 stated that: "Marriage conducted according to Islam is supervised by PPN or other officials appointed/appointed by the Minister of Religion and must be notified of divorce and reconciliation carried out according to Islam to PPN."⁸

a. Registration of marriage according to Islamic law

At first, Islamic law did not concretely regulate the registration of marriages. During the time of Rasulullah SAW. Nor friends are not known for

⁶ Iffah Muzammil, *Fiqh Munakahat (Hukum Pernikahan Dalam Islam)*, 1st ed. (Tangerang: Tira Smart, 2019), 6–8.

⁷ Muhamad Awaluddin, "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia Dan Relevansinya Dengan Teori Mashlahah Al-Syatibi," *Fakultas Syariah Dan Hukum Uin Syarif Hidayatullah Jakarta*, 2015, 27,28.

⁸ Rajafi, 36,37.

the registration of marriages. At that time, marriage was valid if it fulfilled its pillars and conditions. To be known by the public, marriages that have taken place should be advertised and announced to a broad audience, including through the media Walimatul 'ursy. Rasulullah SAW said:

أعلنوا النكاح (رواه أحمد)

“Announce the wedding”. (HR. Ahmad).

Hadith about the marriage notification

حد ثنا أحمد بن منيع, حد ثنا يزيد بن هارون, أخبرنا عيسى بن ميمون
عن القاسم بن محمد, عن عائشة قالت: قال رسول الله ص.م: أعلنوا
هذا النكاح واجعلوه في المساجد, واضربوا عليه بالدفوف

“Tell us Ahmad Bin Mani', tell us Yazid bin Harun, tell us aisyah bin Maimun, from Qasim bin Muhammad from aisyah said Rasulullah SAW: "spread the news of the wedding, hold it in the mosque and sound the tambourine.”

In other hadith He said:

أولم ولو بشاة (رواه مسلم)

“Hold a walimah (for marriage) even if only by slaughtering a goat (HR. Muslim).”⁹

Regarding the registration of marriages, which does not receive much attention in Islamic law, several analyzes can be put forward. First, there is a ban on writing something other than the Qur'an, which results in a writing culture that is not as developed as a culture of rote (oral) memorization; second, a continuation of the first, due to the prohibition of writing other than the Al-Qur'an, they rely more on memorization (memory); third, the tradition of walimat al-'ursy which is a witness besides a syar'I witness regarding a marriage; fourth, there is an impression that marriages that took place in the early days of Islam had not occurred between different regions of the country.

However, along with the development of the times and the dynamics that continue to change, the four analyzes put forward are considered irrelevant, so they demand changes that are more relevant and follow the needs of today's times. The shift from oral (oral) culture to written culture as a feature of modern society demands that contracts and letters be used as authentic evidence. Living witnesses can no longer be relied upon not only because they can disappear due to death but humans can also experience forgetfulness and oversight. On this basis, eternal proof is needed, called a deed.

⁹ Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin, “Pencatatan Pernikahan Perspektif Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974,” 32.

There is no legal basis that explicitly regulates the registration of marriages in Islamic law; even in the Qur'an and hadith, no texts explicitly explain how vital the registration of marriages is.

However, because the recording in terms of its understanding above is one of the written evidence, the Qur'an surah al-Baqarah verse 282 can be used as a legal basis as it reads.:

يايها الذين آمنوا إذا تداينتم بدين إلى أجل مسمى فاكتبوه

“O you who believe, if you do mu'amalah not in cash for a specified time, you should write it down.”

From the paragraph above, it can be understood that the recording (written evidence) is always carried out on non-cash trades. Furthermore, what is included in the non-cash category are all engagement agreements that are ongoing (such as marriages), and the problems are not resolved only at the time of the contract, which can be suspected of the possibility of problems or cases and disputes arising at a later date. This domestic life is not taboo. However, disputes and strife often occur in it. So that sometimes settling the case gets a dead end because from one of the parties, there is nothing that can be used as / has evidence. Marriage registration provides legal guarantees for wives to be protected from their husband's arbitrary behavior. If the husband treats his wife arbitrarily, the wife can submit it to court. Since Islamic law's purpose is to create benefit, the benefit must be the primary consideration in determining the law. Controlling marriages is much more *maslahah* than allowing Muslims to marry 'illegally,' causing harm and chaos in the family/household.¹⁰

b. Registration of marriage according to Law Number 1 of 1974

There is no requirement for marriage registration in classical books; however, in the Law of the Republic of Indonesia, Number 1 of 1974, several matters related to marriage are explained. Chapter one explained the basis of marriage. Article 2 explains that a legal marriage must be carried out following each other's beliefs and the second article states that every marriage must be recorded. Here, researchers quote in full.

Section 2

- a. Marriage is valid if it is carried out according to the laws of each religion and belief.
- b. Every marriage is registered according to the applicable laws and regulations.

Taking into account the formulation of the two verses, it allows multiple interpretations; Whether a marriage is valid is determined by the fulfillment of religious laws and beliefs, as stated in paragraph (1). Meanwhile, the registration of marriages, as regulated in paragraph (2), is only administrative. Alternatively, do the two verses have to be understood in one inseparable connection? This means that the fulfillment of religious rules, laws, and regulations measures the validity of a marriage. Although not a pillar of marriage, marriage registration is necessary for proof. According to Anderson,

¹⁰ Muzammil, *Fiqh Munakahat (Hukum Pernikahan Dalam Islam)*, 87.

in most contemporary Islamic laws, there is a general provision that all marriage contracts must be registered, and any marriage that is not registered is not recognized as valid by the court. Not being recognized as legal by the court is not synonymous with being illegal according to religious law.¹¹

In addition to the view that the registration of marriages is mandatory, another view says that the registration of marriages is not a requirement but something that is sunnah. Neng Djubaidah put forward this view in her book *Registration of Marriages & Unrecorded Marriages*. This view is based on the argument that marriage registration can be categorized as implementing the law of marriage parties or walimah. Namely, where Islam views walimah, carried out after the marriage contract, has the aim that the community knows that the position of the husband and wife is legal.

The provisions regarding the registration of marriages have previously been regulated by Law Number 22 of 1946 concerning the Registration of Marriages, Talaq, and Referrals. This then took effect throughout Indonesia on November 2, 1954, through Law Number 32 of 1954 concerning the Determination of the Applicability of Law of the Republic of Indonesia Number 22 of 1946 concerning the Registration of Marriage, Talaq, and Reconciliation in All Areas Outside Java and Madura. The existence of the law then repeated the existing laws and regulations regarding the registration of marriages, namely the *Huwelijks Ordonantie Stbl. 1929 – 348*, *Vorstenladsche Huwelijks Ordonnantie Stbl. 1938 -98* and *Huwelijks Ordonantie Buitengewesten Stbl 1932 -482*.¹²

A *marriage book* is an official document issued by the Office of Religious Affairs (KUA), which serves as a legal marriage registration before the law. The recording process means a state administration creates order and welfare for its citizens. Recording means entering the marriage in the marriage book for each husband and wife. The marriage book's quotation is authentic evidence carried out by the Marriage, Divorce, and Referral Registrars. Also, by employees of the marriage registry at the civil registry office as referred to in the applicable law regarding registration of marriages.¹³

Marriages not recorded at the KUA are known as *sirri* or *secretly/secret*, private marriages. This means marriages that only fulfill religious requirements but are not recorded or performed in the presence of a Marriage Registrar as ordered by the Marriage Law Number 1 of 1974. The term *underhand marriage* emerged after the promulgation of the Marriage Law Number 1 of 1974. Unregistered marriages or marriages under the hands, even though they materially fulfill the pillars and conditions of marriage according to Islamic law, but because it is not implemented/recorded by VAT, it does not have legal force. The legality of marriage in Law Number 1 of 1974 concerning Marriage is regulated in article 2, which states: (1) Marriage is legal if it is carried out

¹¹ Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin, "Pencatatan Pernikahan Perspektif Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974," 28,29.

¹² Awaluddin, "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia Dan Relevansinya Dengan Teori Mashlahah Al-Syatibi," 39.

¹³ Muhammad Fauzan, "Maqâshid Nafkah Iddah Dan Perlindungan Perempuan," no. 1 (2016): 30.

according to the laws of each religion and belief. (2) Every marriage is recorded according to the prevailing laws and regulations.¹⁴

3. Changes in Marriage Terms in Indonesia's Perspective of Fiqh Rules

One of the ways to understand Islamic law is by studying ushul fiqh, a basic science in forming and understanding Islamic law. Ushul fiqh lays down a methodological basis that must be used by a "judge" in finding and applying the law. In other words, ushul fiqh seeks to determine (to govern). In addition, ushul fiqh is also part of the epistemology of Islamic law. Ushul fiqh seeks to explain the origins, nature, and system of Islamic law and how to analyze the law in different categorizations. Epistemologically, Islamic law must be explored from its sources which are assisted and perfected by an authoritative system of interpretation.¹⁵

The interests of human life are based on benefiting and avoiding harm. The word 'maslahat' means the interests of human life, and the word 'mursalah' means regardless of the specific argument's provisions that justify or cancel it. For example, regarding requiring that marriages be recorded, no single text justifies or cancels it. Registration aims to obtain legal certainty over the occurrence of marriage, which the state will use to protect the rights of each husband and wife. With registration, the state has authentic documents on the occurrence of marriage.¹⁶

The similarity between law and fiqh is that it will continue to change with adjustments to circumstances and conditions. The State of Indonesia recognizes the provisions for amendments to the laws that have been stipulated. Through a justified mechanism, the provisions in the law can be changed if they are deemed not following the Constitution. Likewise, in fiqh, change is necessary considering the development of Muslims in terms of condition, place, culture, and so on. All of that requires fiqh to be flexible. One of the rules of fiqh reads:

لا يَنكُرُ تَغْيِيرَ الْأَحْكَامِ بِتَغْيِيرِ الْأَزْمَانِ

“It cannot be denied that changes in religious law are caused by changing times.”

Even though the state requires the registration of marriages so that the rights of the whole family are correctly protected, in reality, there are still many cases found in society who do not register their marriages officially because they consider that when a marriage becomes legal, it is not at the time of registration or registration, but when a marriage is legal. After the consent-qabul occurs, the registration is only a mere administrative function. Apart from that, they also refer to past understandings of the fuqaha, which did not require the registration of marriages.

¹⁴ Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin, “Pencatatan Pernikahan Perspektif Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974,” 31.

¹⁵ Awaluddin, “Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia Dan Relevansinya Dengan Teori Mashlahah Al-Syatibi,” 49.

¹⁶ Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin, 35.

C. Conclusion

Marriage is an essential thing in human life. With marriage, the household will be upheld following religious norms and society's prevailing order of life. Relating to the registration of marriages, at first Islamic law did not concretely regulate it. During the time of Rasulullah SAW. Nor friends are not known for the registration of marriages. Article 2 of the Law of the Republic of Indonesia Number 1 of 1974 explains that the validity of marriages must be carried out according to each other's beliefs. The second article states that every marriage must be recorded. The similarity between law and fiqh is that it will continue to change with adjustments to circumstances and conditions.

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