

Urgency_of_Marriage_Registrati on.pdf

by Agustin Hanapi

Submission date: 31-Aug-2021 05:27PM (UTC+0700)

Submission ID: 1638779340

File name: Urgency_of_Marriage_Registration.pdf (282.74K)

Word count: 6297

Character count: 33106

**Urgency of Marriage Registration
for Women and Child Protection in Gayo Lues District**

Agustin Hanapi

¹ Edi Yuhermansyah

Universitas Islam Negeri Ar-Raniry

Email: agustin.hanapi@ar-raniry.ac.id

edi.yuhermansyah@ar-raniry.ac.id

Abstract

¹ Currently, marriages that are carried out in secret are synonymous with elopement and are not recorded in the Religious Affairs Office. The phenomenon of underage elopement, which the locals refer to as ‘naik’ (rising), is quite prevalent in Gayo Lues District. There have been six cases occurred already in one year. A pair of students who were still under 19 without the permission of their parents or the school deliberately went to a traditional leader, begging to be married off, while some others even dared to skip the administrative procedures and directly married, thinking that the procedures could be taken care of later. However, real-life is not as smooth as they expected, and so their marriage was not registered, eventually causing the women and children to be the victims. In this study, the focus is related the perspective of Islamic jurisprudence and legislation in Indonesia on marriage registration and the consequences for women and children when there is no marriage registration. This qualitative study used in-depth interviews, descriptive analysis methods, the empirical juridical approach and the normative juridical approach. The results of the study showed that students who eloped in high school generally no longer continued their studies because of shame and inferiority towards their friends. Marriage registration is handled by the State or the Government through statutory regulations in order to create orderly marriage in society.

Keywords: marriage registration, women, children, Gayo Lues

***Urgensi Pencatatan Nikah terhadap Perlindungan
Perempuan dan Anak di Kabupaten Gayo Lues***

Agustin Hanapi

Edi Yuhermansyah

Universitas Islam Negeri Ar-Raniry Banda Aceh

Email: agustin.hanapi@ar-raniry.ac.id

edi.yuhermansyah@ar-raniry.ac.id

Abstrak

Saat ini, perkawinan yang dilakukan secara sembunyi-sembunyi, identik dengan “kawin lari” dan tidak tercatat di KUA. Fenomena “kawin lari” anak dibawah umur, juga banyak terjadi di Kabupaten Gayo Lues, yang mereka sebut dengan istilah “naik”. Bahkan dalam satu tahun terjadi 6 kasus. Sepasang siswa yang masih di bawah usia 19 tahun tanpa izin orang tuanya ataupun pihak sekolah dengan sengaja mendatangi tokoh adat, memohon agar segera dinikahkan, bahkan ada yang nekat tanpa mengikuti prosedur dengan keyakinan menikah saja dulu sedangkan masalah administrasinya bisa diurus belakangan. Namun kenyataannya tidak semulus yang mereka harapkan sehingga pernikahannya tidak tercatat yang pada akhirnya perempuan dan anak yang menjadi korban. Fokus penelitian ini adalah Bagaimana Pencatatan Pernikahan Dalam Perspektif Fikih dan Perundang-Undangan di Indonesia dan Bagaimana Konsekuensi Terhadap Perempuan dan Anak Akibat Tidak Dicatatkan pernikahan. Penelitian ini adalah penelitian kualitatif dengan menggunakan wawancara mendalam serta mengaplikasikan metode deskriptif-analisis dan pendekatan yuridis empiris serta pendekatan yuridis normatif. Adapun hasil penelitian bahwa siswa siswi yang melakukan kawin lari di sekolah menengah pada umumnya tidak lagi meneruskan sekolahnya karena ada perasaan malu dan minder dengan kawan-kawannya. Pencatatan pernikahan dilaksanakan oleh Negara atau Pemerintah melalui perturan perundang-undangan dilakukan agar mewujudkan ketertiban pernikahan dalam masyarakat.

Kata Kunci: *Pencatatan nikah, Perempuan, Anak, Gayo Lues*

<http://jurnal.arraniry.ac.id/index.php/samarah>

Introduction

Neither in the Qur'an nor in the Prophet's Sunnah is found explicitly the order to record marriage. However, there is a text from the Qur'an which suggests recording loan agreements as mentioned in the Qur'an Surah al-Baqarah 2:282. In addition, there is a hadith of the prophet which instructs people to announce marriage to be known to the wider public, such as "*witness the marriage and announce it to other people*" and "*hold a walimah (wedding banquet) even with one goat.*" Marriage announcement is a form of Islamic greatness, and the previous scholars had never married secretly nor not announced the marriage.

In Islam, there are no specific rules regarding the obligation to register a marriage. In fiqh (Islamic jurisprudence), especially the Shafi'i school of thought, marriage is considered sufficient if the *rukun* or conditions are fulfilled (the bride, the groom, the pledge, the guardian, and the witnesses) without having a record, nor a marriage certificate. The absence of a requirement to register a marriage in the early days of Islam was perhaps because marriages had not yet occurred between different regions of the country. At the time, marriages would take place where the prospective husbands and wives were in the same area, and thus, evidence of marriage other than witnesses was not necessary.¹

In Indonesia, for those who do not register marriages, their marriages will not have any legal force, and all the consequences are borne by themselves, as stated in the Marriage Law No. 1 of 1974 "every marriage is registered according to the prevailing laws and regulations."² In addition, in the Compilation of Islamic Law in Indonesia in Article 5, it is stated that (1), "In order to ensure orderliness of marriage for the Muslim community, every marriage must be registered."³ By having marriage record with a clear legal standing, various forms of harm, such as the uncertainty of status for women and children, can be avoided.

¹Dwi Arini Zubaidah, Pencatatan Perkawinan Sebagai Perlindungan Hukum dalam Perspektif Maqashid al-Syar'iyah, *Jurnal al-Ahwal*, Vol. 12. No. 1 2016. Moh. Makmun dan Bakhtiar Bagus Pribadi, Efektivitas Pencatatan Perkawinan di Kator Urusan Agama Kecamatan Tembelang Kabupaten Jombang, *Jurnal Hukum Keluarga Islam*, Vol. 1, No. 1 April 2016.

²Undang-Undang No. 1 Tahun 1974 tentang Perkawinan.

³Instruksi Presiden No. 1 tahun 1991 tentang Kompilasi Hukum Islam <http://jurnal.arraniry.ac.id/index.php/samarah>

Nevertheless, although the State requires the registration of marriages so that the rights of the entire family are well protected, there are still many cases in the society in which some people do not officially register their marriages because they think that a marriage is validated already after the *ijab qabul* (marriage pledge) and not at the time of registration, as the registration is assumed only for the administrative purposes. Apart from that, they also refer to the understanding of past Islamic jurists who did not require registration of marriages. In the community, the majority also believe that divorce is valid as long as it meets the requirements for the breakdown of the marital relationship even though it is not filed before a court session. As a result, when there are issues in marriage, the court cannot process it because the marriage is not recorded. This means that neither husband nor wife nor children will receive proper protection.

This qualitative study used the descriptive analysis method, the empirical juridical approach and the normative juridical approach. The empirical juridical approach was used to describe the facts studied in regard to the social issues when dealing with the Marriage Law and other provisions concerning the family law. The analysis in this study also provided input and suggestions for policy makers so that the community is in an orderly administration of marriage registration. The interviews carried out to school leaders aimed to get in-depth information related to this study, and to find out the cases occurred in the schools and the factors causing students to marry at school age and their future prospects.

Urgency of Marriage Registration in Gayo Luwes

According to AS as principal of MAN in Gayo Luwes and several community leaders, it is revealed that there are often cases of elopement done by students of under marriageable age. The local people call such elopement as 'naik' which literally means 'rising'. In one year the district has experienced up to six cases of 'naik' among school students. Some cases happened among students from one school of different classes (i.e. the girls were second graders while the boys were third graders) and some from different schools (i.e. the girls studied in Islamic schools while the boys in the public

schools or vice versa). Several factors influencing underage elopement are peer influence, environment, and parental attention.⁴

When deciding to elope, concerns arising from the students who eloped included if not married at that time, they would not be together with their sweethearts anymore, as they had been dating for a relatively long time. These students also felt worried that once they graduated, they would have no certainty whether they could realize their promise since they might have different aspirations to pursue in the future (e.g. leaving hometown to work or study in another place).

In addition, these students also had lack of access to information about tertiary institutions, and so when they encountered troubles in school, they did not think about their future prospects aside from getting eloped. One case of elopement was a pair of students without prior permission from their parents or the school deliberately approaching a traditional leader, requesting to be married off immediately even though they were still under the marriageable age stipulated in the law, which is 19 years old. In fact, in order to marry those under 19 through their guardians should submit an application for marriage dispensation to the Sharia Court. In some other cases, the eloped students even disregarded the administrative procedures for marriage since they thought that they could still marry through the religious process first and then handled the administrative issues later on. One of the consequences of marriage while still in school is these students generally no longer continue their studies because they feel embarrassed and inferior towards their friends.

Cases of elopement committed by students who are still in high school which they refer to as 'naik' often occur. Those who do not follow official procedures such as registration at the Religious Affairs Office will not get any proper protection by the State and this can certainly harm the rights of each party. The school principal interviewed in this study said that generally such marriages would not last long and later end in divorce, and these students would even lose their bright future as they dropped out of school and their children would not get good attention as well.

⁴Interview with AS, Headmaster of MAN (Islamic Senior High School)

1) Langkjeran in Gayo Lues District, February 19, 2020.

<http://jurnal.arraniry.ac.id/index.php/samarah>

On the other hand, the highest number of cases submitted to the Blangkejeren Sharia Court from 2015-2017 in Gayo Lues District reached 526 cases of marriage requests.⁵ The Aceh Islamic Sharia program had allocated the budget for as many as 50 couples in the 2017 fiscal year and for 250 couples in 2018, whereas the local government of Gayo Lues has also facilitated marriage ceremonies for the poor and conflict victims of more than 2,000 couples ever since the 2004 tsunami and the Helsinki MoU.

Analysis of Marriage Registration and Protection of Women and Children

Marriage is essentially divine as described in the statutory regulations, Law Number 1 of 1974 in Article 1: “[marriage] is a physical and mental bond between a man and a woman as husband and wife with the aim of creating a happy and eternal household before the Almighty God,” and in Article 2 (1): “Marriage is legal if it is carried out according to the law of each religion and belief.”

The explanation of the above Law is that: as a country based on *Pancasila* (Five Principles), in which the First Principle is Belief in One True God, marriage is strongly related with religion/spirituality, and thus, marriage has an important role. Building a happy family with close ties to family lineage is also the goal of marriage. Providing care and education are the rights and obligations of parents.

With the formulation of marriage in Article 2 paragraph (1), there is no marriage outside the law of each religion and belief in accordance with the 1945 Constitution. The law of each religion and belief includes the provisions of the applicable laws and regulations for its religious and belief groups as long as it does not contradict or is not stipulated otherwise in this Law. Further, the Compilation of Islamic Law formulates the following definition of marriage in Article 2: “Marriage according to Islamic law is *nikah*, which is a very solemn covenant or *mithaqun ghalihun* aimed to obey Allah’s

⁵ Ferra Hasanah, *Istri Yang Bekerja Dan Hubungannya Terhadap Peningkatan Angka Perceraian di Mahkamah Syar’iyah Blangkejeren: Studi kasus Tahun 2015-2017*, (Banda Aceh: Skripsi, 2019).

orders and to carry out marriage is worship”; and in Article 3: “Marriage is aimed at realizing a *sakinah* (tranquility), *mawaddah* (love) household life.”²

The principles of marriage based on Indonesian Law are as follows: The goal of marriage is to form a happy and lasting family. To achieve this, husband and wife need to help and complement each other so that each of them can develop his/her personality to reach spiritual and material prosperity.⁶

In this Law, it is stated that a marriage is legal if it is carried out according to the law of each religion and belief, and also each marriage must be registered according to the prevailing statutory regulations. The registration of each marriage is equally important as any other significant events in a person’s life, for example birth and death, which needs to be stated in certificates, and so is a divorce.

The Law adheres to the principle of monogamy. And only if the person concerned wishes² as allowed in the law and religion of the person concerned, can a husband have more than one wife. However, a marriage between a husband and more than one wife, even though it is desired by the parties concerned, can only be committed if certain conditions are met and decided by the Court.

² This Law also adheres to the principle that the prospective husband and wife must have their soul and body mature enough in order to hold a marriage, so that they can realize the goal of marriage well without ending in divorce and to have good and healthy descendants. For this reason, marriage that may potentially have an issue with population should be prevented. It is evident that a lower age limit for a woman to marry results in a higher birth rate. In this regard, the Law determines the marriageable age for both men and women, which is 19 (nineteen) years for men and 16 (sixteen) years for women.

As the purpose of marriage is to build a family that is eternally happy and prosperous, the Law adheres to the principle of making divorce complicated with certain reasons being presented and carried out before the Court.³

The rights and positions of the wife are balanced with the rights and positions of the husband, both in the household life and in the community, and therefore, everything in the family can be discussed and jointly decided by husband and wife.

¹ <http://jurnal.arraniry.ac.id/index.php/samarah>

The principles within marriage are very sublime and noble, and thus marriage is not something trivial and easy to commit, as it is a form of worship. However, if the spouses ignore it, they will be subject to sanctions and punishments from Allah, and so both parties should take the respective duties and obligations seriously. In order to achieve the purpose of marriage of forming a happy and eternal family based on Godliness, the spouses need to support and complement each other in terms of spiritual and material aspects. In other words, marriage should: a) last a lifetime b) require strict conditions on divorce and as a last resort, and c) husband and wife help one another to develop themselves.

Since marriage is sacred, Islam stipulates some conditions that must be fulfilled first prior to getting married, including being adults, being man and woman, accompanied by witnesses and guardians, and not in a condition that is forbidden to marry either because of lineage or because of religion. The main elements of marriage are the bride-to-be and the groom-to-be, the marriage pledge, the marriage guardian, two witnesses, and the dowry. The majority of Muslim scholars stipulate that the pledge, the bride and groom, the guardian, and the witnesses as the conditions of a valid marriage, and thus, if one of them is not present, the marriage is invalid. Meanwhile, dowry is considered part of the marriage elements that does not affect the process of the marriage ceremony; yet, it must be fulfilled in the period of marriage life.⁶

In *fiqh*, the basic condition of marriage is the bride and the groom, and no necessity of marriage registration. According to Amiur, there are some reasons that *fiqh* pays less attention to the issue of marriage registration even though some Qur'anic text recommends all forms of economic transactions be recorded. First, it is prohibited to write anything other than the Qur'an, and as a result, written culture is less developed than memorized (oral) culture. Second, as a continuation of the first reason, Muslim scholars rely heavily on rote memory, and to remember an important event such as marriage is not considered a difficulty. Third, the *walimat al-ursy* (wedding banquet) tradition in Islamic marriage is already considered evidence of one's marriage, aside from the presence of the witnesses during the marriage ceremony. Fourth, it

⁶ Amir Syarifuddin, *Garis-Garis Besar Fiqh*, (Jakarta: Kencana, 2003).
<http://jurnal.arraniry.ac.id/index.php/samarah>

is believed that marriages that took place in the early days of Islam had not occurred yet between different regions of a country. At the time, marriages usually happened in the place where the prospective husband and wife were in the same area. Thus, any proof of marriage other than the witnesses was not needed.⁷ Based on these reasons, it can be said that marriage registration has not been seen as crucial and used as authentic evidence of a marriage.

However, as times change, many dynamics have occurred in the world. The shift of spoken (oral) culture to written culture as a characteristic of modern society demands that deeds and letters be made as authentic evidence. Living witnesses can no longer be relied upon not only because they can disappear due to death, but also because humans also experience forgetfulness and error. On this basis, an everlasting proof is needed, called a deed. As such, the State reserves the right to organize the society in order to have an orderly administration for the registration of marriage. This issue is highly urgent as mentioned in the Law No. 1 of 1974 in Article 2 (1): “Marriage is legal if it is carried out according to the law of each religion and belief”, and in Article 2 (2): “Every marriage is registered according to the prevailing laws and regulations.” Also, the Compilation of Islamic Law Article 5 (1) states: “In order to ensure orderliness of marriage for the Muslim community, every marriage must be registered”, and Article 5 (2) states: “The registration of marriage as referred to in paragraph (1) shall be carried out by the Marriage Registrar as regulated in Law No. 22 of 1946 in conjunction with Law No. 32 of 1954.”⁸

Considering the significant function of marriage registration, some contemporary scholars regard this as a condition for the validity of a marriage for the following reasons. First, it is supported by the legal practice of public bodies and the articles of the laws and regulations implementing the Marriage Law (Government Regulation No. 9 of 1975), as well as by the spirit and essence of the Marriage Law itself. Second, the paragraph in Article 2 of the

⁷Amiur Nurdin dan Azhari Tarigan, *Hukum Perdata Islam di Indonesia*, (Jakarta: Kencana Prenada Media Group, 2012).

⁸ Undang-undang No.22 Tahun 1946 tentang Pencatatan Nikah, Talak, dan Rujuk dan Undang-undang No. 32 Tahun 1954 tentang Penetapan Berlakunya Undang-Undang Nomor 22 tahun 1964.

Marriage Law must be viewed as an inseparable unit. Third, if the contents of Article 2 of the Marriage Law are linked to Chapter III (Articles 13 to 21) and Chapter IV (Article 22 to 28) respectively concerning prevention and cancellation, it can only be done if it is regulated in the Government Regulation No. 9 of 1975. If a marriage is legal without any registration, the articles on prevention and annulment are of no use. Fourth, in terms of language, the meaning of the word “and” in Article 2 paragraph 1 of the Marriage Law is cumulative in nature.

According to Atho’ Muzhar and Nasution, registration of a marriage should be seen as a new form of marriage announcement. He further adds that such registration has more benefits, especially for women and children.⁹ Ahmad Rafiq also states that when marriage registration only becomes an administrative requirement, the socialization efforts towards the Marriage Law in Indonesia will be meaningless. Yet, the methodological basis of this registration is quite clear. Technically, the scholars of *usul al-fiqh* (principles of Islamic jurisprudence) consider this as a *maslahat al-mursalah* (public interest). With the existence of a marriage registration with a legal standing, any forms of harm on women and children, such as having unclear status, can be avoided.¹⁰ To add, Abdul Halim says that making marriage registration as a legal requirement can be done by implementing *ijtihad insha’i* (new form of legal reasoning) by using the principle of “preventing harm by prioritizing for good.” To guarantee legal certainty and order of its people, the government can establish rules that support the creation of legal order and legal certainty in accordance with the rule of “an act/government regulation, which intends to ensure the benefits of its people.”

Further, the time when a marriage becomes valid is after the registration of the marriage. There are five reasons put forward by the proponents of this statement. First, this condition is supported by the legal practice of public bodies, the articles of the laws and regulations for the implementation of the Marriage Law

⁹ Atho Mudzhar dan Khoiruddin Nasution, *Hukum Keluarga di Dunia Islam Modern: Studi Perbandingan dan Keberlanjutan UU Modern dari Kitab-Kitab Fikih* (Jakarta: Ciputat Press, 2003).

¹⁰ Ahmad Rofiq, *Hukum Islam di Indonesia*, (Jakarta: Rajawali Pers., 1995).

(Government Regulation No. 9 of 1975), and also the spirit and essence of the Marriage Law. Second, the paragraph in article 2 of Law No. 1 of 1974 is of one notion. This means that marriages that have fulfilled the religious and/or belief requirements should be immediately followed by registration or recording, as stipulated by article 100 of the Civil Codes and article 34 of the Christian Indonesian, Christian Javanese, Minahasa and Ambonese Marriage Regulations that a marriage certificate is the only proof of a marriage. Third, if the contents of article 2 of the Marriage Law are linked to chapter III (articles 13 to 21) and chapter IV (articles 22 to 280) of Law No.1 of 1974 respectively concerning the prevention and annulment of marriage, it indicates that the procedure for registration is carried out as regulated by the Government Regulation No. 9 of 1975. Therefore, if a marriage can be valid outside of registration, the chapter on prevention and annulment of marriage is of no use or has no legal effect. Conversely, if the registration of marriage is not considered as a legal condition of marriage, it is very likely that many of the improvements that are expected through this Law cannot be achieved, for example, the control of polygamy, prevention of child (underage) marriage and the like. Fourth, from the language perspective, the meaning of the word “and” in article 2 paragraph (1) of Law No. 1 of 1974, according to Soenarto Soerobroto, is cumulative in nature. To affirm, according to article 2 (1) Law No. 1 of 1974, a marriage is only valid if it fulfills two conditions: religious law and belief. This suggests that if marriage is carried out according to one’s religion only, the marriage is not valid yet. In line with the contents of Article 2, the marriage procedures include registration of marriage. The Government Regulation No. 9 of 1975 generally applies to Muslims and is associated with Law no. 22 of 1946 (applies throughout Indonesia along with Law No. 32 of 1954), and for other religions, the ordinance on civil registration applies.

Fifth, according to Saidus, there are several articles that explicitly support other opinions, for example, the contents of the Government Regulation No. 9 of 1975, article 10 paragraph (3), which states: “With due observance of the procedures for marriage according to each of the laws of religion and belief, the marriage shall be carried out in front of a Registrar and attended by two witnesses.” Therefore, the best way to implement the articles in Law <http://jurnal.arraniry.ac.id/index.php/samarah>

no. 1 of 1974, especially concerning prevention and others, is by changing the substance (essence) of Law No.1 of 1974, not only the procedures. This can help manifest the objectives and effectiveness of Law no. 1 of 1974 concerning the permission and prevention of marriage, as well as the interpretation of its validity.

Ahmad Safwat, an Egyptian scholar, agrees toward the registration of marriage based on the premise that there are laws that require certain behavior, and such laws should not change unless only with changes can the legal objectives be achieved efficiently. This implies that if there is a more efficient way to achieve a goal, that particular way will take precedence. According to Ahmad Safwat, the presence of witnesses during a marriage ceremony is intended as an announcement to the public. If there is a better or more satisfying alternative to achieve such intention, having witnesses can be replaced by official registration of marriage. In other words, Safwat considers marriage registration as a substitute for the presence of witnesses, a condition that must be fulfilled for the validity of the marriage pledge.¹¹ Abu Zahrah also notes that all *fiqh* scholars at all times agree that the ultimate goal of having marriage witnesses is for the announcement (*i'lan wa shahr*) to the community about the existence of a marriage.¹²

In today's modern context, marriage registration is highly urgent and cannot be negotiated because it aims to distinguish between lawful and unlawful marriages. The basis for this determination is the words of the Prophet which states a marriage be attended by witnesses. The witnesses are present at the time of carrying out the marriage pledge.

Quraish Shihab states that all Muslim scholars agree on the prohibition of keeping marriage a secret, as the Prophet requires people to announce marriage news. Shihab also says that in the context of Indonesia, those who conduct unregistered marriages commit sins for themselves since they violate the provisions set by the government and the House of Representatives (*ulil amri*). The

¹¹ Abd Shomad, *Hukum Islam Penormaan Prinsip Syariah Dalam Hukum Indonesia*, (Jakarta: Kencana Prenada Media Group, 2012).

¹² Khoiruddin Nasution, *Hukum Perdata (Keluarga) Islam Indonesia, dan Perbandingan Hukum Perkawinan di Dunia Muslim*, (Yogyakarta: Tazzafa Academia, 2009).

Qur'an already commands Muslims to obey *ulil amri as* long as it does not conflict with the laws of Allah. In this case, the regulation to register marriages does not contradict Allah's laws, rather it is in line with the spirit of the Qur'an.¹³

The reviewers of Islamic laws recognize that marriage registration has a very important position, especially to ensure legal order and certainty for the community. This also includes the rights of community members with new families, such as the right to avoid the possibility of making slander on spouses. For example, slander may arise when a member of the community sees a man and woman walking together and even holding hands.

Marriage registration aims to create marital order in the society, either for marriages carried out based on Islamic law or not. Marriage registration is an effort to maintain the sanctity of *mithaqun ghalithun* of legal aspects that arise as a result of marriage. The registration is manifested in a copy of a Marriage Certificate, each owned by the wife and husband. The certificate can be used by each party if any party feels that they have suffered losses from the marriage bond to fight for their rights. Law No. 1 of 1974 is a new era for the interests of Muslims in particular and Indonesian society in general. The law is a national codification and unification of marriage law which places Islamic law into its own existence, without being interfered by customary law.¹⁴

For people who keep their marriages a secret, they are deeply criticized and are not in accordance with the *maqashid sharia* (objectives of Islamic law). Marriages that are not registered are called *nikah sirri* (secret marriage). According to the Compilation of Islamic Law, *nikah sirri* has no legal force and is categorized as an illicit marriage in the form of a compassionate marriage or cohabitation. Unregistered marriage and child marriage often end with domestic violence which ultimately causes women to become victims in marriage.¹⁵

¹³ M. Quraish Shihab, *Wawasan Alquran Tafsir Maudhu'i atas Pelbagai Persoalan Umat*, (Bandung: Mizan, 1996).

¹⁴ Zainuddin Ali, *Hukum Perdata Islam di Indonesia*, (Jakarta, Sinar Grafika, 2007).

¹⁵ Interview with BM, Public figure in Gayo Luyes, February, 20 2020. <http://jurnal.arraniry.ac.id/index.php/samarah>

The Negative Impacts of *nikah sirri* to Women and Children

When a marriage does not have any legal force, the wife, the husband, and the children will not have a clear status before law and society. Additionally, other effects emerge including there will be slander against the couple because their marriage is unknown or because they do not have strong proof of marriage. It is also difficult to take care of children's needs, especially related to education, because these children do not have a certificate. If the husband dies, the wife will find it hard to claim her right to inherit, as well as the children, and vice versa. If divorce occurs, it will also be difficult for the wife to get her part of property. If there is a dispute, the wife or husband cannot process it legally. When there are husbands who act arbitrarily against their wives, the wives cannot sue them through legal channels. In unregistered marriage, women tend to be less valued because the husbands can easily leave their wives by pronouncing divorce without the need to take care of it legally.

The function of marriage registration from the perspective of the institution is:

1. To realize legal certainty
2. To establish legal order in the form of evidence or legal benefits (justice utility)
3. To facilitate government activities in the population sector
4. To create a harmonious legal life in the society or to create legal justice.¹⁶

Further, the benefits of marriage registration according to statutory regulations are:

1. Protecting the rights of both husband and wife as well as children and other family members in terms of lineage, income, inheritance, and others. The marriage certificate is an authentic proof that cannot be sued for rights;
2. Resolving disputes between husband and wife or their guardians in disputes. The existence of a marriage certificate is an authentic proof of a marriage;
3. Being a long-lived proof as notes and writings will last a long time, and so even if the owner of the signature on an important note has passed away, the note will still be usable

1

¹⁶ Victor Situmorang, *Aspek Hukum Akta Catatan Sipil Di Indonesia*. (Bandung: Sinar Grafika, 1991).

<http://jurnal.arraniry.ac.id/index.php/samarah>

at any time. Moreover, in Islam, records can be used as a legal basis for proof;

4. Protecting a marriage from being unauthorized, as some of the terms and conditions of marriage and its barriers will be examined first; and
5. Preventing false confessions in court, where it is possible for some ill-intentioned people to commit fraud by admitting to marrying a woman in order to overthrow their opponents and defame them with false witnesses.¹⁷

Early age marriage is prone to having problematic issues, in which spouses often do not understand their respective roles and are not aware of the meaning of marriage and how the relationship of husband and wife should be. The husband as the head of the household should protect and protect his wife well, and works to earn a living as the breadwinner of the family. However, in the case of child marriage, it is the wife who often works to support the families as the couple do not understand the purpose of marriage.

Adolescents who elope or carry out early age marriages often fight during married life because both parties do not understand their roles properly. This phenomenon happens due to the low level of religious education and the influence of the environment.¹⁸ Hasanah argues that one factor that causes married couples to divorce include unqualified early age marriages, in which on average those who have child marriages are underage children who are still in junior high and high school.¹⁹ As a consequence of their young age and vulnerability, both parties experience domestic conflicts due to their lack of understanding of marriage and their duties and responsibilities in the household life.

Conclusions

Marriage registration aims to create marital order in the society regardless of whether or not marriages are carried out based on Islamic law. Marriage registration is an effort to maintain the

¹⁷Yusuf bin Ahmad ad Darwuyis, *az Zawaj al 'Urf* (KSA: Darul Ashimah, 1st Ed., 1426 H).

¹⁸Interview with AM, Public Figure in Gayo Luwes, on April 22, 2019.

¹⁹Ferra Hasanah, *Istri Yang Bekerja Dan Hubungannya Terhadap Peningkatan Angka Perceraian di Mahkamah Syar'iyah Blangkejeren: Studi kasus Tahun 2015-2017*, (Banda Aceh: Skripsi, 2019).

<http://jurnal.arraniry.ac.id/index.php/samarah>

solemn covenant of legal aspects that arise as a result of marriage. For those who keep their marriages a secret, they are deeply criticized and are not in accordance with the objectives of Islamic law. Marriages that are not registered are called *nikah sirri* which has no legal force. Such a marriage is categorized as an illicit marriage in the form of a compassionate marriage or cohabitation.

1

References

Book

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

Ahmad Rofiq, *Hukum Islam di Indonesia*, Jakarta: Rajawali Pers., 1995.

Amir Syarifuddin, *Garis-Garis Besar Fiqh*, Jakarta: Kencana, 2003.

Amiur Nurdin dan Azhari Tarigan, *Hukum Perdata Islam di Indonesia*, Jakarta: Kencana Prenada Media Group, 2012.

Atho Mudzhar dan Khoiruddin Nasution, *Hukum Keluarga di Dunia Islam Modern: Studi Perbandingan dan Keberlanjutan UU Modern dari Kitab-Kitab Fiqh*, Jakarta: Ciputat Press, 2003.

Dwi Arini Zubaidah, Pencatatan Perkawinan Sebagai Perlindungan Hukum dalam Perspektif Maqashid al-Syar'iyah, *Jurnal al-Ahwal*, Vol. 12. No. 1 2016.

Ferra Hasanah, *Istri Yang Bekerja Dan Hubungannya Terhadap Peningkatan Angka Perceraian di Mahkamah Syar'iyah Blangkejeren: Studi kasus Tahun 2015-2017*, (Banda Aceh: Skripsi, 2019).

Instruksi Presiden No. 1 tahun 1991 tentang Kompilasi Hukum Islam

Khoiruddin Nasution, *Hukum Perdata (Keluarga) Islam Indonesia, dan Perbandingan Hukum Perkawinan di Dunia Muslim*, Yogyakarta: Tazzafa Academia, 2009.

M. Quraish Shihab, *Wawasan Alquran Tafsir Maudhu'i atas Pelbagai Persoalan Umat*, Bandung: Mizan, 1996.

Moh. Makmun dan Bakhtiar Bagus Pribadi, Efektivitas Pencatatan Perkawinan di Kantor Urusan Agama Kecamatan Tembelang Kabupaten Jombang, *Jurnal Hukum Keluarga Islam*, Vol. 1, No. 1 April 2016.

<http://jurnal.arraniry.ac.id/index.php/samarah>

Undang-Undang No. 1 Tahun 1974 tentang Perkawinan.

Undang-undang No. 32 Tahun 1954 tentang Penetapan Berlakunya
Undang-Undang Nomor 22 tahun 1964.

Undang-undang No.22 Tahun 1946 tentang Pencatatan Nikah,
Talak, dan Rujuk

Victor Situmorang, *Aspek Hukum Akta Catatan Sipil Di Indonesia*,
Bandung: Sinar Grafika, 1991.

Yusuf bin Ahmad ad Darwuyis, *az Zawaj al 'Urf*, KSA: Darul
Ashimah, 1st Ed., 1426 H.

Zainuddin Ali, *Hukum Perdata Islam di Indonesia*, Jakarta, Sinar
Grafika, 2007.

Interviews

Interview with AS, Headmaster of MAN (Islamic Senior High
School) Belangkjeren in Gayo Lues District, February 19,
2020.

Interview with AM, Public Figure in Gayo Luwes, on April 22,
2019.

Interview with BM, Public figure in Gayo Luyes, February, 20
2020.

Urgency_of_Marriage_Registration.pdf

ORIGINALITY REPORT

15%

SIMILARITY INDEX

15%

INTERNET SOURCES

5%

PUBLICATIONS

5%

STUDENT PAPERS

PRIMARY SOURCES

1	jurnal.ar-raniry.ac.id Internet Source	9%
2	journal.fh.unsri.ac.id Internet Source	3%
3	pasca.unhas.ac.id Internet Source	1%
4	www.jurnal-umbuton.ac.id Internet Source	1%
5	M. Bahtiar Tahir, Sahabuddin Sahabuddin, Marzuki Marzuki. "Juridical Review on Confirmation of Unregistered Marriage (A Case Study of Palu Religious Court)", INTERNATIONAL JOURNAL OF CONTEMPORARY ISLAMIC LAW AND SOCIETY, 2019 Publication	1%
6	ejournal.iainbengkulu.ac.id Internet Source	1%

Exclude quotes On

Exclude matches < 1%

Exclude bibliography On