

Marriage Registration in Islamic Law

Sitizalikhah¹, Abdullah², Nurazizah³

^{1,2,3}Institut Agama Islam (IAI) Al-Aziziyah, Indonesia
sitizalikhah@iaialaziziyah.ac.id

Abstract

Getting a life partner is a human partner in accordance with their nature. Living together must be carried out in an official way, namely through marriage. Marriage must be carried out with the provisions that have been set in Islam. In addition, the state also requires registration of marriages. This research is entitled *Marriage Registration in Islamic Law*. This study discusses how the views of Islamic law on marriage registration at the Office of Religious Affairs (KUA) and the consequences of marriages that are not registered at the Office of Religious Affairs (KUA). This research is library research. This type of research is a type of qualitative research with a normative approach that is descriptive-analytical. This research concludes that Islamic law does not view marriage registration as a pillar or condition for a valid marriage. Marriage is still valid as long as the pillars and conditions are met. Marriages that are not registered with the Office of Religious Affairs (KUA) are considered a mistake in the view of Islamic law, because they do not obey Allah's orders in terms of obeying government regulations. Marriage registration is a must in juridical studies. The state does not declare illegitimate marriages that are not registered at the Office of Religious Affairs (KUA). However, the marriage is not under the legal umbrella, so the state is not responsible for the impacts that occur from the marriage in the future.

Keywords

recording; marriage; Islamic law



I. Introduction

The desire to have a life partner is human nature. A man will not have peace of mind if at a certain age he has not found his life partner in fostering a household. Likewise with women, she will not get peace of mind if at a certain time she has not been found by her priest to be invited to live together in a household container. Human nature is in accordance with the wisdom of human creation in pairs, in different genders. This creation is one of the signs of Allah's greatness. As Allah SWT explains in the Qur'an Surah al-Rūm verse 21:

رَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَ

Meaning: And among the signs of His power is that He created for you wives of your own kind, so that you may tend and feel at ease with them, and He created between you love and compassion. Verily in that are signs for a people who think. (Surat al-Rum [30]: 21).

As civilized beings, of course humans have rules in fulfilling these desires. Every human being cannot fulfill these desires carelessly, regardless of the provisions in religion. Allah SWT through the message that was revealed to His messenger conveyed these rules to His servants. The only way that is justified by God in terms of obtaining this peace is by carrying out a legal bond, namely the marriage bond/marriage.

Marriage is a contract / bond that aim to justify the relationship between a man and a woman who is not a mahram. As a contract that has a very big purpose, marriage, of course, has very strict provisions. The marriage contract will take place perfectly if it fulfills the pillars and conditions that have been determined. The scholars in their works, both classical and contemporary have explained in detail about the provisions in carrying out a marriage contract.

In addition to the provisions stipulated in religion, in Muslim countries marriage is also regulated by state regulations. Marriage in Muslim countries even though it has been recognized as legal in religion, but has certain consequences if it is not adjusted to state regulations. Indonesia is one of the countries that participates in regulating religious affairs, including in the matter of marriage/marriage. Indonesia makes regulations so that every marriage contract must be registered at the Office of Religious Affairs (KUA). In this case the question arises, what are the consequences of marriages that are not recorded at the Office of Religious Affairs (KUA). To answer this question, the author conducted a study entitled "Marriage Registration in Islamic Law".

This research is library research, which is a research that utilizes the library to obtain research data. In this study, the author explores and examines library materials or literature related to the problem of marriage registration. The type of research used in this study is a type of qualitative research, which is a research process held for the purpose of understanding the phenomena experienced by the research subjects. Qualitative research is research that does not carry out calculations. That is, qualitative research does not examine matters relating to numbers. The approach used is a normative approach, which is an approach that looks at the problem from its formal or normative legal point of view. The meaning of formal legal is its relationship with halal and haram, may or may not and the like. This research is descriptive-analytical, where the researcher describes the texts related to marriage registration, and then analyzes it from the point of view of Islamic law.

II. Review of Literature

2.1. Definition of Marriage

The word marriage is a syllable with a role affix that comes from the root word marriage. The word marriage has two meanings, namely: an arranged marriage between a man and a woman to become husband and wife; marry, and have husband, or wife; marry. If we look at the two meanings, they both end with the word marriage. This shows that the word marry is synonymous with the word marriage. So, in addition to the term marriage, there is also the term marriage. In its use, the two terms are often distinguished. The word marriage is often understood as an intimate relationship between husband and wife, while marriage is understood as a contract to legalize the relationship. This is indicated by the use of the word mating in animals and plants and not using the word marriage. It is also understood from the words that are often heard among the public 'already married, not married' which are intended for people who have had sex without a contract. This distinction cannot change the similarity (synonym) of the word marry with the word marriage.

Marriage constitutes the Sunnah of the Prophet Muhammad, sunnah in the sense of M exemplifying the actions already committed by the Prophet Muhammad. Marriage isn

required that man have a rightful offspring and family towards a happy life in the world and the afterlife, with the *ridha* of God SWT. (Surya, I. et al. 2019)

Marriage is the process by which two people make their relationship public, official, and permanent. It is the joining of two people in a bond that putatively lasts until death, but in practice is increasingly cut short by divorce. (Jamaluddin, 2018)

The author's statement that the word marriage is synonymous with the word marriage is in accordance with the contents of the Compilation of Islamic Law book 1: Marriage Law, chapter II: Basics of Marriage, Article II which reads: "Marriage according to Islamic law is marriage, which is a very strong contract or *mitsaqan ghalizhan* to obey Allah's commands and carry them out is worship." In the sound of the Compilation of Islamic Law, the definition and law of marriage globally has also been stated.

Marriage is a word affixed to the word marriage. Marriage is an agreement between a man and a woman to be husband and wife (officially); marriage. Marriage is a marriage (act) thing, a marriage ceremony. The word marriage has an absorption syllable that comes from Arabic, namely *nikāh* (نكاح). Etymologically, marriage has the meaning of mixing, gathering or intercourse which is permitted by *syara'*. Meanwhile, in terms of *fuqaha'*, there is a slight difference in defining marriage among the priests of the school of thought.

- a. According to the al-Hanafiyah group, marriage is a contract that makes it easy to have, to have fun on purpose.
- b. According to the al-Shafi'iyah group, marriage is a contract containing the legal provisions of the permissibility of *watha'* (intercourse) with *lafaz* marrying (*inkāh*) or marrying (*tazwīj*) or which has one meaning with both. In essence, the word marriage is addressed to the contract, while in the meaning of *majaz* it is addressed to intimate relationships.
- c. According to al-Malikiyah, Marriage is a contract that contains legal provisions solely to allow *watha'* (intercourse), have fun and enjoy what is in the woman he marries.
- d. According to the al-Hanabilah group, marriage is a contract by using marriage *lafaz* or *tazwīj* to allow benefits, to have fun with women. There are also scholars among the Hanbali School who define marriage as a marriage contract (in the meaning of essence), and intercourse (in the meaning of *majaz*).

However, a strong opinion in this circle states that the word marriage is a word that has a *musytarak* meaning between the contract and intercourse. What is meant by *musytarak* *lafaz* is one *lafaz* that has more than one meaning. So, from the definition conveyed by each school of thought, it can be understood that the notion of marriage does not come out of the meaning of contract and intercourse. It's just that the definitions given by one group sometimes mention what other groups don't mention, so that each group can complement each other. If all the definitions submitted by each group are combined, it can be concluded that what is meant by marriage is a contract using the *lafaz* of marrying or marrying, which aims to allow intimate relations (intercourse) between a man and a woman who is married off.

2.2. Marriage Registration

Marriage registration is a marriage registration process carried out by the Office of Religious Affairs (KUA). A registered marriage is a marriage that is carried out by following the process/flow. To register a marriage, a reception does not have to be carried out by an official of the Office of Religious Affairs (KUA), but the KUA can also hand it over to the bride's guardian. Unregistered marriages are marriages conducted outside the registration of the Office of Religious Affairs (KUA). Such marriages are often referred to as *siri* marriages

or underhanded marriages. In other terms, unregistered marriages are said to be illegal marriages.

The legal basis for registration of marriages in the view of positive Indonesian law is Law Number 1 of 1974 concerning Marriage. In article 2 paragraphs 2 of the law it is emphasized that every marriage must be recorded according to the applicable laws and regulations. In paragraph 1 of article 2 of the law it is stated that marriage is legal if the law of each religion and belief is carried out. When the two verses are combined, it is clear that every marriage which is legally performed according to their respective religions and beliefs must be recorded according to the prevailing laws and regulations in order to be recognized as valid.

The laws and regulations of the Republic of Indonesia require that marriage registration be carried out. However, the order is not strict, so there is no material punishment for those who do not carry it out. The state only hands off the validity of marriages that are not recorded even though the marriage is legal according to their respective religions and beliefs because they are carried out by fulfilling the conditions and pillar that have been set.

III. Discussion

3.1 Marriage Registrations in the View of Islamic Law

If we examine the pillars and conditions of marriage in the fiqh provisions of the four schools of thought, none of the schools mentions marriage registration as one of the pillars or conditions for a valid marriage. However, marriage registration is no less important than other provisions relating to marriage, especially in terms of state administration.

In the view of Islamic law, marriage registration is considered obligatory, but it is not a requirement for a valid marriage. This means that an unregistered marriage cannot be said to be invalid. The validity of a marriage can only be judged by whether or not the pillars and conditions of the marriage are fulfilled. The obligation to register a marriage is outside the context of whether a marriage is legal or not. Marriage registration is an order from God in recording various forms of transactions carried out by a person. As Allah says in the Qur'an Surah al-Baqarah verse 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبَ

Meaning: O you, who believe, if you do debt transactions for a certain period of time, then write down the debt. (Surat al-Baqarah [2]: 282).

Marriage registration is only a state administrative regulation, and it will not change Islamic law. The obligation to register marriages does not affect the validity of marriages, but from the other side, the obligation to register marriages is based on the obligations of citizens to comply with government regulations, in this case the president. The obligation to obey the government is an absolute obligation that comes purely from Allah. As Allah swt. affirms in the Qur'an Surah al-Nisa' verse 59:

مُ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ بِآيَاتِهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَى الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ وَالْأَوْلِيَاءِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا تَوَاصَوْا بِالصَّبْرِ وَاصْبِرُوا صَبْرًا مُّجْتَمِعًا لِلْحَقِّ مِنَ اللَّهِ وَقِيلَ لَهُمُ اتَّقُوا اللَّهَ الَّذِي تَعْلَمُونَ أَنَّ اللَّهَ عَزِيزٌ عَلِيمٌ

Meaning: O you, who believe, obey Allah and obey the Messenger (His), and ulil amri among you. (Surat al-Nisa' [4]: 59).

In the book *Al-Tafsīr al-Munīr fī al-'Aqīdah wa al-Syarī'ah wa al-Manhaj*, Wahbah al-Zuhailī explains that some interpreters interpret the words 'ulil amri' in the verse above as judges and leaders. Others interpret it as the scholars who explain the syar'i law. Meanwhile, scholars among the Imamiyya Shiites interpret it as a ma'shum imam. Al-Fakhr al-Razi said that what is meant by ulil amri is ahlul hilli wal 'aqdi. Ibn al-'Arabi said that they were scholars and umara at the same time.

Several interpreters mentioned by Wahbah al-Zuhaili in his book state that ulil amri in the verse above are umara and ulama. In the reality of Indonesian society, the ulama always call for obedience to the government. So it is inevitable that obeying government rules is an obligation. Obedience to umara also leads to obedience to the ulema, inviting people to obey umara. Obedience to umara is not something that is forbidden as long as the rules of umara do not conflict with Allah's rules. Regulations regarding the obligation to register marriages are not included in the category of regulations that are against the provisions of Allah and are not a disobedience to Allah, so these rules must be obeyed.

So, from the description above, it can be concluded that it is obligatory to register a marriage, but it is not a measure of whether a marriage is legal or not. The validity of a marriage depends on the fulfillment of the pillars and the conditions of the marriage itself. Marriage without registering at the Office of Religious Affairs (KUA) or also known as siri marriage is a violation of state regulations and the perpetrator is sinful based on Surah al-Nisa' verse 59 above, even though the marriage is legal.

There is an association between legal and sinful law in unregistered marriages. This is not an impossibility in Islamic law, because legal and sinful laws have different points of view. In the study of ushul fiqh, legality is part of wadh'i law, while sin is the impact of unlawful law which is part of taklifi law. So the law is valid, but sinful in the case of an unregistered marriage is not something that is contradictory because it has a different point of view.

3.2 Religious Consequences of Unregistered Marriages

Marriage is something that is recommended in Islam. Marriage is the only way to justify intimate relationships between men and women who are not in slavery status. Marriage is also one way to avoid actions that are prohibited and labeled by Allah SWT. As a heinous act and the worst way, namely adultery. As stated in Surah al-Isra' verse 32:

وَلَا تَقْرَبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning: And do not approach adultery; indeed, adultery is an abominable act, and a bad way. (Surat al-Isra' [17]: 32).

Marriage plays an important role in maintaining one's self-esteem, especially women. With marriage, women will not be mere outlets for lust by men who do not have ethics. To tighten this goal, the state also added provisions, namely the registration of marriages. In the view of Islam, as has been described, marriage registration is not a requirement for a valid marriage. So, having a marriage without registration at the Office of Religious Affairs (KUA) does not have any impact on the validity or illegitimacy of the marriage. However, it is a violation of state regulations that lead to a violation of Allah's commands. A person will be sinful if he commits a marriage without registration at the Office of Religious Affairs, it is not a sin in terms of his marriage.

3.3 Marriage Registration in Juridical View

Juridical means according to law or legally. Juridical is everything that has a legal meaning and has been approved by the government. Juridical there are written, such as laws, and some are not written, such as customary law. The problem of marriage registration is closely related to juridical studies. This is because marriage registration is only regulated in statutory laws. As stated in the Compilation of Islamic Law Chapter II: The Basics of Marriage, Article 5 and Article 6 below.

Article 5, paragraph 1: In order to ensure the orderliness of marriage for the Islamic community, every marriage must be recorded.

Article 5, paragraph 2: The registration of the marriage referred to in paragraph (1) is carried out by the Marriage Registrar as regulated in Law Number 22 of 1946 in conjunction with Law Number 32 of 1954.

Article 6, paragraph 1: In order to fulfill the provisions in Article 5, every marriage must take place before and under the supervision of a Marriage Registrar in Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage in Chapter I: Basic Marriage, Article 2 paragraph 2 also states that: Every marriage is recorded according to the applicable laws and regulations.

From several points of provisions contained in the Compilation of Islamic Law (KHI) and the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, which the authors have mentioned, it can be understood that marriage registration is a must in the Republic of Indonesia. Here it is very clear that holding a marriage without registering at the Office of Religious Affairs (KUA) is a violation of the Law of the Republic of Indonesia.

3.4. Juridical Consequences of Unregistered Marriages

Juridical is a legal order that is coercive. In the case of marriage, the recording is very emphasized. The recording aims to ensure the orderliness of state administration, especially in the field of marriage, as stated in the Compilation of Islamic Law Article 5 paragraph 1 which the author has mentioned.

The Compilation of Islamic Law (KHI) and the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage do not state that marriages that are not registered at the Office of Religious Affairs (KUA) are invalid, but such marriages are outside the legal provisions. As mentioned in the Compilation of Islamic Law (KHI) Article 6 paragraph 2 which reads: Marriages carried out outside the supervision of the Marriage Registrar Officer have no legal force.

However, in this case, the Compilation of Islamic Law (KHI) provides concessions for people who have already committed violations. If someone has already carried out a marriage without registering it at the Office of Religious Affairs (KUA), then he can submit an application for his marriage isbat to the Religious Court/Syar'iyah Court, in accordance with the provisions contained in the Compilation of Islamic Law (KHI) Article 7 paragraph 2-4 following:

Article 7 paragraph 2: In the event that the marriage cannot be proven by a marriage certificate, the marriage certificate can be submitted to the Religious Court.

Article 7 paragraph 3: The itsbat of marriage that can be submitted to the Religious Court is limited to matters relating to:

- a) The existence of a marriage in the context of a divorce settlement;
- b) Loss of Marriage Certificate;
- c) There are doubts about the validity of one of the conditions of marriage;
- d) The existence of marriages that occurred before the enactment of Law Number 1 of 1974 and;

e) Marriages carried out by those who do not have marriage barriers according to Law Number 1 of 1974;

Article 7 paragraph 4: Those who have the right to apply for a marriage certificate are husband or wife, their children, marriage guardians and parties with an interest in the marriage.

If the application for isbat marriage is not submitted while the marriage is not registered, then the state is free from the marriage relationship. If in the future there is a dispute in the household that requires the intervention of the government, in this case the judge, the judge cannot act. Not only that, children from such marriages are also not recognized by the state, so the needs of children related to state administration cannot be issued, starting from birth certificates, NIK, BPJS and so on. Even the worst impact is that the child cannot obtain formal education in school because he does not have a birth certificate. This is part of the negative impact in juridical studies on marriages that are not registered with the Office of Religious Affairs (KUA). Given these impacts, So the Indonesian people should not ignore the issue of marriage registration. Not registering a marriage is a violation of state law which has an effect on the negative impacts mentioned above. In addition, not registering a marriage will also be a sin because it violates government regulations which are essentially ordered by Allah SWT for us to obey.

IV. Conclusion

1. In the view of Islamic law, marriage registration is not something that is a pillar or condition for a valid marriage. Marriage is still valid as long as the pillars and conditions that have been determined in Islam are met. Not registering a marriage in the view of Islamic law is considered a mistake, because it does not obey Allah's orders in terms of obeying government regulations.
2. Marriage registration is a must in juridical studies. The state does not declare illegitimate marriages that are not registered at the Office of Religious Affairs (KUA). However, the marriage is not under the legal umbrella, so the state is not responsible for the impacts that occur from the marriage in the future.

References

- ‘Abd al-Rahmān al-Jazīriy. (2002). *Kitāb al-Fiqh ‘Alā al-Madzahib al-Arba’ah*, Cet. II, Jld. 4, Beirut Libanon: Dār al-Fikr.
- Abī Bakr ibn Mas’ūd, *Badāi’ al-Shanāi’ fī Tartīb al-Syarāi’*. (2002). Jld. 4, Beirut: Dār al-Kutub al-‘Ilmiyah.
- Ahmad ibn ‘Abd Allah ibn Ahmad al-Ba’liy, *Al-Raudh al-Nadiy Syarh Kāfi al-Mubtadī*, Arab Saudi: Masyūrāt al-Muassasah, t.t.
- Departemen Agama RI, *Alquran dan Terjemahnya*, Jakarta: Syaamil Media Cipta, 2005.
- Ḥasan Darwīsy al-Quwaisiniy, *Syarh al-Quwaisiniy*, Singapura: Al-Haramain, t.t.
- Jamaluddin. (2018). *AL Ghazali’s View Regarding to the Witness in Islamic Wedding Ceremony*. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). P. 01-10
- Lexy J. Moleong. (2017). *Metodologi Penelitian Kualitatif*, Bandung: PT REMAJA ROSDAKARYA.
- Pengertian Yuridis, Link: <http://www.pengertianmenurutparaahli.com/pengertian-yuridis>.
- Pusat Bahasa. (2008). *Departemen Pendidikan Nasional, Kamus Bahasa Indonesia*, Jakarta: Pusat Bahasa.

- Rachmadi Usman. (2017). Makna Perncatatan Perkawinan dalam Peraturan perundang-undangan Perkawinan di Indonesia, Jurnal Legislasi Indonesia, Vol. 14 , no. 03 – September (Online), Link: <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/80>.
- Sutrisno Hadi. (1994). Metodologi Penelitian Research, Yogyakarta: Andi Offset.
- Surya, I . et al. (2019). Improving Factors of Divorce Rate in Sabang City. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). P. 104-114.
- Wahbah al-Zuhailī. (2009). Al-Tafsīr al-Munīr fī al-‘Aqīdah wa al-Syarī’ah wa al-Manhaj, Cet. X, Jld. III, Damaskus: Dār al-Fikr.
- Zain al-Dīn al-Malībārī, Fath al-Mu’īn, Jld. III, tk, Dār Ihyā’ al-Kutub al-‘Arabiyyah, tt.