



Original Article

The Urgency of Marriage Disability from the Perspective of Fiqh and Compilation of Islamic Law (Khi)

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Abstract:

Marriage is an inner bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead". Marriage will play a role after each mass of people is ready to play a positive role in realizing the purpose of marriage itself. The same thing is in line with Law No. 1 of 1974 concerning marriage article 1, which reads: However, the marriage has not fulfilled the formal law of marriage because it has not been recorded with the authorized registrar/does not have a marriage certificate book. Therefore, even though the marriage is materially valid, but formally the marriage is not yet valid, so that it is forever considered that there has never been an exception marriage if it can be proven by the Marriage Certificate issued by the Marriage Registrar. That by recording the marriage in the Office of Religious Affairs, the marriage has received legal certainty and protection, including against the consequences arising from the said marriage, a woman who marries a man and her marriage is not recorded in the marriage registrar, if the husband is negligent or neglects his obligations, if a wife demands from her husband to fulfill his obligations in court as stipulated in the article 34 paragraph (3) of Law No. 1 of 1974 concerning marriage or will sue her husband in court for having committed intercession as stipulated in article 9 of Law No. 23 of 2004 concerning the elimination of domestic violence (KDRT), then she will experience difficulties due to the absence of authentic evidence of the existence of a legal relationship in the form of marriage between the wife and her husband.



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Introduction

Marriage in Islam is not merely a relationship or an ordinary civil contract, but it has the value of worship. So it is very appropriate if the marriage is said to be a mitsaqan ghalidhan (a very strong contract) to obey the commands of Allah swt. and carrying it out is worship. Initially, Islamic law did not regulate concretely about the registration of marriage.

Marriage registration is an administrative obligation based on laws and regulations that aims to provide guarantees of protection and human rights if in the future a legal act arises that has legal implications so that it can be proven with perfect evidence with an authentic deed (marriage certificate book) as a form of legal certainty. This journal aims to find and analyze and provide an understanding of the importance of marriage registration in Indonesia's positive law that recording is carried out in order to provide the greatest benefit for the creation of happiness for many people.

Methods

The research carried out contains the subject of parenting for parents who are married underage in Sasak Muslim families in Central Lombok Regency. The research method used by the researcher is a qualitative descriptive research method¹.

This research method is a method of data processing based on the results of studies in the field, which is then combined with data obtained from literature studies and also reviews of Islamic Law, so that accurate data can be obtained, while for the problem a phenomenal sociological juridical approach is used, meaning in facing a problem that is discussed based on applicable regulations and then connected with the facts of events in the field.

Results

Marriage in the perspective of fiqh

1. Definition of Marriage in Islamic Law

Dalam surah ar-Rum di terangkan:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَعْقِلُونَ

Meaning: And among the signs of his power is that he created for you wives of your own kind, so that you may be inclined and feel at peace with him, and he made among you a sense of love and affection, indeed, in such a thing there are indeed signs for those who think (QS. Ar-Rum:21)².

Marriage is one of the most important basic principles of life in a perfect association or society. Marriage is not only a very noble way to regulate domestic life and offspring, but it can also be seen as a way to the door of introduction between one race and another, and the introduction will be a way to convey help to one another.

Actually, the marriage relationship is the strongest relationship in human life and life, not only between husband and wife and their descendants, but between two families. How could it not? From the good of the good, transfer the good to all the families, from both sides, so that they become one in the business of helping each other in spreading good and deterring all evil. In addition, with marriage a person will be preserved from the destruction of lust³.

Life partners, matchmaking is the instinct of all creatures of Allah, including humans, as stated by Allah swt in surah Az-zariyat verse 49:

فَمَا زَوْجَيْنِ لَعَلَّكُمْ تَذَكَّرُونَ ﴿٤٩﴾

Meaning: And everything We created in pairs so that you may remember the greatness of Allah SWT (Az-zariyat :49)

A broader definition according to Muhammad Az-zahrah, defines: "An agreement that results in the halal law of association between men and women and help and restrictions on their possessions, rights and obligations⁴.

The definition put forward by Muhammad Abu Zahroh, in addition to looking at

the halalness of the relationship, also looks at the aspect of the consequences of the law. This is comparable to what is stated in Law No. 1 of 1974 concerning marriage which formulates, that marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a family (a happy and eternal household based on a divine being).

Marriage is one of the religious eprintahs to those who are able to carry it out immediately. Because marriage can reduce disobedience, both in the form of vision and adultery. People who want to get married, but do not have the preparation of provisions (physical and non-physical) are encouraged by the Prophet Muhammad (saw). The person who fasts will have the power or the deceitful power of doing a very heinous thing, namely adultery⁵.

Marriage is a very important event in the life of society, because the problem of marriage does not only concern the woman and the groom-to-be but also both parties from their parents, siblings, and their respective families. Marriage is also defined as something that has wide consequences in the legal relationship between husband and wife.

With the marriage arises a bond that contains rights and obligations, for example: the obligation to live in the same place, to be loyal to each other, the obligation to buy the maintenance of the household, the right of inheritance and the like. A very important haal is that with the ministry, the wife immediately does not act alone⁶. The Marriage Bond is marked by a strong contract (agreement) (Mitsaqhan gholizan). The marriage contract is an agreement involving Allaah swt, not just an ordinary agreement as stated by Allagh swt in QS. An-Nisa'21.

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

Meaning: How will you take it back, even though you have mixed with those who are husband and wife. And your wives have taken from you a strong peerjaanjan (QS,. An-Ni sa' 21).

The marriage contract illustrates that even though the agreement is made by humans, its power and content should be considered equal to the covenant of Allah SWT. Marriage at first glance is a mere worldly activity, but in Islam marriage is worship.

2. Marriage in the KHI Perspective

The Compilation of Islamic Law (KHI) defines marriage as a very strong contract or "Mitshaqa Ghalidza" to obey the commands of Allah SWT and carry it out as worship⁸. Marriage is a common sunnatullah and applies to all His creatures, both humans, animals and plants. Marriage is a way that Allah chooses as a way for His creatures to multiply and preserve their lives. Marriage will play a role after each mass of people is ready to play a positive role in realizing the purpose of marriage itself. The same thing is in line with Law No. 1 of 1974 concerning marriage article 1, which reads "Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead". This understanding is emphasized by the Compilation of Islamic Law article 2 that marriage is a very strong contract (mitsaqan ghalizan), to obey Allah's commands and carry it out is worship.

The definition of marriage as understood by most jurists is a bond that aims to legalize promiscuity and legalize sexual relations between a man and a woman who were previously not halal⁹. In the view of Islamic Law, not only halal is the highest

goal, but aims to get legitimate offspring in a series of successive generations in addition so that husband and wife can foster a peaceful life born inwardly on the basis of loving and loving each other in a Sakinah (happy) household.

1. Criteria for Validity of Marriage

- a. Regarding the validity of marriage, it is regulated in article 24 paragraph (1) of Law No. 1/1974, which reads "Marriage is valid if it is carried out according to the laws of each person and their beliefs.

In the explanation of the article, it is stated: with the formulation of article 2 paragraph (1), there is no marriage outside the law of each religion and its belief, in accordance with the 1945 Constitution of the Republic of Indonesia. What is meant by the law of each religion and its beliefs as long as it does not contradict or otherwise stipulate in this law.

- b. Article 4 of the Compilation of Islamic Law which reads: marriage is valid, if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law No. 1 of 1974 concerning marriage.¹¹

Based on the provisions mentioned above, if a marriage has been carried out by fulfilling the conditions and harmony, the marriage is considered valid because it has met the conditions and harmony, then the marriage is considered valid because it has fulfilled the material provisions of marriage. However, the marriage has not fulfilled the formal law of marriage because it has not been recorded with the authorized registrar/does not have a marriage certificate book. Therefore, even though the marriage is materially valid, formally the marriage is not yet valid, so it is forever considered that there has never been a marriage unless it can be proven by a Marriage Certificate issued by the Marriage Registrar.¹²

3. The Urgency of Marriage Registration

As mentioned above, that by recording the marriage in the Office of Religious Affairs, the marriage has received legal certainty and protection, including against the consequences arising from the marriage, a woman who marries a man and her marriage is not recorded with the marriage registrar, if the husband is negligent or neglects his obligations, if a wife demands from her husband to fulfill his obligations in court as stipulated in article 34 paragraph (3) of Law No. 1 of 1974 concerning marriage or will sue her husband for neglect as stipulated in article 9 of Law No. 23 of 2004 concerning the elimination of domestic violence (KDRT), then she will experience difficulties because there is no authentic evidence of the existence of a legal relationship in the form of marriage between the wife and her husband.

From this it is clear that the victim of the aggrieved party due to an unregistered marriage is the woman. Married couples who have children, while their marriage is not registered and will make the birth of their child at the civil registration office will have

difficulties because one of the administrative completeness that must be fulfilled is a copy of the marriage certificate of their parents.

The issuance of such a birth certificate is the same as the birth certificate of a child who does not have a father, or a child out of wedlock because it is only attributed to his mother.

Married couples who do not have a marriage book because their marriage is not registered, who will divorce in court, will need a longer processor than the person who has a marriage book. If in the examination process it is found that their marriage has conditions and marriage rules, then their marriage will be isbatted (passal 7 verse 3) letter a compilation of Islamic law.¹³

Conclusion

After we read and listen to this journal, the author can conclude that the registration of marriage and marriage certificates is a provision that needs to be accepted and implemented by the residents inhabited by the Territory of the Republic of Indonesia, with this conclusion, it can legally prevent the occurrence of other unwanted acts.

Thus, it can be said that although the provision for marriage registration is only an administrative requirement, it has a very large influence on other administrative provisions, especially those related to legal events and acts.

The absence of evidence in the form of recording a marriage will have an impact on the improper implementation of Islamic law, especially Islamic law related to ahwal al syaksiyyah such as in terms of wife support, child support, child education and so on.

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