



THE MEANING OF MARRIAGE REGISTRATION BASED ONMAQASHID AL-SYARI'AH

Achmad Rodli Makmun
IAIN Ponorogo, East Java, Indonesia
rodlimakmun.IAINPo@gmail.com

M. Harir Muzakki
IAIN Ponorogo, East Java, Indonesia
harir@iainponorogo.ac.id

Zulkarnain
IAIN Takengon Aceh Tengah Indonesia
zulkarnain@iaintakengon.ac.id

Ardian Al Hidaya
STAI Madiun, East Java, Indonesia
ardwall99@gmail.com

Abstract:

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Marriage registration issue has been a long debate whether it determines the legality of a marriage or not. Religious law does not include it for the legal condition, while the state law mandate a marriage registration in the Office of Religious Affairs (KUA). This paper belongs to a literature review using data sources from books and articles that discuss marriage registration. The discussion of this paper concludes that the purpose of marriage based on the classical jurisprudence is to legalize sexual relations between men and women. The Marriage Law places a marriage to create a happy and eternal family according to the perspective of Maqashid Al-Syari'ah including the preservation of descent, soul, and mind. The registration of marriages can bring benefits to husbands, wives, and children because they will have legal certainty from the State about their rights in family life. The registration of marriages can also avoid harm or loss to the wife and children if the man as husband does not fulfill his responsibilities.

Keywords: marriage registration, religious law, state law, Maqashid Al-Syari'ah

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Introduction

The progress of the modern era along with the rapid development of



technology and information has brought changes to a person's mindset. It also influences the terms of marriage among people that might be different from one generation to another. The dissimilar meaning of marriage may occur due to the perspective on the basic purpose of marriage itself, whether it is just to fulfill sexual desires or more essential purposes like the continuation of generation.¹

Based on the historical records, every era has its understanding of marriage. In various traditional *fiqh* literature, for example, it is found how the majority of *fiqh* experts define marriage as only a "means" to allow intimate relationships between men and women. Marriage is defined as a medium of lawful intercourse in which before the marriage the relationship is prohibited. It means marriage only emphasizes a sexual orientation, while the true essence of marriage tends to be neglected. It appears that this perspective may be caused by the context and culture prevailing at that time took for granted the meaning of marriage which was only oriented to sexual relations.

Along with the development of human culture and civilization, the early meaning of marriage which is only oriented to the biological aspect is no longer acceptable. Now, people understand that marriage is not only a biological need but also has a sociological orientation that determines the quality of civilization.

It is interesting to know the meaning of marriage in the Indonesian context with the majority population of Muslims. The marriage foundation that applies formally in Indonesia is based on

law, not classical *fiqh* texts. Indonesia is one of the countries that carry out family regulation reform through Law No. 1 of 1974 concerning Marriage.² This law differs from the classical definition of *fiqh* regarding marriage registration. The traditional *fiqh* does not discuss this issue, but Law No. 1 of 1974 regulates it explicitly.

This study discusses the meaning of marriage in Law No. 1 of 1974 and the marriage registration. It uses the perspective of *maqashid al-syari'ah*. This perspective is employed to analyze the extent to which the appropriateness between the meaning of marriage and the registration of marriage as outlined in the Law with the principle of *maqashid al-syari'ah* in Islamic law.

The concept of *Maqashid al-Syari'ah*

Al-Syatibi, as in the opinion of scholars in general, divides Islamic law into areas of ritual worship and social activities. Ritual worship (*'ibadah*), according to *al-Syatibi*, is a group of human actions (*af'ala al-mukallaf*) which are purely the rights of Allah SWT. His goals (*maqashid*) and secrets (*asrar*) cannot be grasped through the human reason (*qairma'qu al-ma'na*), or even if they can be reasoned, they are only on a general scale (*umum jumaliyyah*), not in details.

Consequently, according to *al-Syatibi*, the provisions of *nas* (text) regarding ritual worship must be practiced as it is without being added or subtracted (*al-wuquf 'ala al-mansuju*) 'alaih min gairziya *dah wa la nuqsan*), and this is what *al-Syatibi* calls the term *ta'abbudi*. *Al-Syatibi* explicitly states that in terms

¹Satjipto Rahardjo, *Hukum dan Perubahan Sosial*, (Yogyakarta: Genta Publishing, 2009), hlm. 128-129.

²Khoiruddin Nasution, *Pengantar dan Pemikiran Hukum Keluarga (Perdata) Islam Indonesia*, (Yogyakarta: ACAdEMIA dan TAZZAFa, 2007), hlm. 32.



of ritual worship the basic principle is *ta'abbudi (al-as}l fi} al-'iba>da>t at-ta'abbud)*.

In contrast to ritual worship, based on *al-Sya>t}ibi>*, social activity (*'a>dat*) is a human right and its nature can also be reasoned by the human mind (*ma'qu>l al-ma'na>*). It indicates that the reference is the meaning, not the legal-formal provisions (*ittiba>' al-ma'a>ni> la> al-wuqu>f ma'a al-mans}u>s}*), and this is what is meant by *al-Sya>t}ibi>* with "*ta'aqquli>*", although it is not stated explicitly. *Al-Sya>t}ibi>* states that in social activities the principle is referring to the meaning (*al-as}l fi} al-'a>dat al-iltifa>t ila> al-ma'a>ni>*). In other words, in social activities involving human relations, contextualization efforts are a necessity.

Based on the *al-'a>dat* concept of *al-Sya>t}ibi>*, the understanding of *al-Ahwa>l al-Shakhs}iyah* must be based on the meaning contained in the texts (*nash*) of the Qur'an and hadith, so that the verses of the Qur'an and the hadiths about *al-Ahwa>l al-Syakhs}iyah* are not placed as a form of legal-formal regulation but seek the goals desired by the Shari'ah (Allah and the Messenger of Allah). Him in these verses and hadiths. This effort to find legal goals is called the *maqa>s}id al-syari>'ah* approach. To find the purpose of sharia law (*maqa>s}id al-syari>'ah*) in verses and hadiths, it is necessary to use *us}u>l al-fiqh* method called *al-qawa>'id al-tasyri>'iyah*, or with the term Nas}r H{ami>d Abu> Zaid called "the method of contextual reading" (*manhaj al-qira>'ah al-siya>qiyah*). *Us}u>l al-fiqh* and "contextual reading" still require *asba>b an-nuzu>l* as the main tool for interpretation and legal *istinba>t} of nas}s}* (text of the Qur'an and hadith). Ulama *us}u>l al-fiqh* emphasizes the

importance of *asba>b al-nuzu>l* to understand meaning by holding to the generality of lafaz, not the specificity of the cause (*al-'ibrah bi 'umu>m al-lafz} la> bi khus} u>s} al-sabab*), while "contextual reading" is the opposite, namely holding the specifics of the cause and not the generality of lafadz (*al-'ibrah bi khus}u>s} al-sabab la> bi 'umu>m al-lafz}*).

Contextual reading views the text of the Qur'an or hadith based on the background that causes the text to appear, even "contextual reading" looks at the problem from a broader perspective, namely the entire historical social context of revelation in the 7th century AD in the Arabic world. Through that context, an interpreter can determine the law between the authenticity of revelation and pre-Islamic social customs and habits.³ It makes "contextual reading" creating a distinction between the "historical meaning" derived from a context and the "significance" (*al-magza>*) indicated by the meaning in the interpreter's socio-historical context.⁴

Regarding the determination of law based on the aspect of its purpose, al-Qarafi stated that the source of legal provisions (*mawa>rid al-ah}ka>m*) is divided into two parts, namely: (1) *maqa>s}id*, namely things that encourage *mas}lah}at* or *mafsadat*; and (2) *wasas}il*, namely the road or intermediary that leads to *maqa>s}id*, and the law follow the *maqasid* law.⁵ With this *wasas}il*, every action can lead to *mas}lah}at* or to *mafsadat* which

³Fazlur Rahman, *Islam*, terj. Ahsin Muhammad (Bandung: Pustaka, 1984), 386.

⁴Abu Zaid, *Dekonstruksi Gender*, 180.

⁵ Al-Qarafi, *Al-Furuq*, Jilid. 2 (Makkah: Maktabah Dar Ihya' al-Kutub al-'Arabiyyah, 1344 H), 33.



can be seen from two aspects. Firstly, looking at the motives that encourage someone to do something (intentions), whether it intends to arrive at the desired outcome, lawful or unlawful, and, secondly, knowing the consequences (effect).⁶

Thus, in terms of legal provisions, a person's intention cannot be the basis for determining whether something can be done or not, and what is seen is only the result or effect. If the effect brings *maslahat*, then it can be declared as obligatory or sunnah, but if it brings *mafsadat* then it must be prevented (haram or *makruh*).⁷ *Maslahat* actions can give benefits for many people. The action becomes a 'cause' for the 'effect' which is the goal (*maqasid*) desired by *al-Syar'i* (Allah SWT) to realize the public benefit. It means that considering the consequences (*al-nazjar fi al-ma'a la t*)⁸ in acting is a must. Elsewhere in *al-Muwafaqat*, *al-Syatibi* also calls it *i'tibar al-musabbabat fi juryan al-asbab*.⁹

Based on this concept, it can be concluded that the urgency of cause and effect is the same because an effect arises from a cause. The person who does the cause will get an effect, whether the effect is desired or not. This concept is the same as the general rule in the field of law (*al-qawa'id al-fiqhiyyah*) which states that: *ma la orphan al-waajib illa bihi fa hua al-waajib* (something that causes the fulfillment of obligations) is also mandatory.

⁶Wahbah al-Zuhaili, *Usul al-Fiqh al-Islam*, Jikid. II (Damaskus: Dar al-Fikr, 1987), 880.

⁷Ibid.

⁸Al-Syatibi, *Al-Muwafaqat*, Jilid. IV, 194.

⁹Ibid., 195.

The reasoning process for revelation called *ijtihad* as an attempt to explore *maqasid al-tasyri* by taking into account the positive and negative impacts in applying the law (*al-nazjar fi al-ma'a la t*) *al-Syatibi*. The principle of *al-nazjar fi al-ma'a la t* (legal impact analysis) must be applied in all types of *ijtihad* that are reasoned in nature of *fistislah*.¹⁰

Considering the consequences or effects of an action (*al-nazjar fi al-ma'a la t*) is the goal of the law (*syara'*), so that a *mujtahid* cannot determine the law of an act committed by a *mukallaf* except after analyzing the impact.¹¹ By looking at the effects of an action (*al-nazjar fi al-ma'a la t*), it is clear that the level of human benefit as *maqasid al-syari'ah* (goal law), namely that the benefit of *tahsin* is a complement to the benefit of *haja jiiyyah*, and the benefit of *haja jiiyyah* is a complement to the benefit of *djariyyah*.

In other words, the benefit of *tahsin* does not need to be maintained if it results in the loss of the benefit of *haja jiiyyah* or especially *djariyyah*, because the complement does not need to be maintained if it can lead to the loss of what is to be perfected. The benefit of *haja jiiyyah* also does not need to be maintained if it can stimulate the loss of the benefit of *djariyyah*. Meanwhile, the benefit of *djariyyah* needs to be maintained based on the more important benefit of five things, i.e.

¹⁰Muhammad Ma'ruf ad-Dawalibi, *Al-Madkhalila 'Ilm Usul al-Fiqh*, Cet. 5 (ttp.: Dar al-Kitab al-Jadid, 1380 H/1965 M), 91-92 dan 381-382.

¹¹Al-Syatibi, *Al-Muwafaqat*, Jilid. IV, 194.



religion, soul, reason, honor/descent, and wealth.¹²

Marriage Goals

Islamic Shari'ah considers marriage to have an important position in life. Islamic Shari'ah encourages marriage based on principles, religion, morals, and society. Marriage in Islam is seen as a strong bond and a comprehensive commitment to life, society, and human beings to be honorable people. Marriage is a promise made by a husband and wife to themselves and God as mentioned in Surah al-Nisa verse 21:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

“And how can you take it when one of you has already gone in to the other and they have made with you a firm covenant?”

With this strong agreement, each party, husband and wife, strives to achieve the goal of living together by fulfilling the needs of life and self-realization based on love and peace, desires, and hopes. Marriage in Islam is essentially an act of perfect piety and obedience.

Marriage in Islam aims to have peace of life and love each other between husband and wife. Here, the *sakinah mawaddah wa rahmah* family will be formed. Allah says in Quran Surah al-Rum: 21:

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

“Another of His signs is that He created spouses from among yourselves for you to live with in tranquillity: He ordained love and kindness between you. There

truly are signs in this for those who reflect.”.

Each spouse is described as a ‘garment’ to the other (QS. al-Baqarah: 187). They are your garments, and you are their garments. A peaceful life (*sakinah*) filled with love and affection with mutual understanding between husband and wife to form a happy family. Moreover, each of them realizes that they are like clothes for his/her spouse. This is the main purpose of the marriage law in Islam.

Marriage can create peace and tranquility in the soul and instill love and affection in married couples as a great impetus for a person to worship Allah SWT. The intimacy of husband and wife is seen as a catalyst for the development of their souls. In other words, the intimate relationship that develops between husband and wife is important to ease the psychological burden to produce a better motivation on completing tasks from Allah SWT.¹³

In the perspective of *maqashid al-syariah*, marriage includes the issue of *dharuriyat al-khams*, namely *hifdz al-nasl*. By having a marriage, man will give birth to his child. Allah SWT mentions in Quran Surah al-Nahl: 72

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ بَنِينَ وَبَنَاتٍ وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ...

“Allah has made for you of yourselves spouses and made for you from your spouses' sons (sons and daughters; seeds) and grandchildren, and He has provided you of the good (things)”.

Marriage in addition aims to

¹³Haifaa A. Jawad, *Otentisitas Hak-hak Perempuan: Perspektif Islam atas Kesetaraan Jender*, terj. Anni Hidayatun Noor dkk., Cet. ke-1 (Yogyakarta: Fajar Pustaka Baru, 2002), 106.

¹²Abdul Wahhab Khallaf, *‘Ilm Usul al-Fiqh* (Kairo: Daar al-Kuwaitiyyah, 1968), 206.



preserve good offspring, it is also to educate the human soul to enhance affection, tenderness of soul, and love. By doing so, cooperation will occur because between the two there are differences in tastes, emotions, desires, skills, and others. The most important thing in marriage is not just giving birth to children, but trying to find and form a qualified generation, those who are pious and devoted to Allah.

Another important aspect of the goal is sexual fulfillment in marriage. According to Islamic law, marriage can control sexual desire and channel it to the right place.¹⁴ Marriage also functions to prevent adultery as a heinous act that is forbidden by religion and the perpetrator will be punished with a big sin. It is explained in Quran Surah. al-Nur: 32.

وَلَا تَقْرَبُوا الزَّوْجَ إِذْهُ كَانَ فُجْشَةً وَسَاءَ سَبِيلًا
"You shall not commit adultery; surely it is a shameful deed and an evil way (opening the door to other evils)".

In Hadith, the Prophet Muhammad (PBUH) encourages his ummah to marry, and whoever is not able to marry is recommended to fast. Naturally, it is hard to control human sexual instinct for every adult.¹⁵ Islam wants to show that what distinguishes humans from animals in the case of sexual instincts is through marriage so that all negative consequences caused by improper sexual desires can be avoided. *Fiqh* scholars state that marriage is the only

true and legal way to channel sexual instincts to avoid negative outcomes.¹⁶

Marriage can build cooperation between husband and wife in managing family affairs. It is also seen as a means to build a good and strong personal character as a result of the mutual responsibilities from husband and wife.¹⁷ Thus, marriage is a guarantee of social stability and a form of a dignified life for husband and wife. It also functions to respect women's rights, both in their roles as a wife and mother.¹⁸

The purpose of human creation is to prosper the earth and the contents of the earth and everything in it are created for the human benefit. The wisdom of marriage cannot be separated from that goal. Therefore, the preservation of human offspring is necessary. Marriage is needed to preserve human descendants who will take part in prospering the earth.¹⁹ According to al-Jurjani, marriage is prescribed not only for the prosperity of the earth but also to create an orderly and tidy human life. Thus, the presence of women besides men through marriage is very crucial.²⁰

According to Mustafa al-Khin, the wisdom of marriage can be explored, both *naqliyah* and *aqliyah*. He mentions that there are four pearls of wisdom of marriage;²¹ The first is to

¹⁶ Agus Riyadi, *Bimbingan Konseling Perkawinan (Dakwah dalam Membentuk Keluarga Sakinah)*, (Yogyakarta: Ombak 2013), 59.

¹⁷ Ibid.

¹⁸ Jawad, *Otentisitas Hak-hak Perempuan*, 108.

¹⁹ Ali Ahmad al-Jurjani, *Hikmah al-Tasyri 'wa Falsafatuh*, II (Beirut: Dar al-Fikr, t.t.), 6-7

²⁰ Ibid.

²¹ Mustafa al-Khin dkk., *Al-Fiqh al-Manhaji*, IV (Beirut: Dar al-Qalam, 1987),

¹⁴ Jawad, *Otentisitas Hak-hak Perempuan*, 105.

¹⁵ Abu al-'Ainain Badran, *Ahkamal-Zawajwa al-Thalaq fi al-Islam* (Kairo: Dar al-Ta'lif, 2002), 20-21.



meet the demands of nature; The second is to realize peace of mind and inner stability; the third is to avoid moral decadence, and the fourth is to make sure women carrying out their duties based on their feminine nature. The wisdom of marriage, such as connecting descendants, expanding kinship, building the principles of cooperation, and others can be explored in the verses of the Qur'an, hadith, and community development.

The Meaning of Marriage Based on Maqashid al-Syari'ah Perspective

The traditional *fiqh* defines marriage as to legitimate biological relations. The *mazhab* scholars essentially have a similar definition of marriage. Hanafi scholars describe marriage as a contract to allow men to "have fun" with women (*'aqdunyu fi du milk al-mut'atiqas*) and, *ay h jilluistimta'i al-Rajul min imratin*).²² Similarly, *Syafi'iyah* scholars underline marriage as a contract that enable the relationship between husband and wife through a certain *lafadz* (*'aqdyatadhammaniba*) *hat al-wat'i bi lafdz makhs* *u>s* *jin*).

Based on the above definition, it can be understood that the main orientation in marriage according to *fiqh* experts is to meet biological needs. Marriage is a medium to allow something that is forbidden (sexual intercourse). In other words, marriage is a way of moving a provision that is originally haram to become halal. The definition of marriage from *fiqh* experts is different from the meaning of marriage proposed by the Qur'an that

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²²Wahbah Zuhaili, *Al-Fiqh al-Islam wa Adillatuh*, Juz. 7 (Damaskus: Dar al-Fikr, 1985), 29.

explains it as a strong bond to form peace of mind, and to cultivate love and affection.²³ The definition of marriage put forward in various traditional *fiqh* literature has received sharp criticism, especially from Muslim feminists.²⁴

It seems that the definition of traditional *fiqh* experts refers to the linguistic meaning of marriage, i.e. get-together (*al-wath'u, al-jam'u and al-wadh'u*), and marriage means a contract.²⁵ The majority of *fiqh* experts understand that what is emphasized from the meaning of the marriage in Islam is the contract (*h}aqi>qah fi al-'aqdwamaja>zun fi al-wat'i*).²⁶ This understanding creates a definition that marriage is a contract whose purpose is to justify the biological relationship between men and women.

The definition from the traditional *fiqh* is dissimilar from Law No. 1 of 1974 that marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family based on God Almighty.²⁷ Likewise, the compilation of Islamic Law (KHI) states that marriage is a strong contract to obey Allah's commands as a form of worship.²⁸ Both definitions do not mention at all the orientation of marriage that leads to sexual or biological relationships.

²³QS.al-Rum: 21.

²⁴Qasim Amin, *Tahrir al-Mar'ah*, Cet. ke-1 (Kairo: Maktabah al-Adab, 1899), 114-115.

²⁵Wahbah Zuhaili, *Al-Fiqh al-Islam*, 29.

²⁶*Ibid.*, 30.

²⁷Undang-Undang No. 1 Tahun 1974 tentang Perkawinan Pasal 1.

²⁸Abdurrahman, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademika Pressindo, 1995), 114. Muhammad, *Fiqh Perempuan (Refleksi Kiai atas Wacana Agama dan Gender)*, (Yogyakarta: LKiS, 2007), 101.



Marriage, as formulated by the law, can be seen from the perspective of *maqashid al-syari'ah*. Firstly, marriage is an inner bond. In QS. al-Nisa': 21, it is expressed in the words of *mithaqanghalidhan* (strong agreement). The purpose of this marriage is not merely an agreement to legalize sexual intercourse for temporary. Islamic Shari'ah forbids *mut'ah* marriage, a temporary marriage to satisfy sexual desire only. *Mut'ah* marriage can cause misfortune, especially for women. The purpose of the revelation of the *Shari'ah* is to ensure the welfare of life in this world and the hereafter.

Secondly, marriage is performed between a man and a woman. Islamic law strictly prohibits same-sex marriage. The practice of marriage between two men or between two women is also illegal in Indonesia. Human nature tends to love and marry the opposite sex. *Maqashidul al-syari'ah* places inheritance (*hifzdnasl*) at the highest level (*dharury*). The same-sex marriage can threaten human regeneration and it is contrary to *maqashid al-syari'ah*.

A man and a woman who have entered a marriage contract have a role as husband and wife where both have equal rights and obligations. A husband is obliged to provide facilities for his wife including food, clothing, and shelter. The survival of the wife entirely becomes the husband responsibility. It is called *hifzdnafsin* in the context of *maqashid al-syari'ah*. *Hifdz al-'aq* that urges a husband to educate his wife and provide opportunities for his wife to enhance her knowledge. In the next family life cycle, a husband and a wife will have a mutual obligation to educate their children.

Fourthly, the purpose of marriage in the QS. al-Rum: 21 is to build a *sakinahmawaddahwarahmah* family. If it is related to the principle and purpose of marriage in this verse, marriage is not only to fulfill physical-biological needs, but also psychological-spiritual needs. A happy family is a *maqashid* in a marriage, while marriage itself is a *wasilah* to achieve a happy family. The command to create a family *ofsakinahmawaddahwarahmahis* also an order for its means (*wasilah*) or called a marriage.

Furthermore, to ensure the legality of the relationship between a man and a woman, Law No. 1 of 1974 gives the status for them as a husband and a wife. To obtain this status, they must go through stages as formulated by the existing regulations. In this context, it can be understood that in Islam, the parenting principles (*hifdz al-nasl*) should be done carefully. Certain rules must be obeyed to guarantee the values of benefit. In Islam, the descendent should come from the legal relationship (marriage) to realize the benefit and eliminate harmful effects. Law No. 1 of 1974 requires a man and woman to legalize their relationship in marriage with a proof in the form of a marriage certificate.²⁹

***Maqashid al-Syari'ah* Perspective on Marriage Registration**

Marriage registration is an official statement stating that two people are married. Law No. 1 of 1974 article 2 paragraph (2) states that every marriage must be recorded based on the applicable laws and regulations.³⁰ To complete these rules,

²⁹UU. No. 1 Tahun 1974 Tentang Perkawinan.

³⁰Abd Shomad, *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum*



the government issued regulation No. 9 of 1975 on marriage registration. Firstly, the provision of marriages registration is mentioned in Article 2 paragraph (1) where the marriage registrar officers perform their duty to record a marriage that is based on the Islamic religion. Secondly, Article 3 paragraph (1) states that every person who will marry shall inform the Registrar officers where the marriage will be held at least 10 (ten) working days before the wedding day. Thirdly, to check the marriage documents which refer to Article 6 paragraph (1), the Registrar Officers who receive the notification of the marriage intention will examine whether the requirements have been fulfilled and make sure there is no conflict with the applicable laws. Responding to the provisions of the legislation above, Islamic experts state that any marriage that is not registered or those who have married without the presence of a marriage registrar will bear the juridical risk wherein the marriage is considered illegal.³¹

Marriage registration in the Compilation of Islamic Law is regulated in articles 5 and 6.

- a. Article 5 paragraph (1) mentions that each marriage must be registered or recorded to ensure the order of marriage among Muslims, and paragraph (2) adds that the registration of the marriage in paragraph (1) is done by the marriage registrar.
- b. Article 6 paragraph (1) states that to fulfill the provisions in Article 5, every marriage must take place before and

under the supervision of a marriage registrar, while paragraph (2) clarifies that marriages beyond the marriage registrar supervision have no legal force.³²

The article above explains that the purpose of registering marriages must be carried out in an orderly manner to have legal standing. These two things are very much needed both by the parties who carry out the marriage and those who have an interest within the marriage. For the government, it is to maintain the stability of society and to realize the welfare of the community.

The use of marriage registration based on the provisions of KHI functions as evidence of a certain marriage. This is as regulated in article 7 which states that marriage can only be proven with a certificate made by the marriage registrar. A marriage without a certificate can be proposed for its *isbat* (marriage ratification) before the Religious Court.³³

Marriage certificates can be a shred of strong evidence instead of the marriage witnesses, even this certificate is required as important documents in daily administrative activities. It makes Indonesian citizens cannot neglect this marriage registration process. Besides, the marriage registration is essential for checking and examining the documents related to the identity of the bride and groom, as well as ensuring that the marriage does not conflict with religious law as well as prevailing laws and regulations in Indonesia.

Marriage according to Islamic law is a very strong covenant or

Indonesia (Jakarta: Kencana Prenada Media Group, 2012), 280.

³¹Shomad, Abd, *Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia* (Jakarta: Kencana Prenada Media Group, 2012), 281.

³²Pagar, *Himpunan Peraturan Perundang-undangan Peradilan Agama di Indonesia* (Medan: Perdana Publishing, 2010), 171.

³³ Ibid.



mithaqanghaliza to obey God's command as an act of worship.³⁴This means that marriage is not only an ordinary civil contract but also has the value of worship.³⁵Marriage is an important event in human life. In the Islamic concept, marriage is not just a matter of rights and obligations between husband and wife, but there are other legal consequences, such as regarding the status of children, mutual properties, and other family relationships.

The scholars of traditional *fiqh* literature formulate the terms and pillars of marriage so that the validity of the marriage can be legitimated where the events must be known by the public to guarantee its legal certainty. They think the witnesses and *walimah al-'ursy* are sufficient to meet the purpose of marriage so that marriage registration does not appear in the classical *fiqh* studies. According to Nuruddin, the tradition of *walimat al-'usry* can be used as a marriage witness since the bride and groom in the early days of Islam are coming from the same regions of the country. It makes the presence of the witnesses in marriage as a piece of evidence is more than enough.³⁶

In the context of today's modern society, the complexity of marital problems is getting wider. Marriage can be done between citizens of different countries, and with different state

systems. The issue of marriage is also related to most of the daily activities of community administration, and it is increasingly difficult to maintain the very strict witness requirements in Islamic studies. These new problems require anticipatory steps to prevent the impact of marriage. It urges the ulama in Indonesia to formulate rules through the Law and the KHI that every marriage must be recorded.

Marriage registration in the perspective of *maqashid al-syari'ah* to create benefits for the future family. Muhzhar explains that there are at least three goals of reforming the marriage law. The first is to unify the law in creating marriage order among society. The second is to protect the sanctity of marriage and specifically protects the women status. The third is to respond to the current developments and demands because the traditional *fiqh* concept is considered incapable to provide solutions to current situations.³⁷

Marriages without a registration procedure are known as Sirri Marriages. According to the Laws and KHI, this unregistered marriage has no legal force, and it is categorized as an unlawful marriage. Although marriage is considered legal according to religion, the rights are not assured by the laws and regulations.³⁸It shows the potential harm from this kind of marriage. In this case, the "*al-Ghayah al-Syariah al-Maslahah*" method can be applied, while the benefit is called *jalb al-mashalih wadar al-mafasid* (taking

³⁴ Abdurrahman, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademika Pressindo, 1995), 114.

³⁵ Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 1995), 60.

³⁶ Amiur Nuruddin & Azhari A.T., *Hukum Perdata Islam di Indonesia, Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974 sampai KHI* (Jakarta: Kencana, 2004), 121.

³⁷ M. Atho Mudhar dan Khairuddin Nasution (ed.), *Hukum Keluarga di Dunia Islam Modern, Studi Perbandingan UU Modern dan Kitab-kitab Fikih* (Jakarta: Ciputat Press, 2003), 10-11.

³⁸ Shomad, *Hukum Islam: Penormaan Prinsip Syariah*, 248.



advantages and declining damages).

The importance of registering marriages based on the perspective of *maqashid al-syari'ah* is that this process has become an obligation among citizens under the state or government rules. As stated in the rules of *fiqh*: تَصَرُّفُ الْإِمَامِ عَلَى الرَّعِيَّةِ مَنْوُطٌ بِالْمَصْلَاحَةِ (A government rule for its people is to maintain the public interests and benefits).

Referring to the benefit considerations, it can be concluded that the registration of marriages has a legitimacy basis in the methodology of Islamic studies. Marriage registration is mandatory for every wedding process which is in line with the content of the Qur'an and Sunnah. The Qur'an and Sunnah do not regulate the necessity of marriages registration, but it is similar to the importance of recording or registering in buying and selling transactions as mentioned in QS. al-Baqarah: 282. The marriage contract according to the Qur'an does not belong to *muamalah* indeed, but it is a very strong agreement as stated in QS. al-Nisa': 21. If the debt contract must be recorded based on the message of the above verse, a noble and sacred marriage contract that is even more important must also go through a registration process. Registering for marriage will provide benefits to people's lives. On the other hand, if the marriage is not registered under the applicable laws and regulations, it can be utilized by the guilty parties to conduct marriage only for negative interests that can hurt others, especially the wife (women) and children.

Closing

From the above discussion about the meaning and marriage registration,

several conclusions can be drawn as follows:

Firstly, traditional *fiqh* defines marriage as a medium to legalize sexual relations between a man and a woman under a marriage bond. Meanwhile, Marriage Law No. 1 of 1974 describes it as an inner and outer promise between a man and a woman to create a happy and eternal family based on God's commands. The meaning of marriage according to this law is *maqashid al-syari'ah* including the preservation of human offspring (*hifdz al-nasl*), the preservation of the soul (*hifdz al-nafs*), and the preservation of mind (*hifdz al-'aql*).

Secondly, the traditional *fiqh* scholars do not discuss marriage registration at all. They do not even include it as a condition for the legitimacy of a marriage. The registration in the marriage law is considered as proof that a marriage process has been completed. Marriage is recognized and considered valid if it is recorded. Marriage registration is based on *Maqashid al-Sharia* because this registration can lead to public benefits. On the other hand, unregistered marriages may harm livelihood.

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