

**THE OPINIONS OF THE HEADS OF KANTOR URUSAN AGAMA  
KOTA MALANG ON MARRIAGE REGISTRATION OUTSIDE  
THE AUTHORIZED LOCATION IN THE PERSPECTIVE OF MASLAHAH**

**THESIS**

**By :**

**Muhammad Rizal Agus Setiawan**

**NIM 14210084**



**ISLAMIC FAMILY LAW (AHWAL SYAKHSHIYYAH) DEPARTMENT**

**SHARIA FACULTY**

**UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM**

**MALANG**

**2018**

## STATEMENT OF THE AUTHENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

### **THE OPINIONS OF THE HEADS OF KANTOR URUSAN AGAMA KOTA MALANG ON MARRIAGE REGISTRATION OUTSIDE THE AUTHORIZED LOCATION IN THE PERSPECTIVE OF MASLAHAH**

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 07<sup>th</sup> of May 2018

Author,



Muhammad Rizal Agus Setiawan  
NIM 14210084

**LEGITIMATION SHEET**

The Thesis Board of Examiners state that Muhammad Rizal Agus Setiawan, NIM 14210084, student of the Islamic Family Law (Ahwal Syakhshiyah) Department, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim of Malang, his thesis entitled:

**THE OPINIONS OF THE HEADS OF KANTOR URUSAN AGAMA KOTA MALANG ON MARRIAGE REGISTRATION OUTSIDE THE AUTHORIZED LOCATION IN THE PERSPECTIVE OF MASLAHAH**

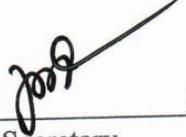
has passed and certified with grade A

Board of Examiners:

1. Erik Sabti Rahmawati, M.A., M.Ag  
NIP. 19751108 200901 2 003

  
Chairman

2. Dra. Jundiani, S.H, M.Hum  
NIP. 196504904 199903 2 001

  
Secretary

3. Dr. Sudirman, M.A  
NIP. 19770822 200501 1 003

  
Main Examiner

Malang, 31<sup>th</sup> of May 2018



Dean,

Dr. H. Saifullah, S.H, M.Hum  
NIP 196512052000031001

**APPROVAL SHEET**

After examining and verifying the thesis of Muhammad Rizal Agus Setiawan, NIM 14210084, Islamic Family Law (Al-Ahwal Al-Syakhshiyah), Department of the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim of Malang entitled:

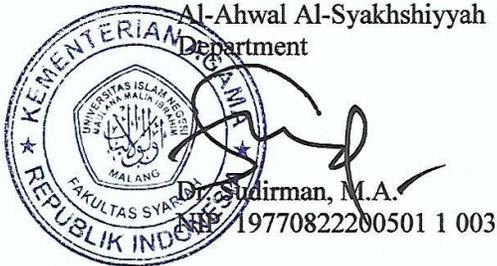
**THE OPINIONS OF THE HEADS OF KANTOR URUSAN AGAMA KOTA MALANG ON MARRIAGE REGISTRATION OUTSIDE THE AUTHORIZED LOCATION IN THE PERSPECTIVE OF MASLAHAH**

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

Malang, 05<sup>th</sup> of May 2018

Acknowledged by,  
The Head of  
Al-Ahwal Al-Syakhshiyah  
Department

Supervisor,

  
Dr. Sudirman, M.A.  
NIP. 19770822200501 1 003

  
Dra. Jundiani, SH., M.Hum  
NIP. 19650904 199903 2 001

## MOTTO

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا  
يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ  
مِنْهُ شَيْئًا فَإِن كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ  
وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِن لَّمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَن  
تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْمَؤُوا أَن تَكْتُبُوهُ  
صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا أَن تَكُونَ تِجَارَةً  
حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا  
شَهِيدٌ وَإِن تَفَعَّلُوا فإِنَّهُ فُسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ (البقرة: 282)

*“O believers! When you deal with each other in lending for a fixed period of time, put it in writing. Let a scribe write it down with justice between the parties. The scribe, who is given the gift of literacy by Allah, should not refuse to write; he is under obligation to write. Let him who incurs the liability (debtor) dictate, fearing Allah his Rabb and not diminishing anything from the settlement. If the borrower is mentally unsound or weak or is unable to dictate himself, let the guardian of his interests dictate for him with justice. Let two witnesses from among you bear witness to all such documents, if two men cannot be found, then one man and two women of your choice should bear witness, so that if one of the women forgets anything the other may remind her. The witnesses must not refuse when they are called upon to do so. You must not be averse to writing (your contract) for a future period, whether it is a small matter or big. This action is more just for you in the sight of Allah, because it facilitates the establishment of evidence and is the best way to remove all doubts; but if it is a common commercial transaction concluded on the spot among yourselves, there is no blame on you if you do not put it in writing. You should have witnesses when you make commercial transactions. Let no harm be done to the scribe or witnesses; and if you do so, you shall be guilty of transgression. Fear Allah; it is Allah that teaches you and Allah has knowledge of everything(Q.S Al-Baqarah (2:282) .”*

## ACKNOWLEDGMENT

All praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His grace and guidance, this thesis entitled **“The Opinions of the Heads of Kantor Urusan Agama Kota Malang On Marriage Registration Outside the Authorized Location In the Perspective of Maslahah”** could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from the darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day in Judgement. Amin.

With all the supports and help, discussions, guidance and directions from all parties involved during the process of completing this thesis, the author wishes to express his utmost gratitude to the following :

1. Prof. Dr. Abdul Haris, M.Ag. as the Rector of The State Islamic University Maulana Malik Ibrahim Malang.
2. Dr. H. Saifullah, S.H, M.Hum., as the Dean of The Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim Malang.
3. Dr. Sudirman, M.A., as the Head of Al-Ahwal Al-Syakhshiyah Department of the Sharia Faculty, The State Islamic University Maulana Malik Ibrahim of Malang.
4. Erik Sabti Rahmawati, M.A., as the Chairman and Dra. Jundiani, S.H, M.Hum., as the Secretary and Dr. Sudirman, M.A., as the Main Examiner. Thank you very much for the opportunity that has been given the author, so the author can convey/deliver the results of my research.
5. Dra. Jundiani, S.H, M.Hum., as the thesis supervisor. The writer express her gratitude for the guidance, suggestion and directional motivation were given with sincere and patient attention, therefore, this thesis can be completed into its present form May Allah (SWT) shower her and her family with His blessings.
6. Dr. Fadil Sj M.Ag. as my gurdian lecturer during I study at Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang.
7. All my teachers of Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang for their flowing knowledge and valuable experiences.

8. My beloved Father and Mother, who have given me chance to get adequate education, love, material, and spiritual support, also endless praying until I am able to complete my study excellently.
9. Thanks a lot to all thoses whom I can't mention one by one who has assisted me in the process until the completion of this research.

Hopefully, by imparting what has been learned during the course of study in the Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang, it will benefit all readers and the researcher herself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive critics and suggestion for the improvement and betterment of this thesis.

Malang, 07<sup>th</sup> of May 2018

Author,



Muhammad Rizal Agus Setiawan  
NIM 14210084

## TRANSLITERATION GUIDANCE

### A. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	‘
ث	Ts	غ	Gh
ج	J	ف	F
خ	H	ق	Q
ح	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	وْ	H
ش	Sy	ء	‘
ص	Sh	ي	Y
ض	Dl		

### B. Vocal, Long-pronounce and Diphthong

Vocal *fathah* = A

Vocal *kasrah* = I

Vocal *dlommah* = U

Long-vocal (a) = Â e.g. قال became Qâla

Long-vocal (i) = Î e.g. قيل become Qîla

Long-vocal (u) = Û e.g. دون become Dûna

Diphthong (aw) = و e.g. قول become Qawlun

Diphthong (ay) = ي e.g. خير become Khayrun

### C. Ta' Marbûthah

*Ta' marbûthah* transliterated as “t” in the middle of word, but if *Ta' marbûthah* in the end of word, it transliterated as “h” e.g. الرسالة للم دراسة become *al-risalat li al-mudarrisah*, or in the standing among two word that in the form of *mudlaf* and *mudlaf ilayh*, it transliterated as t and connected to the next word, e.g. فى رحمة الله become *fi rahmatillâh*.

### D. Auxiliary Verb and Lafdh al-Jalalah

Auxiliary verb “al” ( ال ) written with lowercase form, except if it located it the first position, and “al” in *lafadh jalâlâh* which located in the middle of two word or being or become *idhâfah*, it remove from writing.

- a. Al-Imâm al-Bukhâriy said ...
- b. Al-Bukhâriy in muqaddimah of his book said ...
- c. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*

**TABLE OF CONTENT**

FRONT COVER .....	
TITLE SHEET .....	i
STATEMENT OF THE AUTHENTICITY .....	ii
LEGITIMATION SHEET .....	iii
APPROVAL SHEET .....	iv
MOTTO .....	v
ACKNOWLEDGEMENT .....	vi
TRANSLITERATION GUIDENCE .....	viii
TABLE OF CONTENT .....	x
ABSTRACT .....	xiii
CHAPTER I : INTRODUCTION.....	1
A. Background Of Research .....	1
B. Scope of Problem .....	6
C. Statement of Problem .....	7
D. Objective of Research .....	7
E. Significant of Research .....	7
F. Operational Definition .....	8
G. Discussion Structure .....	8
CHAPTER II : LITERATURE REVIEW.....	11
A. Previous Research .....	11
B. Literature Review .....	14

CHAPTER III: RESEARCH METHOD .....	36
A. Types of Research .....	36
B. Research Approach .....	36
C. Research Sites .....	37
D. Types and Data Sources .....	37
E. Method of Collecting Data.....	39
F. Data Processing Method.....	40
CHAPTER IV: FINDINGS AND DISCUSSION .....	42
A. Overview of Research Focus .....	42
B. Data Exposure and Analysis .....	43
CHAPTER V: CONCLUSIONS AND SUGGESTIONS .....	62
A. Conclusions .....	62
B. Suggestions .....	63
BIBLIOGRAPHY .....	65
THE LIST OF INTERVIEW.....	68
APPENDIXES .....	69
CONSULTATION PROOF.....	75

## ABSTRAK

Muhammad Rizal Agus Setiawan, 14210084, **Pendapat Kepala Kantor Urusan Agama Kota Malang Terhadap Pencatatan Perkawinan di Luar Wilayah Kewenangan**, Skripsi, Jurusan Al-Ahwal Al-Syakhshiyah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing: Dra. Jundiani, S.H, M.Hum

**Kata Kunci:** Kantor Urusan Agama, *Maslahah*, Pencatatan Perkawinan, Pendapat

Surat edaran Dirjen Bimas Islam Nomor: DJ.II.2/1/HM.01/942/2009 perihal Asas Pencatatan Perkawinan, penegasan Pasal 17 PMA No. 11 Tahun 2007. PPN tidak boleh mencatat pernikahan di luar wilayah hukumnya, karena asas pencatatan adalah menganut asas tempat terjadinya peristiwa bukan domisili. Akad nikah merupakan peristiwa yang utama di dalam pencatatan perkawinan. Di kota malang pernah terjadi pernikahan di Masjid Jami' dihadiri pejabat KUA Kedung Kandang. Terkait wilayah Masjid Jami' masuk wilayah Kecamatan Klojen. Peraturan dibuat agar memberikan kemaslahatan. Terutama bagi KUA sebagai pelaksana keputusan dirjen tersebut, dengan menggali pendapat Kepala KUA dengan tinjauan *maslahah*.

Penelitian ini bertujuan mendeskripsikan dan menganalisis pendapat, adanya asas pencatatan perkawinan, dan pendapat Kepala KUA Kota Malang terhadap pencatatan perkawinan di luar wilayah kewenangan ditinjau dari *maslahah*.

Jenis Penelitian ini adalah yuridis empiris dengan pendekatan yuridis sosiologis. Data primer merupakan data yang diperoleh dengan wawancara dari pendapat Kepala KUA terkait asas pencatatan perkawinan. Data di olah dan dianalisis dengan menggunakan perspektif *maslahah* terkait dengan adanya pencatatan perkawinan di luar wilayah kewenangan.

Hasil penelitian disimpulkan bahwa pencatatan perkawinan di luar dari wilayah kewenangan boleh asal rukun dan syarat perkawinan terpenuhi. Kepala KUA menjadi wali hakim karena berhubungan langsung dengan wilayah dan ada ikrar wali hakim merujuk pada kitab *I'anatu Tholibin*. Terkait pencatatan perkawinan dilihat dari pendapat kepala KUA merupakan *maslahat tahsiniyat* yang jika dilakukan akan lebih memberi kebaikan bagi penghulu, sebagai pejabat yang menghadiri pelaksanaan akad pernikahan yang merupakan pokok dari pencatatan perkawinan.

### ABSTRACT

Muhammad Rizal Agus Setiawan. 14210084. **The Opinions of the Heads of Kantor Urusan Agama Kota Malang on Marriage Registration Outside the Authorized Location In the Perspective of Maslahah.** Thesis. Al-Ahwal Al-Syakhshiyah Department, Sharia Faculty, Maulana Malik Ibrahim Islamic State University, Malang, Supervisor: Dra. Jundiani, S.H, M.Hum.

**Key Words:** Kantor Urusan Agama, Maslahah, Marriage Registration, Opinion

The Circular Letter of the Director General for Guidance of Islamic Community (Dirjen Bimas) Number: DJ.II.2/1/HM.01/942/2009 concerning the principles of marriage registration, the affirmation of Article 17 PMA Number 11 of the Year 2007 states that marriage registrar (PPN) should not record a marriage outside the area of his authorized location because the principle of registration is to adhere the principle of place where the ceremony is conducted, not the area of residence. A ceremony of performing marriage agreement is a major event in marriage registration. In Malang city, some people usually conduct it at Masjid Jami', which is in the area of Klojen, attended by KUA officials (*penghulu*) of other than Klojen such as Kedung Kandang. It complicates the KUA officials and society, while rules are made to bring benefits, especially for KUA, as the implementer of Director General's decision. Thus, the researcher is interested in examining the opinions of the heads of KUA Kota Malang on marriage registration outside the authorized location viewed from *maslahah*.

This study aims to describe and analyze the opinions of the Head of KUA Kota Malang on the principle of marriage registration in the perspective of benefit (*maslahah*) having the fact that marriage registration is somehow, even it is common, conducted outside his area of authorized.

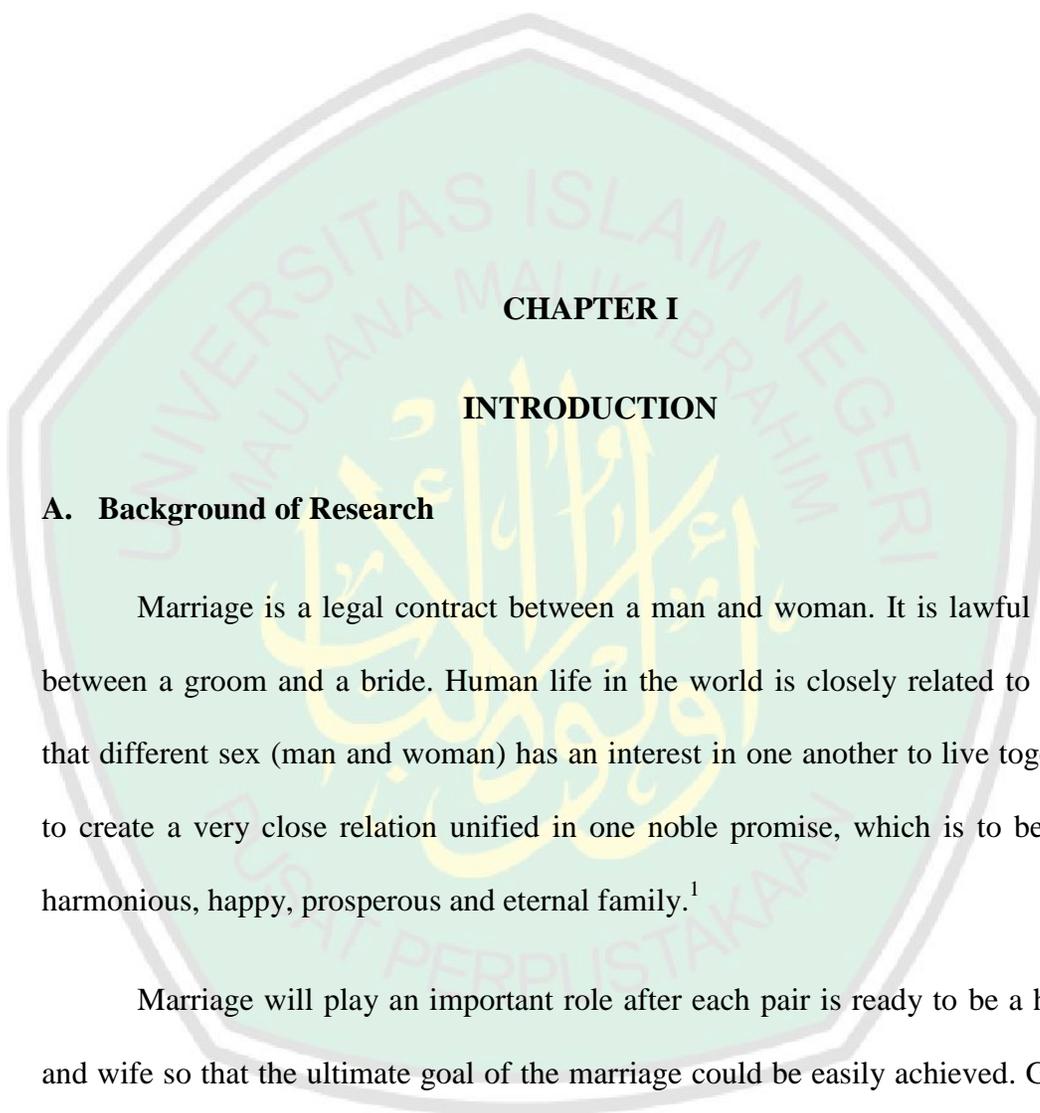
The type of this research is empirical juridical with sociological juridical approach. The primary data are obtained through interviews with the Head of KUA related to the marriage registration. The data are analyzed under the perspective of *mashlahah*.

The results of the research conclude that marriage registration outside the area of the official authorized is allowed as long as the pillars and requirements of the marriage are well-fulfilled. However, it is not allowed for the magistrate guardian (*wali hakim*) because he to do with the area of residence and a Pledge of Magistrate Guardian based on the book of *I'anatu Tholibin*. Marriage registration, according to the head of KUA, brings *maslahat tahsiniyat*. It means that the implementation of the principle brings more benefit for the time efficiency of the headman because he does not need to go too far out of his area of jurisdiction to attend the ceremony of marriage agreement.

## ملخص البحث

محمد رجال اغوس سوتياوان، 14210084، رأي رئس مكتب الشؤون الدينية مالانج عن  
تسجيل النكاح خارج الولايته منظور من النظرية المصلحة، بحث العلم، قسم الأحوال  
الشخصية، الكلية الشريعة، الجامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج،  
المشرفة: جونيديان الماجستير.

**الكلمات الأساسية:** مكتب الشؤون الدينية، المصلحة، تسجيل النكاح، الرأي.  
أكد نشرة ديرجن بيماس الإسلام رقم: 2/1. DJ.II. HM. :01/942/2009 عن  
التسجيل، التوكد في الفصل 17 رقم 11 PMA العام 2007. موظف تسجيل النكاح لا يجوز  
ان يسجل النكاح في خروج ولاية حكمه، لأن أساس التسجيل النكاح هو يرى أنه مكان النكاح  
ليس مسكن الشخص. عقد النكاح هو أهم أمور في تسجيل النكاح. وقد وقع عقد النكاح في  
المسجد الجامع وموظف التسجيل النكاح من مكتب الشؤون الدينية كدونغ كاندانغ. وولاية  
المسجد الجامع دخلت ولاية كلوجن. وصنع النظام مصلحة، لا سيما لمكتب الشؤون الدينية يكون  
أداء قر الديرجن ذلك، حفر رأي رئس مكتب الشؤون الدينية الذي منظور من النظرية المصلحة.  
والهدف لهذا البحث وصف وتحليل الرأي، كانه تسجيل النكاح في الخروج من ولاية  
حكمه، رأي رئس مكتب الشؤون الدينية مالانج على أساس تسجيل النكاح منظور من النظرية  
المصلحة.  
و نوع هذا البحث هو الحكم التجريبي بمدخل الحكم الإجتماع . البيانات الرئيسية هي  
نتيجة المقابلة بالرئس مكتب الشؤون الدينية ارتباط باساس تسجيل النكاح . و تحليل البيانات  
باستعمال النظرية المصلحة ارتباط بموجوده اساس تسجيل النكاح.  
نتيجة البحث هي أن أساس تسجيل النكاح في الخارج من ولاية الحكم جائز عندما يقام  
الشرط و ركن النكاح . إلا ولي الحاكم لأن عنده علاقة المباشرة بالولاية و يجد لإقرار كما في  
كتاب أعانة الطالبين . وان أساس تسجيل النكاح عند رأي رئس مكتب الشؤون الدينية هو النظام  
مصلحة تاحسينيات التي إذا فعل يعطي الخير للموظف، كالموظف الذي يحضر في عقد النكاح  
من أساس تسجيل النكاح.



## CHAPTER I

### INTRODUCTION

#### A. Background of Research

Marriage is a legal contract between a man and woman. It is lawful relation between a groom and a bride. Human life in the world is closely related to the fact that different sex (man and woman) has an interest in one another to live together or to create a very close relation unified in one noble promise, which is to be in one harmonious, happy, prosperous and eternal family.<sup>1</sup>

Marriage will play an important role after each pair is ready to be a husband and wife so that the ultimate goal of the marriage could be easily achieved. God will not create human like other creatures who live without any boundaries following his desire and having intercourse between male and female freely without rules. Allah

---

<sup>1</sup> Sution Usman Adji, *Kawin Lari dan Kawin Antar Agama*, (Yogyakarta: Liberty, 2002), 19.

provides the appropriate guidance of the sharia to guarantee the honor and prestige of human beings. Allah stated in QS. Ar-Ruum [30:21]:

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

*“And of His signs, another one is that, He created for you mates from among yourselves that you may find comfort with them, and He planted love and kindness in your hearts; surely there are signs in this for those who think about it.”*

In regulation to the above explanation, the Law Number 1 of the year 1974 on Marriage Article 2 states that “marriage is lawful when entered in accordance with the laws of the representative religions and believes of the parties”. The word ‘lawful’ means justified in accordance with the law applied. If the marriage is not conducted according to the law, it is not valid. Thus, when a marriage is not conducted based on the law number 1 of the year 1974, it is not officially valid according to the legislation, and it is also not valid according to religion.<sup>2</sup> Thus, every marriage should be registered. Marriage registration is similar to the record of important events on a

<sup>2</sup> Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut: Perundangan, Hukum Adat, Hukum Agama*, (Bandung: CV Mandar Maju, 2007), 25.

person's life, such as birth and death recorded in the certificate or official document which is also listed in the registration list.<sup>3</sup>

Kantor Urusan Agama (KUA) is a place to monitor and register all activities related to marriage, divorce, and reconciliation. This is stated in Law number 22 of the year 1946 on the Marriage Registration, Divorce, and Reconciliation. Basically, KUA aims at managing the administration of marriage, divorce, and reconciliation to support the Muslim's marriage in Indonesia, because Indonesia is a country with the largest Muslim community in the world. KUA will facilitate and ease the access towards marriage administratively.

KUA has its own division for marriage administration which deals with marriage registration. In addition to Law number 22 of the year 1946, marriage registration is also regulated in PMA number 11 of the year 2007. It becomes the policy of the Minister of Religious Affairs which explains the procedure of marriage registration.

A regulation is created to ease the stake holders in the implementation of the law, so that the administration process can be well and smoothly performed. Marriage registration is urgently required to create the marital administrative system because it is now badly needed.

---

<sup>3</sup> Sudarsono, *Hukum Perkawinan Nasional*, (Jakarta: PT Rineka Cipta, 2005), 8.

The most important issue in marriage registration and its validity is marriage agreement. Marriage agreement in PMA number 11 of the year 2007 is also regulated. The regulations are mentioned in Chapter IX on the Marriage Agreement. Article 17 paragraph (1) states that the ceremony of the marriage is held in front of the marriage registrar (PPN) or headman (*Penghulu*), or the marriage registrar assistant of the wife candidate's place of residence. Paragraph (2) mentions that “if the marriage agreement is to be conducted beyond the provisions in paragraph (1), the prospective wife or guardian shall inform the PPN of her place of residence to obtain a recommendation letter of marriage.

In Malang, people usually carry out marriage agreement outside KUA office. The urban community tends to choose a place which is representative and conducive to the guests for either process of conducting marriage agreement or for wedding reception. Holiday is also commonly chosen for the effectiveness of conducting the marriage agreement. The favorite places for the process of marriage agreement are usually mosques, buildings, and hotels. However, there are particular areas in Malang that do not have or rarely have the favorite places to hold the marriage agreement ceremony, that they usually do the marriage agreement outside their region of residence when marriage registration is done.

In particular cases, some people hold the marriage agreement outside the KUA of the couple's district of residence where they register the marriage. This registration is usually done in a large mosque in Malang, such as Jami' Mosque

Malang, Klojen. So, sometimes a KUA from the residence other than KUA near the mosque carries out the contract in that mosque. For example, on January 3<sup>rd</sup>, 2018, a ceremony of marriage agreement was conducted and attended by KUA Kedung Kandang officials.<sup>4</sup> Similar case, a process of marriage agreement held outside the authorized location, also occurred in the KUA of Blimbing sub-district. According to the Head of KUA Sub-district of Blimbing, the marriage agreement was conducted in Fathurrachman Mosque because it is close to the reception area at UMM Dome which is the Sub-district of Dau while the couple registered the marriage in Sub-district of Blimbing.<sup>5</sup>

The chapter explaining the marriage agreement affirms that the contract may be held beyond the provisions. This provision is clarified by the circular letter of the Director General for Guidance of Islamic Community (Dirjen Bimas Islam) Number: DJ.II.2 / 1 / HM.01 / 942/2009 about the Principles of marriage registration in point 1 and 2, Article 17 PMA No. 11 year 2007. The further explanation of the principle of marriage registration in Point 3 and 4 states that marriage registrars may not record the marriage outside their authorized location. It is due to the fact that the principle of registration is to adhere to the principle of the place where the event occurs, not based on the place of residence. Moreover, what is not allowed from conducting a marriage registration is that registration beyond the jurisdiction such as registration process abroad (in Saudi Arabia with marriage registrar from Indonesian).

---

<sup>4</sup> Lukman (*Takmir Jami' Mosque*), *Interview*, (Malang, January 8 2018)

<sup>5</sup> Abdul Afif, *Interview*, (Malang, February 11 2018).

Every rule is certainly expected to bring good benefits from the aspect of the officer (KUA Employee) and the prospective bridegroom. It aims to give a good impact (*maslahah*) which is making the implementation easy. However, the regulations issued by the Director General for Guidance of Islamic Community seem to provide uncertainty upon its application, and it is not fully adjusted with the condition of the general public. It is related to PMA Number 11 of the Year 2007 Article 21 paragraph (1) which states that “Marriage agreement is executed in KUA” and paragraph (2) “At the request of the bride and the approval of PPN, the marriage agreement may be executed outside KUA”. This article gives freedom to PPN, but the release of a circular letter of the Director General for Guidance of Islamic Community on the principle of marriage registration causes difficulties in the application of marriage registration and the process of performing marriage agreement. Therefore, the researcher is interested in investigating the opinion of the heads of KUA as a PPN officer related to the review of marriage registration outside the authorized. Moreover, the main registration of a marriage is the time when the marriage agreement is performed.

### **B. Scope of Problem**

The researcher limits this research on the opinions of heads of KUA Kota Malang on the issued marriage registration outside the authorized. This limitation is intended to make sure that the discussion focuses on the research problem.

### C. Statement of Problem

The research problem will clarify the background exposed with the following research questions:

1. What are the opinions of the heads of Kantor Urusan Agama Kota Malang on the principle of marriage registration?
2. How are the opinions of the heads of Kantor Urusan Agama Kota Malang on marriage registration outside the authorized location viewed from *masalah*?

### D. Objective of Research

The current study, based on the explanation of the problem, aims to:

1. To describe and analyze the opinions of the heads of Kantor Urusan Agama Kota Malang on the principles of marriage registration.
2. To describe and analyze the opinions of the heads of Kantor Urusan Agama Kota Malang on marriage registration outside the authorized location viewed from *masalah*.

### E. Significant of Research

It is expected that the result of the current research can academically contribute to the enrichment of theories in *Al-Ahwal Al-Syakhsiyyah*. It aims to develop the related theories, especially about the opinions of heads of KUA on the marriage registration in Indonesian. In addition to enriching scientific knowledge on

marriage registration, this study might be made as an additional source of reference to further examine the marriage registration.

## F. Operational Definition

**Opinion:** a thought or an estimation of somebody related to particular thing. It is a conclusion (after making consideration, investigation, etc.).<sup>6</sup>

**Marriage Registration:** The process of marriage administration handled by the marriage registrar for the sake of law enforcement.<sup>7</sup>

**Authorized:** Authorities in enforcing the ruling area.<sup>8</sup>

**Maslahah:** a benefit which is in line with the goal of *Sharia 'Al-Islami* (Allah SWT), but there is no specific instruction that admits or rejects it.<sup>9</sup>

## G. Discussion Structure

This section describes the writing system of the current research as follow:

Chapter I contains introduction which includes introduction, research background, research questions, and research significance. It explains the issues to be discussed and examined in the current research. The research background which provides the detail of the problem is also provided in the introduction. The purpose of

<sup>6</sup> <https://kbbi.web.id/pendapat>, accessed date, March 5, 2018.

<sup>7</sup> <http://estyindra.weebly.com/mkn-journal/pencatatan-perkawinan>, accessed date, September 7, 2017.

<sup>8</sup> <http://babla.co.id>, accessed date, July 20, 2018

<sup>9</sup> Prof. Dr. Amir Syarifuddin, *Garis-garis Besar Ushul Fiqh*, ( Jakarta: Kencana Prenada Media Group, 2012), 64.

the study and the benefit of the research related to the marriage registration outside the authorized location is also described in the introduction.

Chapter II is a Review of Related Literature. This chapter describes the theory or concept of marriage, the marriage registration regulation applied Indonesia and the perspective of *masalah* used as the basis for analyzing the research problem.

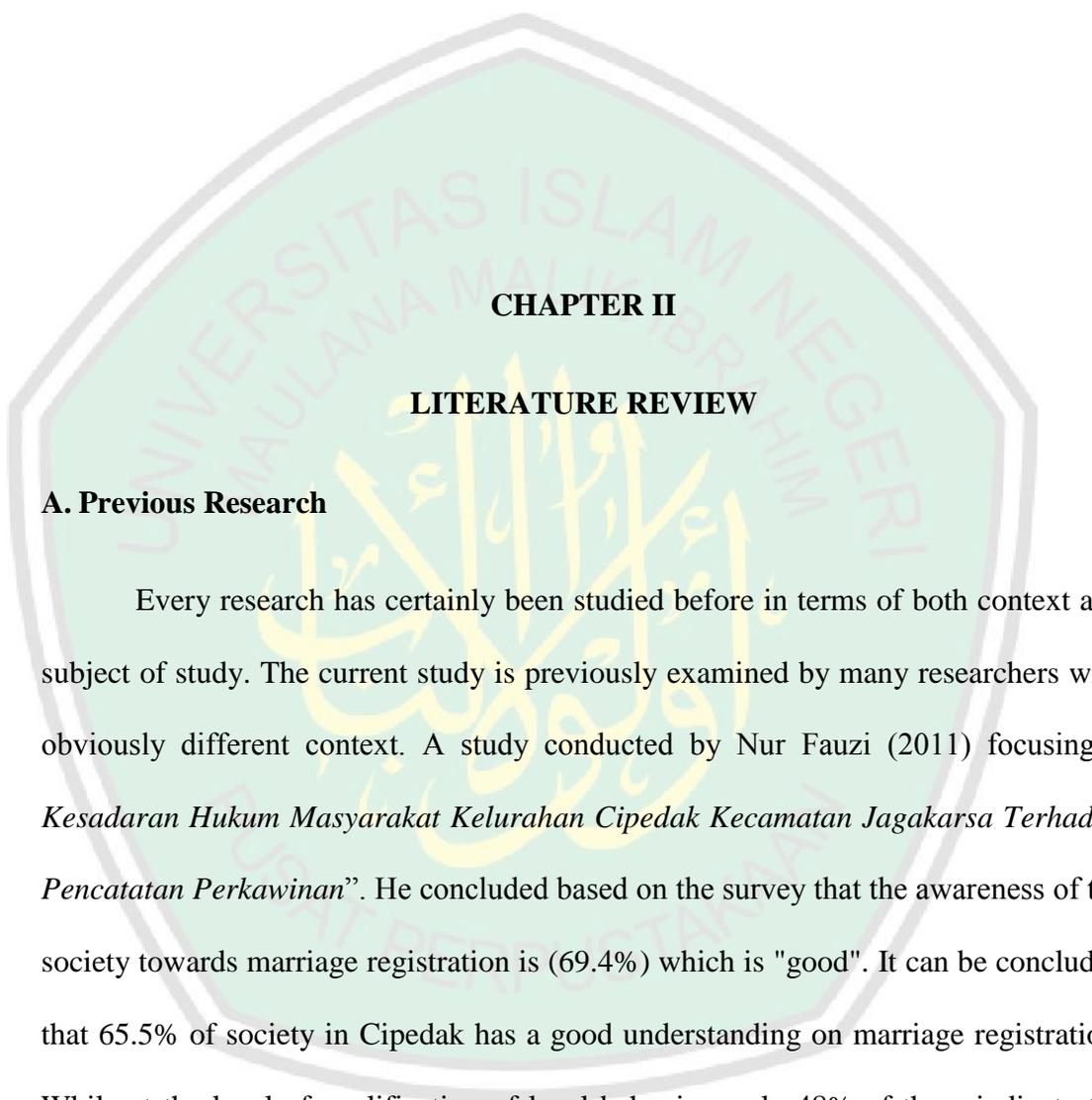
Chapter III is Research Method. This chapter describes the research methods employed. The main data used in the current study is the results of the interview, because the type of this research is empirical juridical. The data will then be processed and analyzed with the existing theory. The main source or informant is the heads of KUA Kota Malang.

Chapter IV is Finding and Discussion. This chapter is the core of the study because it analyzes the primary, secondary and tertiary data related to the interviews on the issue of marriage registration. In this chapter, the results and discussion of the research is elaborated. The answer to the problem formulated is described in accordance with the research questions.

Chapter V is Conclusions and Suggestions. This chapter is the last chapter which contains the conclusions and suggestions. The conclusion is in the form of a short answer to the question related to the research problem. The number of points in the research problem is related to the opinion of the heads of KUA Kota Malang on the principle of marriage registration and marriage registration outside the authorized

in Malang city. Suggestion aims to explain the recommendation for the relevant parties or further research in the future.





## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

Every research has certainly been studied before in terms of both context and subject of study. The current study is previously examined by many researchers with obviously different context. A study conducted by Nur Fauzi (2011) focusing “*Kesadaran Hukum Masyarakat Kelurahan Cipedak Kecamatan Jagakarsa Terhadap Pencatatan Perkawinan*”. He concluded based on the survey that the awareness of the society towards marriage registration is (69.4%) which is "good". It can be concluded that 65.5% of society in Cipedak has a good understanding on marriage registration. While at the level of qualification of legal behavior, only 48% of them indicate the existence of behavior reflecting the implementation of the regulation. Thus, public

legal behavior can be categorized less.<sup>10</sup>

Ahmad Maskur (2014) studies: “ *Analisis Masalah Mursalah terhadap hukum pencatatan perkawinan di Indonesia (Studi kritis atas Ketentuan Peraturan Perundang-undangan dalam Masalah Pencatatan Perkawinan)*”. He concludes that the relatively low punishment which does not give deterrence effect to the ones who break the law leads the complexity of enforcing the law. Marriage registration is not regulated in the provisions of Islamic law, and now it is very urgent in order to protect the rights of the husband and wife. Marriage registration gives many benefits, and it can avoid any practical problem of the husband and wife in the future. It is also in line with the *maqhasidu sharia* which includes the maintenance of religion, soul, heredity, mind, and wealth. The marriage registration written in the law must be interpreted as the *sharia* of Islam.<sup>11</sup>

Furthermore, Isti Astuti Savitri (2011) studies about “*Efektivitas Pencatatan Perkawinan pada KUA Kecamatan Bekasi Utara*”. She finds out that marriage registration in KUA north Bekasi has increased since 2010. The awareness of society towards marriage registration in the northern part of Bekasi is less related to

---

<sup>10</sup> Nur Fauzi, *Kesadaran Hukum Masyarakat Kelurahan Cipedak Kecamatan Jagakarsa Terhadap Pencatatan Perkawinan*, (Skripsi-UIN Syarif Hidayatullah Jakarta, 2011), 65.

<sup>11</sup> Ahmad Maskur, *Analisis Masalah Mursalah terhadap hukum pencatatan perkawinan di Indonesia (Studi kritis atas Ketentuan Peraturan Perundang-undangan dalam Masalah Pencatatan Perkawinan)*, (Skripsi-UIN Sunan Ampel Surabaya, 2014), 99.

unregistered marriage because most of the population is low educated. So that, efforts are made by coordinating with each village head.<sup>12</sup>

### 1. Table of Previous Research

No	Title	Similarity	Difference
1	Nur Fauzi (2011) entitled " <i>Kesadaran Hukum Masyarakat Kelurahan Cipadak Kecamatan Jagakarsa Terhadap Pencatatan Perkawinan</i> "	The object of the study on marriage registration	Nur Fauzi emphasizes the awareness of Cipadak Community Law about the importance of marriage registration, while the researcher is more on the marriage registration outside the authorized location.
2	Maskur (2014) undertook a study entitled: " <i>Analisis Masalah Mursalah terhadap hukum pencatatan perkawinan di Indonesia (Studi kritis atas Ketentuan Peraturan Perundang-undangan dalam Masalah Pencatatan Perkawinan)</i> "	Analysis using <i>Maslahah</i>	Ahmad Maskur using <i>Mashlahah</i> Analysis to review about marriage registration, while researcher uses <i>Mashlahah</i> Analysis to examine the marriage registration outside the authorized location
3	Savitri (2011) entitled " <i>efektivitas Pencatatan Perkawinan pada KUA Kecamatan Bekasi Utara</i> "	The object of the study is related to marriage registration	An analysis on marriage registration with the effectiveness, whereas the researcher uses the opinion of the head of KUA to analyze the <i>masalah</i>

<sup>12</sup> Isti Astuti Savitri, *Efektivitas Pencatatan Perkawinan pada KUA Kecamatan Bekasi Utara*. *Peneliti menyimpulkan bahwa pencatatan perkawinan di KUA Bekasi Utara*, (Skripsi-UIN Syarif Hidayatuallah, 2011), 62,

## **B. Literature Review**

### **1. Marriage According to the Government Law**

Indonesian has its own law related to marriages. It is written in the regulation number 1 of the Year 1974. The Law defines marriage as the outer and inner bond between a man and a woman as husband and wife aiming to undergo a happy and eternal family based on the Almighty God.<sup>13</sup>

Regulation Number 1 of the year 1974 on Marriage is universal for all Indonesian citizens. Nevertheless, the Marriage Law is also deferential because the validity of marriage is that when it is conducted according to each Religious Law.

The legal marriage of each religion under Article 2 paragraph (1) is a "legal event". The legal event cannot be annulled by an "Important Event", which is specified in Article 2 paragraph (2) that each marriage is registered according to the regulation applied. This can be seen from the explanation of Article 2.

Under the formula of Article 2 paragraph (1), in accordance with the 1945 Constitution, there is no marriage conducted outside the law of the couple's religion and belief. The law of every religion and belief should include the provisions applicable to their religious class and belief as long as it is not contradictory, or it is not clearly specified in this law.

---

<sup>13</sup> Lembaran Negara Republik Indonesia Year 1974 Number 1.

The Government Regulation Number 9/1975 on the implementation of Law Number 1 of the Year 1975 on Marriage regulates the procedures and conduct of marriage and marriage registration. The Chapter III of the Marriage Procedure article 10, paragraph (2) states, "the marriage ceremony is performed according to the law of their respective religion and belief," and paragraph (3) states "by observing the marriage ceremony according to their respective laws of the religion and belief, it is held in front of the PPN and attended by two witnesses."<sup>14</sup>

Article 2 in the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) formulates that "marriage according to Islamic Law is a very strong marriage promise or *mitsaqan ghalizan* to obey God's command and to do the worship". Article 3 KHI formulates the purpose of marriage, which is to achieve the life of *sakinah, mawaddah, and rahmah*. The explanation of the validity of the marriage is provided in Article 4 KHI, that "Marriage is lawful if it is done according to Islamic Law in accordance with Article 2 paragraph (1) of regulation Number 1 of the Year 1974 About Marriage.

## **2. Marriage According to Islamic Law**

The Qur'an has mentioned that a man is created to live in pairs. It is the innate nature of humans and other living beings. In fact, everything is created to match. By living in pairs that human offspring can take place.<sup>15</sup> QS An-Nisa: 1 affirms, "O

---

<sup>14</sup> Lembaran Negara Republik Indonesia Year 1975 Number 12.

<sup>15</sup> Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, (Yogyakarta: UII Press, 2006), 11.

mankind, fear of your god who created you from Adam (self) and from him God created his wife (Eve); and from them God raised many men and women”.

The hadith of Prophet told by Bukhari-Muslim from Abdullah ibn Mas'ud ra command, "O youth, all of whom have been able to bear the cost of marriage, should marry because the marriage is better able to bend the eyes and better able to keep the honor. Whoever is not yet capable of doing it, do fasting because it is as a shield that is able to keep him from committing adultery".

The above verses and hadiths conclude that Islam advocates marriage. Islam views a marriage as a worship to God, following the *sunnah* of the Prophet. On the other hand, marriage is considered to have a humanitarian value, to fulfill their life instinct, to carry out the life of fellow human beings and to realize the serenity of life.

Islamic law regulates that marriage is legally religious through contract or legal bond between parties concerned with two men witnessed. Thus, it is reasonable that marriage, according to Islamic law, is a contract or an association to justify the sexual relationship between men and women in order to achieve the family life happiness, which is filled with a sense of tranquility and affection in a way that is pleasing to Allah.<sup>16</sup>

---

<sup>16</sup> Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, 14.

In his book "Outlines of Muhammad Law" (Principles of Islamic Law), Asaf A.A. Fyzee explained that marriage according to Islamic view has 3 (three) aspects; Legal aspect, social aspect, religious aspect.<sup>17</sup>

When viewed from the legal aspect, marriage is an agreement. It is written in the word of Allah SWT:

*"How will you take it back, in part you have mixed up with the other as husband and wife, and they (your wives) have taken from you a strong promise"* (Surah An Nisa ': 21).

This marriage agreement has three special characters:

1. Marriage cannot be done without voluntary intention from both sides
2. Both parties (men and women) who bind the marriage agreement shall have the right to terminate the treaty based on the existing provisions of its laws.
3. The marriage agreement shall govern the legal limits of the rights and obligations of each party.

---

<sup>17</sup> Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*, (Yogyakarta: Liberty, 2004), 9.

Marriage has its own significances when viewed from the social aspect. They are:

1. It is generally thought that people who get married have a more valuable position than those who have not married, especially women. Marriage will give her a higher social status. Being a wife, she will get certain rights, and she can take legal action in various field of *muamalah*, which was once limited. She must be gain the approval and supervision parents to do anything before getting married.
2. Before the enforcement of the law of marriage, women could be combined as a co-wife without limitation, and they cannot afford to refuse it. However, Islam regulates that polygamy is limited only for four wives; moreover it could only done with some certain conditions.

Islam sees and makes marriage as the basis of a good society, for marriage is not only attributed to the inner relation only but also unity of mind and soul. According to Islamic teachings, marriage is not merely an ordinary agreement but sacred, in which the two sides are linked into spouses or asked each other to be their life partner in the name of God.

The pillars are inherent element of a legal event or legal act. If any of the terms from the event or legal act is not met, the result is invalid and the status is null under the law.<sup>18</sup> There are five pillars of marriage:

- a) The presence of the groom
- b) The presence of the bride
- c) The presence of a female guardian or her deputy
- d) The presence of two witnesses
- e) *Ijab* and *Qabul*

The requirements are things inherent in each element which are parts of legal act or legal event. The consequence of incomplete requirements is that it does not automatically nullify any legal action or legal event, but such action or event may be canceled.<sup>19</sup>

The requirements of marriage is closely related to the marriage pillars. They are the presence of the prospective bride and groom, guardian, witness and marriage vow (*ijab qabul*). A potential husband should meet the following requirements:

- a. Not the *mahram* of the future wife
- b. He is not forced, it means the marriage is on his own willingness
- c. The person is certain or clear
- d. Not being *ihram*

<sup>18</sup> Neng Djubaidah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat (Menurut Hukum Tertulis di Indonesia dan Hukum Islam)*, (Jakarta: Sinar Grafika, 2010), 90.

<sup>19</sup> Neng Djubaidah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat (Menurut Hukum Tertulis di Indonesia dan Hukum Islam)*, 92.

A candidate of wife who will get married should be free from the following barrier of *syar'i*:

- a. Unmarried
- b. Not a *mahram*
- c. Not during *iddah*
- d. Candidate must also be independent, it means on her own willingness
- e. The future husband is obviously clear
- f. Not being *ihram*

To become a marriage guardian, a person must meet the following requirements:

- a. A Man
- b. Adult
- c. Reasonable
- d. Independent (not forced)
- e. Fair
- f. Not being *ihram*

The requirements of the witness are:

- a. Man
- b. *Baligh*
- c. Understandably
- d. Fair

- e. Can hear and see
- f. Not forced
- g. Not being *ihram*
- h. Understand the language used for *ijab qabul*

### 3. Marriage Registration

Islam basically sees marriage registration as something indispensable and necessary because it leads into a great impact. It is also important for the government as well as the couples who get married. However, marriage registration is not the part of the pillars and requirements. However, even though it is not a part of the pillars and requirements, it has a beneficial effect. It is stated that:

دَرْءُ الْمَفْسَدِ وَ حَلْبُ الْمَصْرَلِحِ

*“Refuse the harm (mafsadatan) and take the benefit (masholih)”*

Marriage registration indeed nothing discussed in the two main sources of Islamic law, be it in the Qur'an and in the Hadith of the Prophet, but if we are conscientious of the first verse was revealed to the Prophet, namely the letter of Al'Alaq containing the command to read, at least we can draw a conclusion that Islam is the first religion that teaches its people to write, read and manage administration are modern. Allah stated in QS. Al-Baqarah [2:282]:

يَأْتِيهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَيْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلِهُ هُوَ فَلْيُمْلِلْ لِهُ بِالْعَدْلِ وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ وَلَا يَأْبَ الشُّهُدَاءُ إِذَا مَا دُعُوا وَلَا تَسْمَؤُا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَلِكُمْ أَفْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَا بُؤَا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ وَإِنْ تَفَعَّلُوا فَإِنَّهُ فَسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ (البقرة: 282)

*“O believers! When you deal with each other in lending for a fixed period of time, put it in writing. Let a scribe write it down with justice between the parties. The scribe, who is given the gift of literacy by Allah, should not refuse to write; he is under obligation to write. Let him who incurs the liability (debtor) dictate, fearing Allah his Rabb and not diminishing anything from the settlement. If the borrower is mentally unsound or weak or is unable to dictate himself, let the guardian of his interests dictate for him with justice. Let two witnesses from among you bear witness to all such documents, if two men cannot be found, then one man and two women of your choice should bear witness, so that if one of the women forgets anything the other may remind her. The witnesses must not refuse when they are called upon to do so. You must not be averse to writing (your contract) for a future period, whether it is a small matter or big. This action is more just for you in the sight of Allah, because it facilitates the establishment of evidence and is the best way to remove all doubts; but if it is a common commercial transaction concluded on the spot among yourselves, there is no blame on you if you do not put it in writing. You should have witnesses when you make commercial transactions. Let no harm be done to the scribe or witnesses; and if you do so, you shall be guilty of transgression. Fear Allah; it is Allah that teaches you and Allah has knowledge of everything(Q.S Al-Baqarah (2:282)). ”*

Article 1 of regulation Number 22 of the Year 1946 stipulates in subsection

(1) that "a marriage conducted based on Islamic teachings should be supervised by

the Officer of marriage registrar appointed by the Minister of Religious Affairs, or the employee".<sup>20</sup>

The explanation of marriage registration according to the regulation Number 1 of the Year 1974 is to register "the important events", not "legal events". It can be seen more clearly in the General Explanation on item 4 letter b of regulation Number 1 Year 1974, as the following direct quotation.<sup>21</sup> In this Law it is stated that a marriage is lawful if it is done according to the law of each religion and belief, and in addition each marriage, it also must be recorded according to the prevailing laws and regulations.

Article 45 PP number 9 of the Year 1975 determines the punishment of the person who breaks the law: the first violation of article 3 which contains the provisions of the person to be married must notify his willingness to the PPN, article 10 paragraph 3 of the marriage procedure according to the religion and belief respectively.<sup>22</sup>

Government Regulation Number 9/1975 on the Rules of Implementation of the Law Number 1974 on Marriage guides the procedures and conduct of marriage and marriage registration.<sup>23</sup> Several articles considered important. Article 2 of

---

<sup>20</sup> Lembaran Negara Republik Indonesia Year 1946 Number 98.

<sup>21</sup> Neng Djubaidah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat (Menurut Hukum Tertulis di Indonesia dan Hukum Islam)*, 215.

<sup>22</sup> Neng Djubaidah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat (Menurut Hukum Tertulis di Indonesia dan Hukum Islam)*, 217.

<sup>23</sup> Lembaran Negara Republik Indonesia Year 1975 Number 12.

Government Regulation Number 9 of the Year 1975 paragraph (1) which determines the marriage registration for Muslims shall be conducted by PPN as referred to the regulation Number 22 of the Year 1946.

Article 45 of Government Regulation Number 9 Year 1975 determines the punishment of the offending person: first foul Article 3, which contains the provisions concerning the person who will conduct the marriage shall notify the PPN; the second foul Article 10 paragraph (3), concerning the marriage procedure according to their respective religion and the trust is performed in front of the PPN and attend two witnesses, foul Article 40 of Polygamy by husband without court permission. The offender is punished by a fine of not more than Rp 7.500 (seven thousand five hundred rupiah).

Persons who may be subject to fines under Article 45 can be seen from the provisions of Article 3 of Government Regulation Number 9 of the year 1975, paragraph (1) provides that: "Any person who will marry informs his or her will to the PPN at the marriage will be held". Based on the formula, what is meant by every person who will marry is the "groom's candidate" and "bride's candidate," or one of the "groom's candidate" or "bride's candidate".

The marriage registration is regulated in Article 5 KHI states that:

- 1) To ensure the order of marriage for the Islamic community every marriage should be registered.

- 2) The marriage registration as referred to paragraph (1) shall be conducted by PPN as regulated in regulation Number 22 of the Year 1946.

On December 29, the issuance of regulation No. 23 year 2006 on Population Administration and updated with regulation No. 24 year 2013. Registration of a marriage that is Muslim, article 8 of regulation No. 24 year 2013 determines that the obligations of implementing Agencies for the registration of marriage, divorce, reconciliation, divorce, and reconciliation for the Muslim population at the sub-district level shall be carried out by the PPN of the District KUA.

As explained in Regulation of PMA No. 11 year 2007 concerning Marriage Registration, Article 2 paragraph (1) which reads:

"A marriage officer who, as PPN, is an officer conducting checks on the requirements, supervision and registration of marriage / reconciliation, registration of divorce, divorce, and marital guidance."

Related to the article can be taken 3 main points that become the duty of the PPN held by the Head of KUA as Article 2 paragraph (2) PMA No. 11 Year 2007. First, the task of PPN is to conduct inspection, supervision and registration of marriage events, including recording of reconciliation and divorce. Second, the PPN conducts marital guidance to the bride and groom, so that the life of the household becomes harmonious and in accordance with what is taught by Islam. Third, PPN

served as Judge, if there is *Adhal* and *Mafqud* guardian. This is stated in Article 1 paragraph (1) of PMA No. 30 Year 2005 About *Wali Hakim* is the Head of KUA appointed by the Minister of Religious Affairs to act as the marriage guardian for the prospective bride who has no guardian.

With regard to the judge's guardian, referring to the book of *fiqh* (*I'anaah Thalibin Juz 3 Page 360 Darul Fikr*) with the three requirements of the judge may marry off to a matching man, the woman who has *baligh*, *qadli* is in his territory. These requirements are also explained in the Book of *Fathul Mu'in Bi Syarh Qurratil 'Ain Bi Muhimmatid Diin*;

(فَتَحِيَّوَجُ) أَيُّ الْفَاضِرِيِّ (بِكُفٍّ) لَا يَغْرَهُ (بَالِغٌ) كَأَنَّ فِي مَجْلٍ وَلَا يَحِيَّ حَالَ الْعَدْوِ وَلَوْ مُجْتَمِعَةً بِهِ وَإِنْ كَانَ إِذْنُهَا لَهُ وَهِيَ خَرَجَتْ، أَمَا إِذَا كَانَتْ خَارِجَةً عَنْ مَجْلٍ وَلَا يَحِيَّ حَالَهَا فَلَا يَحِيَّوَجُهَا مِنْهُ أَوْ كَانَ هُوَ فِيهَا لِأَنَّ الْوَالِيَّ عَلَيْهِ لَا يَتَعَلَّقُ بِمَجْلٍ طَبِ.

“*Qadli's guardian marries a baligh woman who is tied up aqad she is in the area even though it is past and even if the permission of marriage is given when she was still outside the area of the Qadli's divinity, with comparable men not the unequal. If, when bound by the aqad, the woman is outside the Qadli's divinity, then the Qadli can not marry her off even if she is given permission before leaving the area. And even if the prospective husband is in the custody area, because it is related to women not to prospective husband.*”<sup>24</sup>

#### 4. Marriage Registration Principles

Government Regulation (PP) no. 9 of 1975 concerning the implementation of regulation Number 1 of the year 1974 concerning marriage in Article 3 paragraph (1)

<sup>24</sup> Syekh Zainuddin bin Abdul Aziz Al-Malibari, *Fathul Mu'in Bi Syarh Qurratil 'Ain Bi Muhimmatid-Diin*, terj. M. Fikril Hakim dan Abu Sholahuddin, (Kediri: Al-Aziziyah Press, 2014), 45.

states "anyone who will marry shall notify the will to the PPN at the place of marriage will be held".

It is further explained in the Regulation of the Minister of Religious Affairs (PMA) number 11 year 2007 concerning the marriage registration in article 17 mentioned:

(1). The marriage agreement shall be held in front of PPN or the headman or PPN assistant of the territory of the prospective wife.

(2). If the marriage agreement will be held outside the provisions as referred to in paragraph (1), then the prospective wife or guardian shall inform the PPN in the territory of the prospective wife's to obtain the marriage recommendation letter.

The purpose of this paragraph (2) of Article 17 is that if the marriage agreement is to be executed other than at the prospective wife's residence, such as in the residence of the prospective husband, in the guardian's resident or other place, it shall notify the PPN in the territory of the prospective wife's to obtain a recommendation letter, then the marriage will be registered with PPN where the marriage ceremony event will take place.

A more detailed explanation of the principle of marriage registration is described also in the Circular Letter of the Director General of Islamic Guidance Number DJ.II.2 / 1 / HM.01 / 942/2009 dated 29 June 2009 on item 3 states that based on the above provisions, PPN may not register marriage outside its jurisdiction,

since the principle of registration is to adhere to the principle of the occurrence of events not domicile.

## 5. Maslahah

All the regulations made must create a benefit for the implementer and the object of its implementation. Therefore, Islam also regulates the benefits. Welfare is taken into account in order to provide convenience.

### a. Maslahah Understanding

*Maslahah* comes from the word *shalaha* (صلاح) with the addition of *alif* in the beginning which means the word means either the opposite of a word from bad or damaged. It is *masdar* with the meaning of the word *shalah* (صلاح), ie the benefit or regardless of it damage.<sup>25</sup>

*Maslahah* according to Al-Ghazali means something that brings benefits (profit) and make harm (damage), but the essence of *maslahah* is keeping the goal *syara'* (in establishing the law). While there are five points as the aim of the *syara'* in establishing the law, namely maintaining religion, soul, mind, descent, and property.

Al-Syatibi itself interpreted *maslahah* from two views, namely in terms of the occurrence of *maslahah* in reality and in terms of dependent demands *syara'* to *maslahah*.

---

<sup>25</sup> Amir Syarifuddin, *Ushul Fiqh Jilid 2*, (Jakarta: Kencana Prenada Media Group, 2011), 345.

1). In terms of *maslahah* occurrence in reality, it means:

Something that returns to the upright life of human life, is achieved what is desired by the nature of *syahwati* and the *aqli* absolutely.

2). In terms of dependent demands *syara'* to *mashlahah*, the benefit that is the goal of the determination of *syara'* law. To produce it, God demands man to do.

From several definitions of *maslahah* with different formulas, it can be concluded that *maslahah* is something that is considered good by common sense because it brings good and avoids evil (damage) for human beings, in line with the aim of *syara'* in establishing the law.

*Maslahah al-mursalah* is a benefit that its existence is not supported by the verses of al-Quran and al-Hadith that allow or prohibit its use. *Maslahah* etymologically meaningful to benefit and deny the existence of harm. While the meaning of language *mursalah* according to the dictionary is released. In this context it is regardless regardless of Shari'a appointment, either to regard or to refuse.

According to Wahbah as-Zuhayli, *maslahah al-mursalah* are some circumstances or actions that are in line with the actions and purposes of the *shari'*, but there is no certain proposition of *syara'* which justifies or invalidates, and by law it will gain the benefit and be rejected of destruction.

*Maslahah Mursalah* according to Abdul Wahab Kallaf, *maslahah mursalah* is *maslahah* where *syar'i*, (Allah and His Apostle), does not specify the law specifically

to realize the benefit of it, nor is there a proof that shows for his confession and cancellation<sup>26</sup>.

From some of the above understanding we can briefly understand that *maslahah al-mursalah* is a goodness that its legality is not sustained by *syara'*. Its position that there is no special legality of the texts related to the imposition or the cancellation of *maslahah*, it makes it as *maslahah al-mursalah*. In its application, the scholar's *jumhur* agrees to use the *maslahah al-mu'tabarah* as they agree to reject the *maslahah mulghah*. While against *maslahah al-mursalah* there are differences of opinion among the scholars.

#### **b. Kinds of *Maslahah***

*Maslahah* is not just about reason in judging whether things are good or bad, nor because it can bring pleasure and avoid damage. But further than that, that what is considered good by reason must also be in line with the aim of *syara'* in establishing the law, which is to preserve the five basic principles of life. The power of *maslahah* can be seen in terms of the purpose of *syara'* which is directly or indirectly related to the five basic principles for human life, namely religion, soul, intellect, descent, and wealth.

---

<sup>26</sup> Abdul Wahab Kallaf, *Kaidah-Kaidah Hukum Islam*, (Jakarta: Rajawali Press, 1993), 126

1). Viewed from the aspect of its power as *Hujjah*

In terms of its strength as *hujjah* in establishing the law, *masalahah* divided into three kinds, namely:

a). *Maslahah Dharuriyat*

*Maslahah dharuriyat* is the benefit that occupy the primary needs. This welfare is directly related to the preservation of religion and the world. The existence of *masalahah dharuriyat* is needed by human life, meaning that human life can not take place properly if the benefit is not fulfilled.

This welfare consists of the five essential elements of religion. Five elements are then referred to as goodness or *masalahah* in dharuri level. Therefore God commands people to do business for the fulfillment of these basic needs. Any attempt or action that directly leads to the disappearance or destruction of the five essential elements is evil, therefore Allah forbids it. To abandon God's prohibition is *masalahah* in *dharuri* level.

In this case Allah forbids the apostates to keep religion, forbids killing to keep the soul, forbids drinking to keep the mind, forbids adultery to keep offspring, and forbids stealing to keep property.

b). *Maslahah Hajiyat*

*Maslahah hajiyat* is the benefit that occupy secondary needs, that is needed by humans to escape from the trouble that will befall them. *Maslahah hajiyat* if if not fulfilled then not to disturb the feasibility and system of human life system, but can cause human difficulties in living his life.

The example of *maslahah hajiyat* is the relief (*rukhsah*) given by Allah to His servant in performing a duty of worship. Like the permissibility to *jama'* their praying for those who travel far, the permissibility to not fast in Ramadan when they are sick by replacing it on another day.

c). *Maslahah Tahsiniyat*

*Maslahah tahsiniyat* is the benefit that occupies the position of tertiary needs which by fulfilling it can make human life avoid from circumstances that are not commendable. By fulfilling this *maslahah*, a person can occupy a superior position. The inability of a person to fulfill this does not result in the destruction of the order of life and does not cause difficulties in his life.

An example is in closing aurat to embellish the appearance of wearing good clothes according to the rules but still following the fashion trends.

## 2). Judging from the existence or absence of a Prohibition

A part from the above division, in terms of the existence or absence of a Prohibition which is a supportive argument for a benefit. To answer that, scholars divide the *maslahat* as follows:<sup>27</sup>

a). Something that matters according to reason, and besides that there are also specific instructions in the texts or *ijma'* that the *maslahat* can be counted. *Maslahat* this form is called *al-maslahah al-mu'tabarah*. *Maslahat* in this form is agreed by the scholars to be guided in establishing the law. For example, it should not be approached (the sexual relationship with) the wife who is *hadi* is *aik* according to reason, because that so bring a destructive disease. This is also in line with the prohibition of Allah in the Qur'an.

b). Something that is benevolent by reason, but there are specific instructions in the *nash* or *ijma'* that reject it. *Maslahat* in this form is called *al-maslahat al-mulghah*. The cleric has agreed to reject him as the proxy of the *syara'* law. For example, based on reason judgment is a benefit equalize the rights of men and women in the right to receive inheritance, because in accordance with the emancipation of women who have been binding. However, what is defined as the *maslahat* by reason is inconsistent with the Qur'anic guidance which establishes the right of the boy is twice the right of the girl.

---

<sup>27</sup> Amir Syarifuddin, *Garis-Garis Besar Ushul Fiqh*, (Jakarta: KENCANA PRENADA MEDIA GROUP, 2012), 65.

c). Something that is *mashlahah* according to reason, but there is no special texts that justify it and also there is no specific guidance that justifies it and also no specific instructions that reject it. Maslahat in this form is called *al-mashlahah al-mursalah*. For example, the effort to collect the verses of the Qur'an in one mushaf at the time of Abu Bakr's caliph. This effort is good, because otherwise the verses of the Qur'an will be scattered and lost. There is no prohibition against it, although there is no argument against it. This is what speaks in this language.

### c. The Position of Maslahah as the Law of Sharia

Therefore the absence of specific guidance in the *nash* or *ijma'* who view it, the scholars differed in placing it as a syari 's legal prohibition. The Maliki cleric placed it as a legal prohibition on the grounds that it was a *maslahat* and there were no specific instructions that rejected it. This allowed group based his opinion on the Qur'anic and Prophetic Hadith. The group also put forward several requirements to accept it. Terms are as follows:<sup>28</sup>

- 1). *Maslahat Mursalah* is an essential and common *maslahat* and acceptable to common sense.
- 2). It is considered common as *maslahat* is really in line with God's purpose in establishing the law.

<sup>28</sup> Amir Syarifuddin, *Garis-Garis Besar Ushul Fiqh*, 66.

- 3). It is considered common as a *maslahat* that aligns with God's purpose in establishing the law does not clash with the existing *nash*.
- 4). The *maslahat mursalah* is practiced in conditions where it is require in the sense it will bring difficulties in life.



### CHAPTER III

#### RESEARCH METHOD

##### A. Type of Research

The type of this research is empirical juridical which examines the applied legal provisions and the status quo among the society.<sup>29</sup> The study is conducted by analyzing in the society of Kota Malang about marriage registration outside the authorized location. The head of KUA is the functional officer of the headman and he is given an additional task as a head of KUA. He is officially responsible for the legality of marriage registration.

##### B. Research Approach

The researcher, in the current study, uses sociological juridical approach to identify and conceptualize the law as the real and functional social institution in the

---

<sup>29</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, (Jakarta: Sinar Grafika, 2002), 15.

real life system.<sup>30</sup> Problems that occur in KUA is a social phenomenon in the form of conducting a ceremony of performing wedding vow outside the legal area of the authorized location. The problem appears due to the legal product on marriage registration outside the authorized location. The opinion of the head of KUA as the stake holder and executor of the regulation is used as the main data in the current research.

### **C. Research sites**

The study is conducted in KUA Kota Malang. There are five (5) KUA's in Kota Malang. They are: KUA Sukun, KUA Lowokwaru, KUA Blimbing, KUA Kedung Kandang, and KUA Klojen.

### **D. Types and Data Sources**

The current research is a field research that the data used are primary and secondary.

#### **1). Primary Data**

The main source of the data is directly obtained by interviewing the heads of KUA Malang as marriage registrars (PPN). They are the head of KUA Sukun District, KUA Lowokwaru District, KUA Klojen District, KUA Kedung Kandang District, and KUA Blimbing District.

---

<sup>30</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI-Press, 1986), 51.

### 1. Table of Informants from the Heads of KUA (PPN)

No.	Name of the head of KUA (PPN)	Address	Position
1	Anas Fauzie	Malang	Head of KUA (PPN), Lowokwaru District
2	Ahmad Syaifuddin	Malang	Head of KUA (PPN), Klojen District
3	Abdul Afif	Malang	Head of KUA (PPN), Blimbing District
4	Ahmad Sa'roni	Malang	Head of KUA (PPN), Kedung Kandang District
5	Ahmad Hadiri	Malang	Head of KUA (PPN), Sukun District

#### b.) Secondary Data

The secondary data of the current study as a basic reference material is obtained by reading and studying the materials related to the problems studied. The researcher studies the laws and regulations, books, journals, articles, and related materials to enrich the knowledge as the secondary data. Besides, the literature related to Marriage Registration, such as the Record Book of Marriage & Unrecorded Marriage (by Written Law in Indonesia and Islamic Law) by Neng Djubaidah, Sudarsono's Book of National Marriage, and the Indonesian Law on Marriage under Laws, Customary Laws and Laws Religion, and Legality of Marriage in the form of Legislation are useful.

## E. Method of Collecting Data

Three types of data collection tools, which are document studies or library materials, observation, and interviews, are used in this study. They can be used each, or altogether.<sup>31</sup>

1). The primary data is collected through:

a). Interview Method

Interview, is one method of data collection through communication, which is through contact or personal relationship between data collector and data source. In this process, interview results are determined by several factors which correlate and influence the flow of information. The factors are: the interviewer, respondent, research topic in the questionnaire, and interview situation. The respondents in this study are the head of KUA Malang as PPN.

b). Observation Method

Observation and systematic recording to the symptoms that appear on the object of research are also conducted to enrich data collection.<sup>32</sup> Observations focus on the research objectives, and they are done systematically through careful planning. In this case, the researcher made an observation on what was submitted by the head of KUA Kota Malang which discusses marriage registration.

---

<sup>31</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI-Press, 1986), 21.

<sup>32</sup> Ahmad Tanzeh, *Pengantar Metode Penelitian*, (Yogyakarta: Penerbit Teras, 2009), 58

## **F. Data Processing Method**

Data processing explains about the procedure of processing and data analysis through the following stages:

1. Data selection

It is the examination of data to determine whether the data is complete in accordance with the purposes of research related to the marriage registration. The main data are obtained from the main informants, the head of KUA Kota Malang.

2. Data Classification

It is data placement in accordance with the subject matter studied. The data are the result of the interviews with the informants, and also the laws or regulations related to marriage registration.

3. Data Verification

It is a way of examining back the data obtained, whether they are related to the focus of research topic and the regulations of marriage registration.

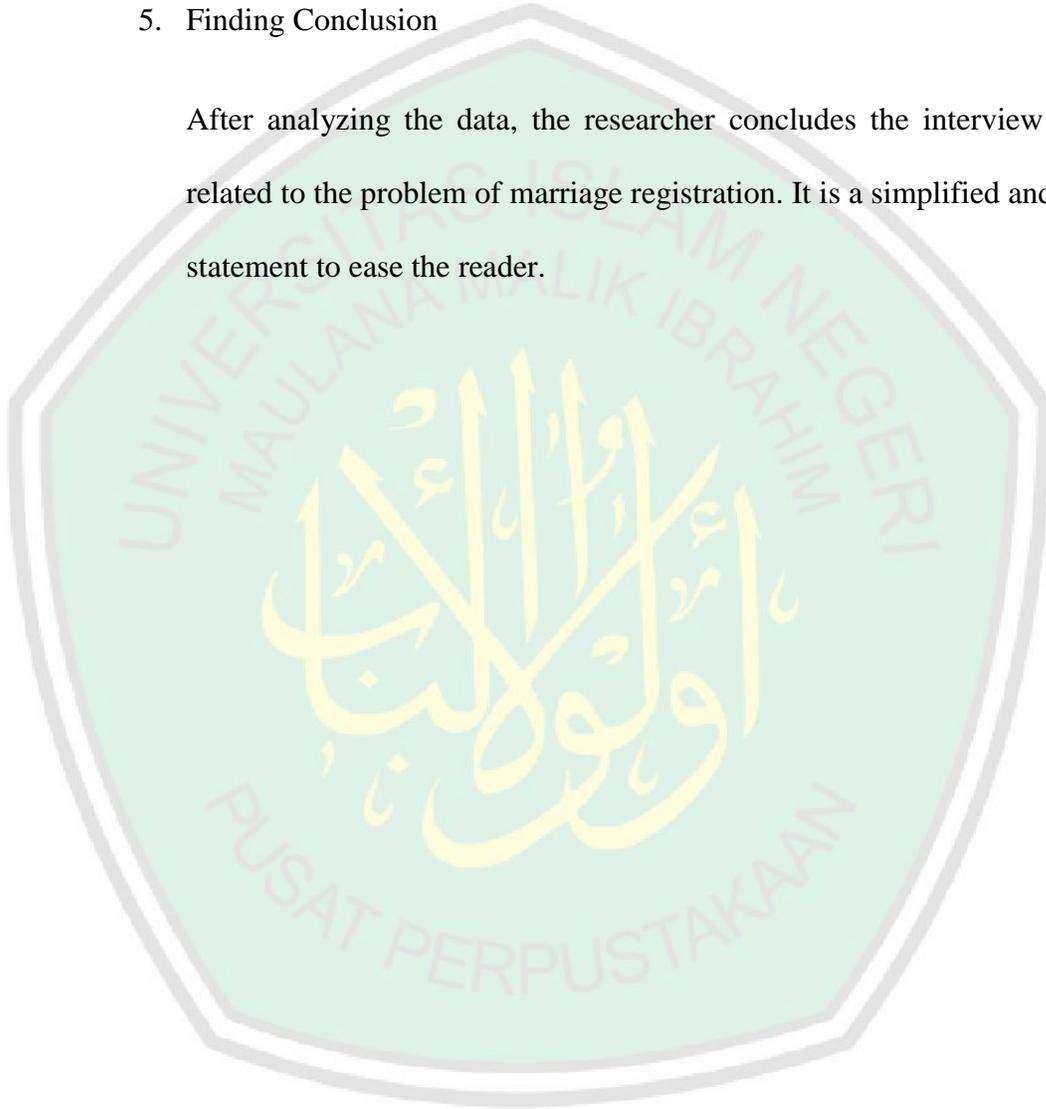
4. Analysis of data or legal material

It is the process of simplification into a form which is easy to read and interpret. The writer uses descriptive analysis method. It is an effort to

collect and arrange the data. They are then analyzed with the object analysis about marriage registration by processing the interview result.

#### 5. Finding Conclusion

After analyzing the data, the researcher concludes the interview results related to the problem of marriage registration. It is a simplified and sorted statement to ease the reader.



## CHAPTER IV

### FINDINGS AND DISCUSSION

#### A. Overview of Research Focus

The area of Kota Malang is 110.06 km<sup>2</sup>, a city with up 820,243 populations in 2010 consisting of 404,553 males and 415,690 females. The population density is about 7,453 people per square kilometer (km<sup>2</sup>). They are spread over five sub-districts (Klojen = 105,907 people, Blimbing = 172,333 people, Kedung Kandang = 174,447 people, Sukun = 181,513 people, and Lowokwaru = 186,013 people). Malang consists of 57 urban villages, 536 neighbourhoods, and 4,011 hamlets.

There are 5 (five) Offices of Religious Affairs (KUA) of Kota Malang as follow:p

1. KUA in Sukun sub-district
2. KUA in Lowokwaru sub-district
3. KUA in Blimbing sub-district

4. KUA in Kedung Kandang sub-district

5. KUA in Klojen sub-district

## **B. Data Exposure and Analysis**

### **1. The Opinions of the Heads of Kantor Urusan Agama Kota Malang on the Principle of Marriage Registration**

According to the terminology of language, the pillars of principle refers to two meanings; the first is the foundation, the base and fundamental (something focusing on thought or opinion).<sup>33</sup> Meanwhile, according to R.H. Soebroto Brotoduredjo, the principle is a source or a cause that become the starting point of something, which determines its essence.<sup>34</sup>

The Law Number 9 Year 1975 on the implementation of Law number 1 of the year 1975 on Marriage regulates the procedures and the conduct of marriage and the marriage registration. The chapter III article 10 paragraph 2 of the Marriage procedure states, "marriage ceremony is held according to the law of their respective laws of religion and belief," and in paragraph 3 states that "By observing the marriage ceremony, according to their respective laws of religion and belief, it is held in front of the PPN, and it is attended by two witnesses."<sup>35</sup>

---

<sup>33</sup> <http://kbbi.web.id/asas>, accessed date , February 28, 2018.

<sup>34</sup> [www.scribd.com/asas](http://www.scribd.com/asas), accessed date, April 4, 2018

<sup>35</sup> Lembaran Negara Republik Indonesia Year 1975 Number. 12.

Article 1 of Regulation Number 22 of the year 1946 stipulates in paragraph 1 that "Marriage conducted according to the religion of Islam, is supervised by the PPN appointed by the Minister of Religious Affairs or the appointed employee".<sup>36</sup>

The regulation of Marriage registration in Article 5 of KHI (compilation of Islamic Law) states that:

- 1) To ensure the order of marriage for the Islamic community, every marriage should be registered.
- 2) The registration of marriage as referred to in paragraph 1 shall be conducted by the PPN written in regulation number 22 of the year 1946 and in number 32 of the year 1954.

Government regulation Number 9 of 1975 concerning the implementation of Law Number 1 year 1974 concerning marriage in article 3 paragraph 1 states; "anyone who will get married shall notify the will to the PPN at the place of marriage will be held"

It is further regulated in the regulation of the Minister of Religious Affairs (PMA) number 11 of the year 2007 concerning the registration of marriage in article 17 mentioned that:

- (1) The marriage agreement shall be held in the presence of PPN or the village headman or the assistant of PPN in the place of the future wife.

---

<sup>36</sup> Lembaran Negara Republik Indonesia Year 1947 Number 98.

(2) If the ceremony of performing the marriage agreement is held outside the authorized as referred to in paragraph 1, the future wife or the guardian shall inform the PPN in the place of the future wife to obtain the marriage recommendation letter.

The purpose of this paragraph (paragraph 2) of the article 17 is that if the ceremony of marriage agreement is going to be executed outside the the future wife's place, such as in the future husband's, the guardian shall notify the PPN in the place of the future wife to obtain a recommendation letter, then the marriage will be registered to the PPN where the wedding ceremony will be held.

A more detailed explanation of the principle of marriage registration is described also in the Circular Letter of the Directorate General of Islamic Guidance number DJ.II.2/1HM.01/942/2009, 29<sup>th</sup> of June 2009 on three articles which state that PPN is not allowed to registration a marriage outside its authorized, since the principle of registration is to adhere to the principle of the holding of marriage agreement, not the the place where the ceremony takes place.

The regulation should be able to provide benefits to the regulators and the communities. The benefit that does exist is not only for society, but also for regulators of what has been issued from the regulation. The existence of marriage registration principles related to the authorized is advantageous in terms of time efficiency. The head of KUA as a PPN does not have to attend the marriage agreement outside his authorized location because marriage is accumulated in certain months. On a daily basis, there are usually several marriages, so if there is a pair of

couple, the implementation of the marriage agreement of its authorized will hamper the performance of the PPN. It is due to taking time to get the location of marriage agreement or where the wedding ceremony is held. As the result of interview with the head of KUA in Sukun sub-district, Ahmad Hadiri said that;<sup>37</sup>

*“Saya selaku kepala KUA Kecamatan Sukun melakukan 99% peraturan Dirjen ini. Asas pencatatan perkawinan sebenarnya menguntungkan dari pihak penghulu atau Kepala KUA. Dalam segi cakupan wilayah. Misalnya, kalau saya memegang manten 1.400 pasang rata-rata segitu. Dari sekian pasang tersebut, banyak berkumpul di bulan-bulan tertentu. Misalnya hari ini saya ada 9 pasang manten, terus penghulu saya hanya 2 dan 1 pasang minta akad dihadiri di Kecamatan Lowokwaru, berapa waktu yang saya pakai untuk perjalanan kesana, dan bagaimana dengan pelayanan yang lain. Maka akan efektif bila saya pindahkan ke Kecamatan Lowokwaru saja. Biar penghulu Lowokwaru yang menangani akad pernikahan tersebut. Akan tetapi ada juga itu diperbatasan, contoh Pisang Candi dengan Bareng Raya Langsep Masjid Al-Ikhlas, jadi yang mau menikah rumahnya di depan Masjid Al-Ikhlas tapi itu wilayah Kecamatan Sukun, akan tetapi akad nikahnya minta di Masjid Al-Ikhlas, apakah permintaan nikahnya akan saya tolak padahal hanya berhadap-hadapan. Itu persoalan saya 1% tadi yang membolehkan. Dasar alasan saya, pertama mensukseskan Dasar dari pelaksanaan peraturan Dirjen ini sebagai aturan bagi saya sebagai intansi yang berwenang di atas saya dan masalah bagi saya sebagai Kepala KUA terkait efisiensi perjalanan yang saya lakukan untuk pelaksanaan akad di luar wilayah kecamatan sukun”*

(“I, as the head of KUA in Sukun sub-district, apply 90% of this Directorate General's regulation. The principle of marriage registration is actually beneficial for the village headman or the head of KUA in terms of area marriage agreement. For example, I hold 1.400 pairs of couples. Many of them hold conduct the ceremony in the same particular months. For example, today I have 9 pairs of couple. There are only two village headmen, and one of them asks the wedding ceremony to be held in Lowokwaru sub-district. From this case, how long do I need to get there? What about the other services? That would be effective if I go to Lowokwaru sub-district only and let the village headman from Lowokwaru to handle the wedding ceremony. Yet, there are also borders, such as what that happens in Pisang Candi with

<sup>37</sup> Ahmad Hadiri, *Interview*, (Malang, March 13 2018).

Bareng Raya Langsep in Al-Ikhlas mosque, so the one who wants to marry has a house in front of the mosque but that is in Sukun sub-district, and his marriage agreement is demanded in Al-Ikhlas mosque. I cannot decide whether to refuse the request or not if it is face to face in location. That is my 1% of my problem. One of my reasons in succeeding the basis of the implementation of the Directorate General's regulation as a rule for me as the authorized authority over me and the *masalah* for me as the head of KUA related to the efficiency of the trip that I did for the implementation of the marriage agreement outside Sukun.”)

Ahmad Hadiri as the head of KUA as an official under the Directorate General certainly implement the regulation. The principle of marriage registration is fulfilled if the implementation of the marriage agreement is geographically not possible to reach. Time efficiency becomes a consideration in the implementation of the Directorate General regulation. If it can be reached geographically, the principle of marriage registration can not be implemented.

The principle of marriage registration is not only related to the area marriage agreement. In requirements of administration, it also provides protection to parties involved in marriage. The protection is in requirements of certainty of the area or place of marriage registration. According to the head of KUA Lowokwaru sub-district;<sup>38</sup>

*“Menurut saya dalam rangka untuk meminimalisir pemalsuan biodata. Karena jika pernikahan orang luar tidak dicatatkan disini semisal lowokwaru dan mengaku sudah dicatatkan disana kecamatan lain terkait pembohongan berita tentang kehendak nikah. Tujuannya diatur untuk menjaga semua pihak baik calon putri putra maupun wali dan lain-lain. Akan tetapi sedikit tidak nyaman jika semua ingin di satu tempat. Karena menurut pendapat saya ini hanya untuk beda kecamatan di luar wilayah kota bukan se wilayah kota. Ada pada daerah kerja masing-masing sesuai dengan SK.”*

<sup>38</sup> Anas Fauzie, *Interview*, (Malang, March 12 2018).

“I think it is intended to minimize the counterfeiting of identity if the marriage of people coming from outside the area of residence is not registered here, in Lowokwaru, and it claimed to have been registered to the other sub-districts related to the cheating news about the will of marriage. The goal is set to keep all parties whether for the future husband or the future wife as well and the guardian and other parties. It is a bit uncomfortable if all parties want to have a wedding ceremony and the marriage agreement in the same place. In my opinion this is only for different sub-district outside the city area rather than in the same area. There are some at each working area according to the decree.”)

Anas Fauzie slightly disagree with the principle issued by the Directorate General, because if it is associated with the place of the marriage covenant, they will choose in one place only. The principle of marriage registration is for the different city instead of one city.

The regulations are made to create convenience towards people who implement them. Regulations made by the Directorate General are sometimes not flexible. It shall be seen from both sides of society and the village headman, as officials who are also authorized to register the marriage. The head of KUA of Blimbing sub-district, Abdul Afif, states that;<sup>39</sup>

*“Aturan ini satu sisi memberatkan masyarakat dan satu sisi mengenakan masyarakat. Misalnya ada yang ingin menikah di Surabaya. Kalau diberi kewenangan ke Petugas tidak mau. Contoh lagi Hotel Santika berdekatan dengan Blimbing akan tetapi hotel tersebut ikut wilayah kecamatan Lowokwaru. Rumah makan Kaliurang masuk wlayah Lowokwaru. Depannya Hotel Savana masuk wilayah Klojen. Padahal paling dekat dengan wilayah Kecamatan Blimbing. Kalau seperti itu tidak masalah. Aturan ini mestinya elastic, fleksibel diberi kewenangan kepada penghulu. Kalau penghulu diberi kewenangan enak. Hanya saja siap-siap dengan permintaan masyarakat. Terkadang masyarakat tidak mikir pokoknya juga. Jika diminta yang jauh sulit penghulunya. Tapi kalau hanya wilayahnya berdekatan enak tidak apa-*

<sup>39</sup> Abdul Afif, *Interview*, (Malang, March 12 2018)

*apa. Pernah saya menerapkan aturan ini dan tidak mau melaksanakan pernikahan karena ada aturan. Kebetulan yang akan menikah anak wakil PA Kota Malang. Ingin menikah di landungsari tlogomas dau di masjid dan resepsi pernikahan dilakukan di UMM Dome dan menolak. Sampai jadi polemic. Sampai Oleh karena itu jika ada yang menjamin saya melanggar toh di syariat tidak masalah. Secara administrasi terpasang di akta nikah.”*

(“This regulation, in one-sided, is burdensome to society and the community. For example, there are those who want to get married in Surabaya. If they are given the authority to the PPN, they will refuse it. Another example is of Santika Hotel adjacent to Blimbing sub-district but the hotel is in Lowokwaru sub-district. Kaliurang Restaurant is in Lowokwaru sub-district. In front of it there is Savana Hotel which is in Klojen sub-district. Though it is the closest is in Blimbing sub-district. Thus, it will be a problem. This regulation should be flexible to the village headman who is given the authority. It is just getting ready to fit with the public demand. Sometimes people do not think that much. If there is a request that is far difficult in its village headman, it depends on the distance they request. If the location is not really far, it sounds nicer for the village headman. Once I apply this regulation and I do not want to carry out marriage because of the regulation. The people who will marry in coincidence is the son of the representative of religious court in Malang. He wants to get married in Landungsari Tlogomas in the mosque and having a wedding reception at UMM Dome and it is all refused. Time by time it becomes the polemic. Administratively they are registered in Sharia’s law. It has the problem solving that I can help them as long as it is still in a marriage certificate.”)

As the head of KUA, his opinion which is closely related to the principle of marriage registration issued by the Directorate General has been imposed or not implemented. The principle, as long as it does not impose the Shari'a, the pillars and requirements have been met. The pillars of marriage are related to the bride-to-be, witness, guardian and recitation of vow according to the procedure of marriage in terms of religion into the marriage pillars. Based on the area where they are staying at, in relation to the Marriage Law of article 4 in KHI (compilation of Islamic law),

that "Marriage is legal, if it is done according to Islamic Law in accordance with article 2 paragraph 1 of Law Number 1 year 1974 about marriage.

The Directorate General's regulation on the principle of marriage registration cannot be made as an annual decision as long as the regulation does not contain any harm. The principle of marriage registration issued by the Directorate General is considered not to see the conditions in the community. It is in line with the opinion of the head of KUA Kedung Kandang sub-district;<sup>40</sup>

*“Jika landasannya sama-sama Dirjen tidak bisa bila terjadi posisi hukum yang sama. Aadanya peraturan Dirjen yang satu tidak bisa menganulir putusan Dirjen yang sebelumnya. Kecuali putusan tersebut mengandung kemudhorotan. Keputusan dirjen tidak melihat faktualnya. Bukan kita menyalahi keputusan Dirjen. Keputusan Dirjen tersebut tidak memenuhi asas keadilan. Pelayanan publik melihat situasi dan kondisi. Kita subjektif jika pernikahan di Surabaya maka dilihat unsur lokus dan yurisdiksi melihat situasi dan kondisi. Sebenarnya adanya asas pencatatan perkawinan menguntungkan penghulu tidak perlu repot keluar dari wilayah kerjanya, karena fokus dalam satu wilayah. Akan tetapi masyarakat tidak mau mengerti itu. Terpenting rukun dan syarat tidak ada masalah. Itu hanya beda tempat pencatatan perkawinan yang didaftarkan dengan tempat pelaksanaan akad. Meski hal yang pokok dalam pencatatan perkawinan adalah saat pelaksanaan akad nikah.”*

(“If the foundation is the same, the Directorate General regulation cannot prohibit it due to its similar legal position. Directorate General Regulation cannot annul the previous Directorate General's decision unless the decision contains harm. The decision of Directorate General does not see the fact. We don't impose the Directorate General's decision because the decision does not fulfill the principle of justice. Public services are adjusted to the situation and conditions as well. We are subjective if the marriage held in Surabaya then we see the element of locus and authorized location while seeing the situation and conditions. Actually there is a principle of marriage registration profitable for the village headman who does not need to go outside of working area, because they focus in one area. Yet, people do not want to understand that.

<sup>40</sup> Ahmad Sya'rani, *Interview*, (Malang, March 13 2018).

The most important thing is getting along the pillars and the requirements will not be a problem. It is just a different place of marriage registered with the place of the marriage settlement. Nevertheless, the main thing in the registration of marriage is the time for the implementation of the marriage agreement.”)

KUA cannot impose the will of related locus and authorized location. Public demand cannot be imposed because the office is a public service. The community does not understand the regulations issued by the Directorate General. They assume that everything can be done without considering the procedures and regulations made by the competent authorities above the KUA. The principle of marriage registration which is the subject is has a good impact when it is well-applied. For the village headman, he does not need to go out of the working area to attend the wedding ceremony.

In line with Ahmad Sya'rani's opinion, regarding with the implementation of the Directorate General's regulation on the principle of marriage registration, Ahmad Syaifudin states that the most important one is the fulfillment of the pillars and requirements, and the location of the ceremony is still reasonable to reach. He argues;<sup>41</sup>

*“Asas hukum itu kesejahteraan kecuali yang bersifat prinsip. Orang dari Klojen menikah di blimbing harus ada dasar hukumnya, melalui rekomendasi. Jika tidak ada rekomendasi tidak boleh dicatat di Blimbing. Sekalipun menikahnya di KUA Blimbing. Prinsip dasar menikah di tempat tinggal istri. Jika diluar maka harus ada rekomendasi. Karena itu prinsip pencatatan. Adanya per dirjen ini sifatnya hanya mentertibkan. Ada penghulu dibawa ke Mekkah dan sebagainya. Sementara di kedutaan sudah ada penghulu. Dan itu bukan termasuk dalam unsur pembatalan pernikahan. Karena bukan*

<sup>41</sup> Ahmad Syaifuddin, *Interview*, (Malang, March 12 2018).

*administrasi pokok. Masalah bagi pihak pengantinnya. Dasar hukum didalam peraturan menteri tidak ada yang menyatakan dirjen yang membuat peraturan pencatatan. Dirjen hanya diberikan wewenang membuat blanko. Bicara hierarki hukum peraturan ini tidak bisa mengikat. Peraturan juknis harus dibuat atas perintah peraturan atasnya. Hal ini yang mengakibatkan tidak berjalan secara efektif. Wewenang membuat teknis pencatatan perkawinan itu menteri agama. Ini hanya sebuah himbauan dan kehati-hatian saja. Seharusnya jika menurut dengan teori pembuatan hukum jika ada kata pelarangan maka harus ada sanksi. Tidak efektif dari sudut pembuatan hukum tidak mengikat. Semisal penghulu melanggar tidak ada sanksi. Dan dirjen kurang berwenang.“*

(“The principle of law is a social welfare, except the principle in the article. People from Klojen sub-district who get married in Blimbing must have a legal basis, through the recommendation. If they cannot afford for recommendation, it should not be registered in Blimbing sub-district though they get married in KUA Blimbing sub-district. The basic principle of getting married is in the wife's residence. If it takes place outside, there should be a recommendation. Hence, the principle of marriage is the registration. The existence of Directorate General's regulation is only putting it in order. For example, how if you take a village headman to Mecca with you for your wedding ceremony and at the embassy you have already had a village headman at the place of your wedding? That is not included in the element of cancellation of marriage, because it is not the principle administration, yet it is *masalah* for the bride and groom-to-be. The law basis in the ministerial regulation does not stipulate that the Directorate General creates the registration law. The Directorate General is only authorized to make the undiscussed case. The regulation of the technical road map should be made by the order of the head office. This has not resulted effective. The authority to make technical registration of the marriage is the minister of religion. This is just an appeal and caution. It should be in accordance with the theory of creating law which is a banning should be followed with the sanctions. It is ineffective from the point of non-binding law. There will be no sanction for the imposition of the headman, and the Directorate General is less-authorized in this case.”)

If the Regulation of the Minister of Religious Affairs Number 11 of the year 2007 concerning with the location of marriage registration is enforced, it should be followed with the sanction. The principle of marriage registration refers to The Regulation of the Minister of Religious Affairs Number 11 of the year 2007. The

sanctions are not mentioned in the regulation. Thus, the law could not be well-enforced.

Based on the opinion expressed by the head of KUA in Malang, responding to the principles of marriage registration issued by the Directorate General of Islamic Guidance Number DJ.II.2/1/HM.01/942/2009 on June 29<sup>th</sup>, 2009, the basis is the the place where the marriage is registered because the essence of marriage registration is the time when the ceremony of performing the marriage vow is conducted. The opinion of the head of KUA concludes that the principle of marriage registration is the place where the registration of marriage should be conducted. If it is not implemented, it would not be a problem because it does not include the elements that can cause the cancellation of the marriage. All of the heads of KUA do not follow the regulation, whereas it is made, for the stakeholders in KUA, to discipline the administrative system of marriage registration. The main problem is the practice of marriage agreement.

Marriage registration is carried out in order to enforce the order of the marriage administration. The Regulation of the Minister of Religious Affairs Number 11 of the year 2007 on marriage agreement is also listed as the basis of the principle of marriage registration. It only emphasizes on the implementation of the marriage covenant related to the place where the marriage registration is done. It is only an administrative control, not the matter of principle. Besides, it benefits the village headman to only attend a wedding ceremony in his working area. He does not need to get out of their sub-district, even though it is out of the town.

## **2. The Opinions of the Heads of Kantor Urusan Agama Kota Malang on Marriage Registration Outside the Authorized Location Viewed from *Maslahah*.**

Islam guides and regulates the legitimate marriage procedure. It is absolutely through marriage contract. The contract is executed when the pillars and requirements are completed. When they are completed, the marriage is legal according to Islam.

The law Number 1 of the year 1974 on marriage is universal for all Indonesian citizens. Nevertheless, the Law is also different according to the religion of the couple because the legality of marriage is proven to be valid in accordance with the tenet of every religion. So, the marriage between a Muslim groom and a Muslim bride is legal. Article 2 paragraph 1 states that marriage is conducted based on their respective religious law and belief. This is the main point for the legitimation of marriage.

It is a common tradition of society in Kota Malang to perform marriage agreement outside the KUA of the couple's residence. They usually do it in the mosques, especially Masjid Jami Malang. This mosque is in the area of Klojen sub-district. The researcher found that the ceremony of marriage agreement is not only performed by the people living along Klojen. Some are coming from the KUA located in Kedung Kandang sub-district. Thus, there is a marriage registration outside of the marriage area as long as the pillars and requirements is fulfilled. Responding to this, the researcher interviews the head of KUA in Sukun sub-district;<sup>42</sup>

---

<sup>42</sup> Ahmad Hadiri, *Interview*, (Malang, March 13 2018).

*“Kepala KUA diangkat berdasarkan SK wilayah kerja. Sehingga pernikahan dilakukan dengan berdasarkan wilayah hukum atau kerja dari Kepala KUA. Terlebih saat menjadi wali hakim sebagai Kepala KUA saya tidak sah menikahkan di luar wilayah hukum dari wilayah Kecamatan Sukun. Sehingga tidak berani untuk menikahkan di luar wilayah kecamatan Sukun. Karena pernikahan tersebut menjadi tidak sah. Karena selaku wali hakim dibatasi wilayah dan ada ikrar wali hakim. Jika ada yang akad nikah di luar dari Kecamatan sukun, maka sebagai kepala KUA merekomendasikan pencatatan perkawinan ke KUA yang dimana tempat atau wilayah terjadi akad tersebut.”*

*(“The Head of KUA is appointed based on the authorized location written on decree, so that a marriage is conducted on the basis of authorized location or working area of the Head of KUA. When I become the magistrate guardian (*wali hakim*), as head of KUA, I cannot legally marry a couple living outside the authorized location of Sukun sub-district. So, I do not dare to marry a couple off outside the authorized. If it happens, the marriage becomes illegal. I am, as the magistrate guardian, limited by the territory regulation and I once did a pledge of *wali hakim*. If a couple wants to perform a marriage registration outside Sukun, as the head of KUA, I usually recommend the registration process of marriage to the KUA in which the marriage agreement is held.”)*

According to him, the head of KUA is limited by the authorized location because each head is appointed and inaugurated based on the decree of authorized specific or limited to the area of his work. The limitation of the area, according to him, is related to the magistrate guardian (*Wali Hakim*). It is found in *Fathul Mu'in* that:

*"Qadli'a guardian marries a baligh woman (woman who is turning to adult) whose wedding settlement is conducted in his area of authorized even though his marriage permit is granted while she is still outside of the area of the Qadli's guardian, to a man in her level. When the vow is performed outside the authorized area of the guardian, he cannot marry her even though the marriage permit is given before leaving the area, and even if her future*

*husband is in the guardianship area, it is still not allowed because it is related to a woman, not her future husband.*"<sup>43</sup>

In relation to the magistrate guardian, the head of KUA can not marry people living outside his authorized area. The marriage becomes illegal because there is territorial boundary or *wilayatul hukmi* of *wali hakim*. It will be legal if he is not the *wali hakim*, even though it takes place out of the authorized location of the head of KUA, because it is not related to him. He usually recommends a PPN to be a representative (*taukil*) during the ceremony of the marriage agreement.

Similar to the above interview the Head of KUA Lowokwaru sub-district, states that the registration of marriage outside his authorized is not a problem, except the *wali hakim*. He argues that;<sup>44</sup>

*"Terkait dengan pencatatan perkawinan di luar wilayah hukum, saya berpendapat bahwa jika rekomendasi ribet maka, tidak perlu pindah pencatatan nikah. Artinya, selama di wilayah terdekat tidak masalah. Karena apabila ingin menikah semisal di Masjid Jami', maka pencatatan perkawinan akan menumpuk di Kecamatan Klojen, akad nikah ingin di Sasana Budaya UM, pencatatannya menumpuk di Kecamatan Lowokwaru. Senyampang tetangga kecamatan saya selaku Kepala KUA fleksibel dalam melakukan pencatatan perkawinan. Kecuali jika di luar Kota, atau di daerah Kabupaten atau di Luar Negeri maka beda lagi ke fleksibelannya dalam pencatatan perkawinan. Berbeda dengan wali hakim karena wali hakim terkait dengan wilayatul hukmi dan ada ikrar wali hakim. Jikalau terjadi akad nikah di luar dari wilayah dimana dilakukan pendaftaran, maka cukup dengan pemberitahuan saja kalau pinjam tempat."*

("In relation to the marriage registration which is done outside the authorized, I would say that if the recommendations are complicated there is no need to transfer the registration. It is not a problem as long as it is in the nearest area. Because, if you want to get married in Masjid Jami', the registration of

<sup>43</sup>Zainuddin Syekh bin Abdul Aziz Al-Malibari, Fathul Mu'in Bi Syarh Qurratil'Ain Bi Muhimmatid-Diin, translation M. Fikri Hakim and Abu Sholahuddin, (Kediri: Al-Aziziyah Press, 2014), 45.

<sup>44</sup>Anas Fauzie, *Interview*, (Malang, March 12 2018).

marriage will be accumulated in Klojen sub-district. When the marriage ceremony is going to be held in Sasana Budaya UM, the registration is in the sub-district of Lowokwaru. When the ceremony is conducted in my neighboring sub-district, as a head of KUA, I make it flexible in doing marriage registration. In case it is conducted outside the city or overseas, it is going to be a different case. However, it does not work for the *wali hakim* because he is related to *wilayah hukmi* and he already does a pledge of *wali hakim*. If the ceremony of performing marriage agreement is held outside of the area where the marriage registration is made, it can be simply done by notification that they just borrow the place.”)

Similar opinion is also found from the interview with the head of KUA in Blimbing sub-district who states that;<sup>45</sup>

“Menurut syariat pernikahan di luar wilayah KUA sah apabila tidak menggunakan wali hakim. Wali hakim terikat dengan wilayah sesuai di kitab *Ianatul Tolibin*, atau di *Fathul mu'in*. Kepala KUA Kecamatan Blimbing berarti di wilayah KUA Kecamatan Blimbing. Hal terpenting adalah rukun dan syarat terpenuhi.”

(“According to the marriage law (*Shari'a*), KUA authorized is legal when they are not having *wali hakim*. *Wali hakim* limited with the authorized location according to the book *Ianatul Tolibin*, or *Fathul Mu'in*. The head of KUA in Blimbing sub-district means that he works in Blimbing sub-district as well. The most important thing is the pillars and requirements are fulfilled.)

The above opinion stated that the marriage is legal if the pillars and requirements are fulfilled. The pillars are an inherent element of a legal event or a legal act. If any pillars in the event or legal act is not completed, it would be invalid and the statute fails by law.<sup>46</sup> There are five pillars of marriage:

- a) The presence of the groom
- b) The presence of the bride

<sup>45</sup> Abdul Afif, *Interview*, (Malang, March 12 2018).

<sup>46</sup> Neng Djubaidah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat (Menurut Hukum Tertulis di Indonesia dan Hukum Islam)*, 90.

- c) The presence of a guardian from the bride or her deputy
- d) Two witnesses
- e) *Ijab* and *Qabul*

Requirements are things inherent in each element which is a part of a legal act or event. The consequence of incomplete requirements is that it does not automatically fails the legal action or event, but such legal action or event may be cancelled.<sup>47</sup> The legal marriage according to the law is regulated in Article 2 paragraph 1 of regulation Nounber 1 of the year 1974 which states, “a marriage is legal if it is done according to the law respectively a long with their religion and belief. So the legality of marriage is in accordance with the law. Indonesian law in this context is positive. In line with head of KUA Kedung Kandang sub-district, Ahmad Sya'rani states that;<sup>48</sup>

*“Pendapat saya bahwa orang tidak mau direkomendasikan di luar dari wilayah domisili pencatatan perkawinan yang didaftarkan. Karena argument yang dilontarkan pihak yang akan melangsungkan pernikahan tidak mau dalam pengurusan harus pindah dikarenakan pelaksanaan akad nikah berbeda dengan tempat dimana pendaftaran nikah dilakukan. Menurut mereka, masjid merupakan sarana publik, jadi bebas untuk dilakukan kegiatan di dalamnya terutama pelaksanaan akad nikah. Sebab ada unsur ritual dan sakralnuya. Jadi Kenapa?” saya harus mencatatkan di Kecamatan Lowokwaru padahal saya bukan orang Kecamatan Lowokwaru”, ini respon masyarakat atau unek-unek dari masyarakat. Pencatatan perkawinan memang ada unsur locus dan yurisdiksi. Telah terjadi consensus dan selama tidak merugikan masyarakat maka tidak apa-apa. Contoh lagi ada orang Singosari ingin menikah di Kecamatan Kedungkandang saya tidak keberatan. Kalau wali hakim, karena ikrar kita terbatas dengan wilayah tidak mau mencatat pernikahan di luar wilayah yurisdiksi dimana saya ditugaskan.”*

<sup>47</sup> Neng Djubaidah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat (Menurut Hukum Tertulis di Indonesia dan Hukum Islam)*, 92.

<sup>48</sup> Ahmad Sya'rani, *Interview*, (Malang, March 13 2018).

(“In my opinion, people are not willing to be recommended to make marriage registration outside the area of residence since they believe that the ceremony of performing marriage agreement could be different from the place where the marriage registration is done. According to them, the mosque, which is a public facility, is free to use especially for the conducting the ceremony of performing marriage vow. It is an element of ritual, and it is sacred. They say “So why I have to register in Lowokwaru sub-district when I am not living in Lowokwaru?” This is a public response or feelings of the community. Marriage registration is indeed an element of locus and authorized location. There has been a consensus, and as long as it does not harm the community, that would be okay. For example, a couple from Singosari wants to get married in Kedung Kandang sub-district, I do not mind if the *wali hakim*, who has a pledge to be limited with the authorized location, does not register the marriage here.”)

The opinion of Ahmad Sya'rani emphasized that the mosque is a public facility that everyone is entitled to use it. Therefore, the registration of marriage whose ceremony is conducted outside the authorized location is not a problem, unless, the head of KUA becomes the *wali hakim*, because the head of KUA has already made a pledge.

Marriage registration is based on the locus and authorized location. However, it does not become part of the pillars and requirements of the marriage. It is only a technical part of a marriage registration in KUA. As the result of interview with the head of KUA in Klojen, Ahmad Syaifuddin said that;<sup>49</sup>

*“Pendapat saya, bahwa pencatatan perkawinan Itu hanya persoalan teknis saja. Orang bisa saja dinikahkan di KUA Klojen untuk memenuhi pencatatan. Itu boleh-boleh saja jika ingin pelaksanaa di Hotel di luar wilayah Kecamatan Klojen. Pedoman satu orang dihadapan PPN. Kedua persoalan-persoalan secara sosiologis, orang dari Jakarta dia sebetulnya tidak tahu hotel ini wilayah mana. Setelah daftar di Klojen ternyata hotel masuk*

<sup>49</sup> Ahmad Syaifuddin, *Interview*, (Malang, March 12 2018).

*wilayah Lowokwaru. Padahal rekomendasi dia dari Jakarta KUA Klojen. Itu secara logika jika rekomendasi kita kembalikan juga ribet. Maka disiasati menikah nya tetap di hotel tersebut. Kecuali wali hakim yang dibatasi wilayah”.*

(“According to me, marriage registration is just a technical matter. One could get married in KUA Klojen to fulfill the registration. It is okay if you want to conduct the ceremony in the Hotel outside Klojen. One person is in front of the PPN. Both problems are sociological. Somebody from Jakarta does not know in which area is the hotel. When he already made registration in Klojen, it turns out that the hotel belongs to Lowokwaru sub-district. Even though his recommendation for wedding ceremony he got from Jakarta is for Klojen sub-district, logically, if we turn the recommendation back, it will be very complicated. To solve this problem, they keep getting married at the hotel, except the magistrate guardian is limited by its authorized location.”)

The statement from the head of the KUA in Klojen sub-district shows that the registration of marriage is only a technical thing. It is not a matter of principle so that the registration conducted outside the authorized KUA will not be a problem. It does not impose the regulations mentioned before, yet it is set otherwise in this law.

The head of KUA states that marriage registration outside the area where it is registered can be conducted whenever the distance, time, and service efficiency are possible. It is allowed as long as it does not harm the headman. Magistrate guardian cannot conduct marriage agreement outside his working area, that the practice of marriage is supposed to be among the area where the bride is registered. The practice of marriage agreement by magistrate is bound with the area of authorized location.

Considering the first *Maslahah* which is *Maslahah Dharuriyat*, the principle of marriage registration is not strongly enforced to be fulfilled because it is only a limited implementation of marriage agreement and marriage registration. The second one is *Maslahah Hajiyat*. Considering from this *maslahah*, the principle of marriage

registration is not included because it does not change the order of life. The implementation is not a matter of principle such as the marriage terms and condition.

The third one is *Maslahah Tahsiniyat*, which is the principle of marriage registration related to the place where the marriage agreement is held becomes the the principle of marriage registration. This is related to the working area of the village headman which focuses on each working area without leaving the sub-district. Thus, considering the majority opinion of the head of KUA who argue that the principle of marriage registration is included into *Maslahah Tahsiniyat*, it is supposed to be done for its good impact towards the headman without attending the ceremony of marriage agreement which takes place outside the working area. This is for the sake of the efficiency of time because the wedding ceremony is mostly held in certain specific months.



## CHAPTER V

### CONCLUSIONS AND SUGGESTIONS

#### A. CONCLUSIONS

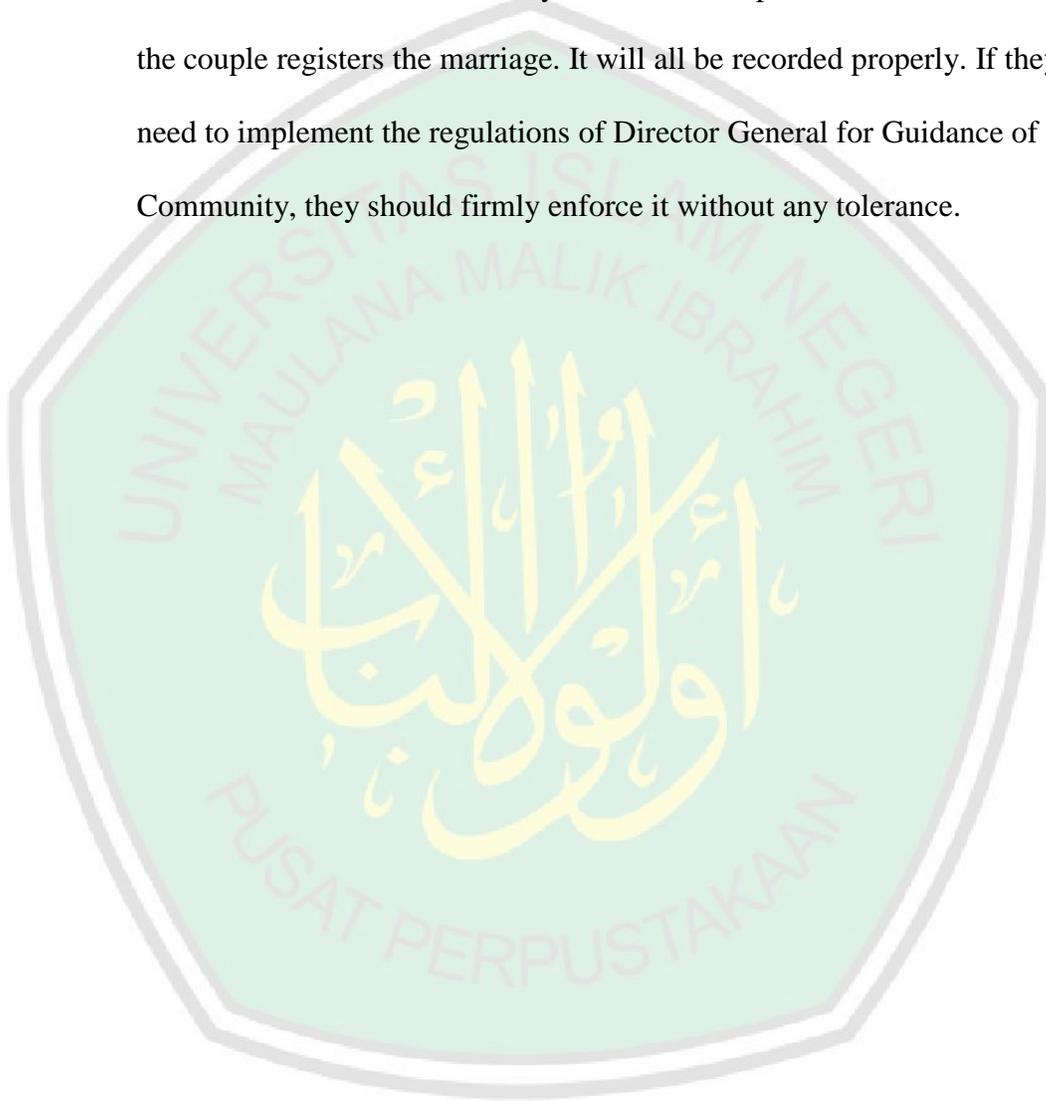
1. All of the heads of KUA do not follow the regulation, whereas it is made, for the stakeholders in KUA, to discipline the administrative system of marriage registration. The main problem is the practice of marriage agreement. The Regulation of Director General for Guidance of Islamic Community is also addressed to all public servants in KUA, headmen, who attend the ceremony of marriage agreement. Thus, the area of marriage registration equals to the area where the ceremony of marriage agreement is conducted.
2. The heads of KUA argue that it does not matter, because it is just a matter of a place, and it is not included in the pillar and requirements. The ceremony can be conducted anywhere as long as it is not far and reachable. However, it is not valid for magistrate guardian. The Head of KUA appointed by the minister of Religious Affairs as Judge cannot officially record the marriage

whose ceremony is conducted outside his authorized location. The Heads of KUA also made a pledge for being a magistrate guardian. Magistrate guardian, referring to the book of *fiqh (I'alah Thalibin Juz 3 Page 360 Darul Fikr)* who already fulfill three requirements may marry off a woman who is already baligh, qadli, and being in the area of residence to a matching man. These requirements are also explained in the Book *Fathul Mu'in Bi Syarh Qurratil 'Ain Bi Muhimmatid Diin*. The majority of the Heads of KUA state that the principle of marriage registration bring *Maslahah Tahsiniyat*. If it is done, it will bring good impact towards the headman without having to attend the ceremony outside the marriage registration area. The implementation brings more efficiency on the service time because wedding ceremony is commonly accumulated in certain months.

## **B. SUGGESTIONS**

1. The government is supposed to consider the situation and conditions among society when creating a regulation. The phenomenon occurring in the community should be the reason to create a more flexible regulation because the main point of marriage administration should be further clarified with the one who has authority, the headman. The headman is sometimes confused with the regulation and the demand of the people who do not understand the rules of KUA as a place for public service.

2. The Heads of KUA is supposed to learn more about marriage regulation. Marriage registration is not the main principle of marriage, but it will be crucial in the future to avoid any administrative problem related to data where the couple registers the marriage. It will all be recorded properly. If they really need to implement the regulations of Director General for Guidance of Islamic Community, they should firmly enforce it without any tolerance.



## BIBLIOGRAPHY

### KITAB & REGULATION

Al-Qur'an Al-Karim Malik Qur'an Translation

Inpres No.1 tahun 1991 tentang Kompilasi Hukum Islam

PMA No. 11 Tahun 2007 tentang Pencatatan Perkawinan

Peraturan Pemerintah No. 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan

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

Undang-Undang No. 1 Tahun 1974 tentang Perkawinan

Undang-Undang No. 24 Tahun 2013 tentang Administrasi Kependudukan

### BOOKS

Amin Summa, Muhammad. *Hukum Keluarga Islam di Dunia Islam*. Jakarta: PT Raja Grafindo Persada. 2005.

Azhar Basyir, Ahmad. *Hukum Perkawinan Islam*. Yogyakarta: UII Press. 2006.

Djubaidah, Neng. *Pencatatan Perkawinan & Perkawinan Tidak Dicatat (Menurut Hukum Tertulis di Indonesia dan Hukum Islam)*. Jakarta: Sinar Grafika. 2010.

Hadikusuma, Hilman. *Hukum Perkawinan Indonesia Menurut: Perundangan, Hukum Adat, Hukum Agama*. Bandung: CV Mandar Maju. 2007.

Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI-Press. 1986.

Soemiyati. *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*. Yogyakarta: Liberty. 2004.

Sudarsono. *Hukum Perkawinan Nasional*. Jakarta: PT Rineka Cipta. 2005.

Syarifuddin, Amir. *Garis-Garis Besar Ushul Fiqh*. Jakarta: Kencana Prenada Media Group. 2012.

Syarifuddin, Amir. *Ushul Fiqh Jilid 2*. Jakarta: Kencana Prenada Media Group. 2011.

Syekh Zainuddin bin Abdul Aziz Al-Malibari, *Fathul Mu'in Bi Syarh Qurratil 'Ain Bi Muhimmatid-Diin*, terj. M. Fikril Hakim dan Abu Sholahuddin. Kediri: Al-Aziziyah Press. 2014.

Tanzeh, Ahmad. *Pengantar Metode Penelitian*. Yogyakarta: Penerbit Teras, 2009.

Usman Adji, Sution. *Kawin Lari dan Kawin Antar Agama*. Yogyakarta: Liberty. 2002.

Wahab Khallaf, Abdul. *Kaidah-Kaidah Hukum Islam*. Jakarta: Rajawali Press. 1993.

Waluyo, Bambang. *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika. 2002.

#### **RESEARCHES**

Ahmad Maskur. *Analisis Masalah Mursal terhadap hukum pencatatan perkawinan di Indonesia ( Studi kritis atas Ketentuan Peraturan Perundang-undangan dalam Masalah Pencatatan Perkawinan)*. Skripsi. Surabaya: UIN Sunan Ampel Surabaya. 2014.

Isti Astuti Savitri, *Efektivitas Pencatatan Perkawinan pada KUA Kecamatan Bekasi Utara. Peneliti menyimpulkan bahwa pencatatan perkawinan di KUA Bekasi Utara. Skripsi*. Jakarta: UIN Syarif Hidayatullah. 2011.

Nur Fauzi. *Kesadaran Hukum Masyarakat Kelurahan Cipedak Kecamatan Jagakarsa Terhadap Pencatatan Perkawinan. Skripsi*. Jakarta: UIN Syarif Hidayatullah. 2011.

#### **INTERVIEWS**

Abdul Afif, *Interview*, Malang, KUA Blimbing 2018.

Anas Fauzie, *Interview*, Malang, KUA Lowokwaru 2018.

Ahmad Hadiri, *Interview*, Malang, KUA Sukun 2018.

Ahmad Sya'rani, *Interview*, Malang KUA Kedung Kandang 2018.

Ahmad Syaifuddin, *Interview*, Malang Klojen 2018.

**WEBSITES**

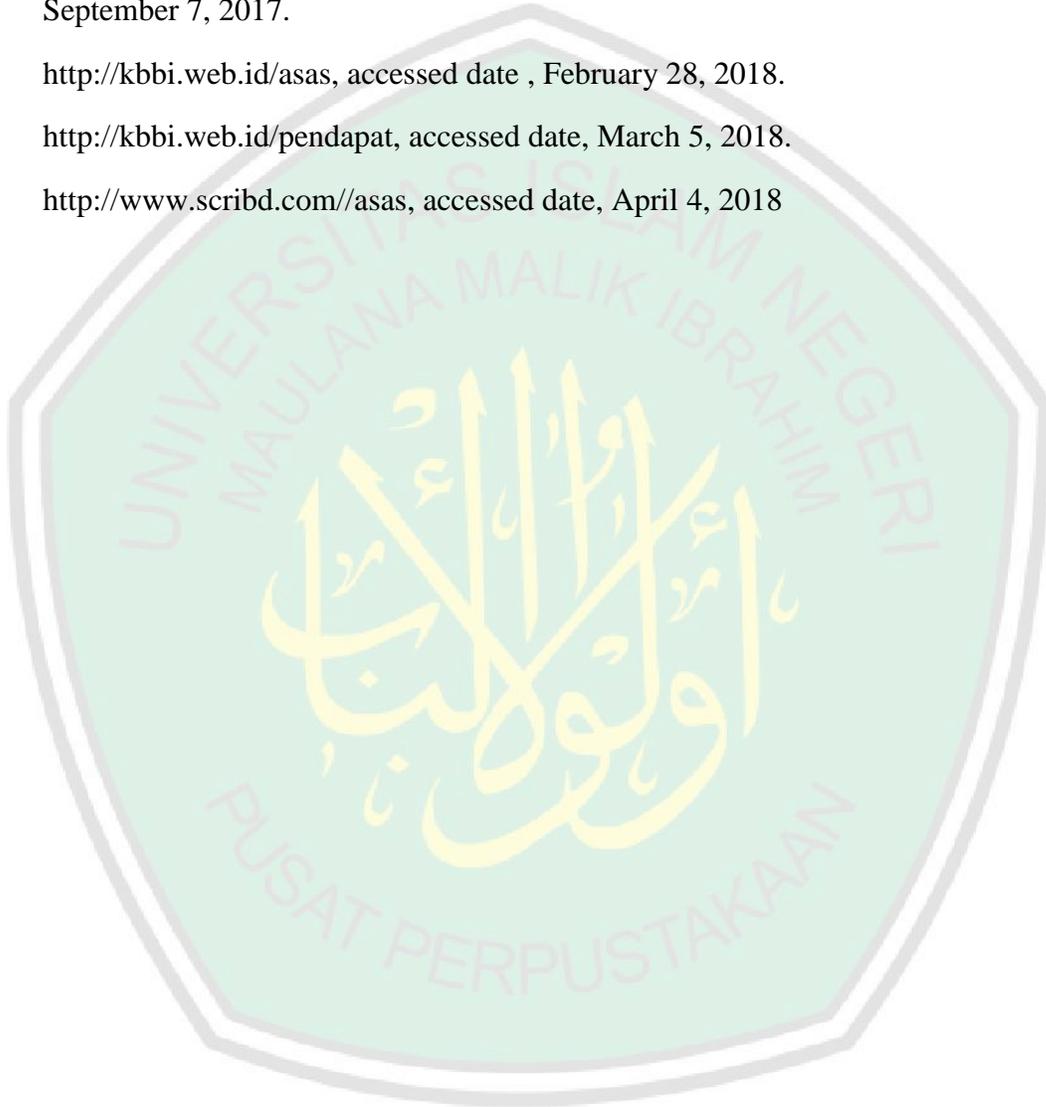
<http://babla.co.id>, accessed date, July 20 , 2018

<http://estyindra.weebly.com/mkn-journal/pencatatan-perkawinan>, accessed date, September 7, 2017.

<http://kbbi.web.id/asas>, accessed date , February 28, 2018.

<http://kbbi.web.id/pendapat>, accessed date, March 5, 2018.

<http://www.scribd.com//asas>, accessed date, April 4, 2018



### THE LIST OF INTERVIEW

1. Berapa banyak akad nikah yang dilaksanakan di luar kantor?
2. Dimana biasanya tempat pelaksanaan akad di luar kantor tersebut?
3. Bagaimana implementasi terkait dengan regulasi pencatatan perkawinan?
4. Bagaimana pandangan bapak terkait asas pencatatan perkawinan?
5. Bagaimana pandangan terkait dengan pelaksanaan akad nikah di luar wilayah KUA yang didaftarkan?
6. Apa alasannya jika setuju dengan asas pencatatan perkawinan?
7. Apa alasannya jika tidak setuju dengan asas pencatatan perkawinan?
8. Apa dasar hukum yang mendasari pendapat bapak?
9. Apa masalah adanya peraturan tersebut?

## APPENDIXES



**1. Interview with Head of KUA Blimbing**



**2. Interview with Head of KUA Kedung Kandang**



**3. Interview with Head of KUA Lowokwaru**



**4. Interview with Head of KUA Klojen**



**5. Interview with Head of KUA Sukun**





**DEPARTEMEN AGAMA R.I.  
DIREKTORAT JENDERAL BIMBINGAN MASYARAKAT ISLAM**

Jl. Lapangan Banteng Barat No. 3 – 4 Jakarta Pusat  
Website : [www.depag.go.id](http://www.depag.go.id); e-mail: [bimasislam@depag.go.id](mailto:bimasislam@depag.go.id)  
PO. BOX 3733 JKP 10037 – JAKARTA 10710

Jakarta, 29 Juni 2009

Nomor : DJ.II.2/1/HM.01/942/2009  
Lampiran :  
Perihal : Asas Pencatatan Perkawinan

Kepada  
Yth. Kepala Kantor Wilayah  
Departemen Agama RI  
Seluruh Indonesia

Assalamu'alaikum wr. wb.

Dalam upaya menertibkan administrasi pencatatan perkawinan, kami minta perhatian Saudara hal-hal sebagai berikut:

1. Pasal 3 ayat (1) PMA No. 11 Tahun 2007 tentang Pencatatan Nikah dinyatakan: *"Pemberitahuan kehendak menikah disampaikan kepada PPN, di wilayah kecamatan tempat tinggal calon istri"*.
2. Pada Pasal 17 ayat (1) ditegaskan bahwa "akad nikah dilaksanakan di hadapan PPN atau Penghulu atau Pembantu PPN dari tempat tinggal calon istri". Kemudian dalam ayat (2) dinyatakan "apabila akad nikah dilaksanakan di luar ketentuan sebagaimana dimaksud pada ayat (1), maka calon istri atau walinya harus memberitahukan kepada PPN wilayah tempat tinggal calon istri untuk mendapat surat rekomendasi nikah".
3. Berdasarkan ketentuan tersebut di atas, PPN tidak boleh mencatat pernikahan di luar wilayah hukumnya, karena asas pencatatan adalah menganut asas tempat terjadinya peristiwa bukan domisili.
4. Sehubungan dengan masih adanya pencatatan perkawinan yang dilakukan oleh PPN di luar wilayah hukumnya (termasuk pencatatan perkawinan di luar negeri, sebagai contoh di Mekkah Saudi Arabia dengan PPN dari Indonesia), kami minta agar Saudara memerintahkan kepada aparat di wilayah Saudara untuk mematuhi dan melaksanakan ketentuan di atas.

Demikian, untuk menjadi pedoman.

Wassalam,  
An. Direktur Jenderal  
Direktur Urusan Agama Islam  
Dan Pembinaan Syariah

t.t.d

Drs. H. Moh. Muchtar Ilyas

Tembusan:

1. Dirjen Bimas Islam;
2. Irjen Dep. Agama



KEMENTERIAN AGAMA  
**UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG**  
**FAKULTAS SYARIAH**

Terakreditasi "A" SK BAN-PT Depdiknas Nomor : 157/SK/BAN-PT/Ak-XVI/S/III/2013 (Al Ahwal Al Syakhshiyah)  
 Terakreditasi "B" SK BAN-PT Nomor : 021/BAN-PT/Ak-XIV/S1/III/2011 (Hukum Bisnis Syariah)  
 Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399, Faksimile (0341) 559399  
 Website: <http://syariah.uin-malang.ac.id/>

Nomor : Un.03.2/TL.014<sup>46</sup>/2017  
 Lampiran : -  
 Perihal : **Pra-Penelitian**

**Kepada Yth.**  
**Kepala Kementrian Agama Kota Malang**  
 Jalan Panji Suroso No. 2,  
 Purwodadi, Blimbing, Kota Malang, Jawa Timur 65126

*Assalamualaikum wa Rahmatullah wa Barakatuh*

Dengan hormat, kami mohon agar :

Nama : Muhammad Rizal Agus Setiawan  
 NIM : 14210084  
 Fakultas : Syariah  
 Jurusan : Al Ahwal Al Syakhshiyah

diperkenankan mengadakan pra-penelitian (*pra research*) di daerah/lingkungan wewenang Kepala Kantor Urusan Agama Kota Malang, guna menyelesaikan tugas akhir/skripsi, yang berjudul: **Pandangan Kepala KUA Terhadap Pencatatan Perkawinan di Luar KUA yang Didaftarkan (Studi Kantor Urusan agama Kota Malang)**

Demikian, atas perhatian dan perkenan Bapak/Ibu, kami mengucapkan terima kasih.

*Wassalamualaikum wa Rahmatullah wa Barakatuh*

a. Dekan  
 Wakil Dekan Bidang Akademik  
  
 Dr. H. Badrudin, M.HI.  
 NIP. 19641127 200003 1 001

Tembusan:

1. Dekan
2. Ketua Jurusan Al-Ahwal Al-Syakhshiyah
3. Kabag. Tata Usaha



**CONSULTATION PROOF**

Name : Muhammad Rizal Agus Setiawan  
 Student Number : 14210084  
 Department : Islamic Family Law (Ahwal Syakhshiyah)  
 Supervisor : Dra. Jundiani, SH., M.Hum  
 Thesis Title : THE OPINIONS OF THE HEADS OF KANTOR URUSAN AGAMA KOTA MALANG ON MARRIAGE REGISTRATION OUTSIDE THE AUTHORIZED LOCATION IN THE PERSPECTIVE OF MASLAHAH

No.	Day/Date	Subject of Consultation	Signature
1.	Tuesday, 21 November 2017	Proposal	
2.	Tuesday, 11 December 2017	Review Proposal	
3.	Thursday, 15 February 2018	Chapter 1 and Layout	
4.	Friday, 9 March 2018	Chapter 2 and 3	
5.	Tuesday, 13 March 2018	Review Chapter 1, 2 and 3	
6.	Thursday, 5 April 2018	Chapter 4	
7.	Tuesday, 10 April 2018	Chapter 5	
8.	Thursday, 19 April 2018	Review All Chapter	
9.	Tuesday, 24 April 2018	Abstract	
10.	Thursday, 26 April 2018	ACC Chapter 1-5 and Abstract	

Malang, 04<sup>th</sup> of May 2018

Acknowledged by:

o.b. Dean

Head of Al-Ahwal Al-Syakhshiyah  
 Department



Dr. Sudirman, M.A.

NIP 19770822200501 1 003

## CURRICULUM VITAE

### 1. Personal Detail



**Full Name** : Muhammad Rizal Agus Setiawan

**Birth Place** : Malang

**Birth Date** : August 29<sup>th</sup> 1994

**Sex** : Male

**Religion** : Islam

**Parents** : Mu'in (Alm) & Tumini

**Address** : Desa Sumberpetung Kec. Kalipare  
Kab. Malang

**Cell Phone** : 085608080966

**E-Mail** : rizalpebisnismuslim@gmail.com

### 2. Formal Education

2001-2007	State Elementary School 03 Sumberpetung
2007-2010	State Junior High School 01 Kalipare
2010-2013	Vocational High School Muhammadiyah 01 Kepanjen
2014-2018	State Islamic University Maulana Malik Ibrahim Malang

### 3. Non Formal Education

2016-Now	Ponpes Sabilurrosyad Gasek Sukun Malang
----------	-----------------------------------------

### 4. Organisations

2015-2016	Musyrif-Musyrifah Ma'had Sunan Ampel Al-'Aly
2015-2016	UPKM JDFI
2015-2018	Maiyah Kampus UIN Malang
2015-2017	UKM LKP2M UIN Malang
2018-Now	Publication Devition @mediasantrinu

